

ENVIRONMENTAL IMPACT ASSESSMENT AND IMPACT AND BENEFIT AGREEMENTS: CREATIVE TENSION OR CONFLICT?

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1. Introduction

In northern Canada, a new paradigm for large project approvals has emerged based on land claims mandated environmental impact assessment (EIA) processes and on the negotiation of impact and benefit agreements (IBAs). Recent experience in the Northwest Territories (NWT), the Yukon, Nunavut and the northern regions of some provinces indicates that negotiated IBAs have emerged as an adjunct to the public EIA process and have become a primary means for addressing social and economic impacts of northern Canada's aboriginal peoples.

The northern EIA processes enshrined in land claims have expanded on the scope of socio-economic and socio-cultural impact evaluation (i.e., SEIA) more so than in any other jurisdiction in Canada. Co-management institutions of public government, with the mandate for EIA, are responsible for implementing these provisions⁴. In these same land claims are also provisions that ensure that economic and other benefits accrue to the aboriginal beneficiaries affected by development. The arrangements for ensuring that these benefits are provided to beneficiaries generally involve the negotiation of agreements (i.e., IBAs). The triggers for these negotiations differ, but generally they involve a decision to develop a resource and therefore, involve the need for access to aboriginal lands or an impact on an aboriginal population. Impact and benefit agreements are negotiated bilaterally between project proponents and aboriginal groups whose lands or communities will be affected.

The negotiation of private IBAs has affected the goals and practice of EIA, especially SEIA, in the north. Good EIA processes encourage public involvement and openness in decision-making. The content of IBAs, as private agreements, are not part of the evidence considered in an EIA, but they have become an essential part of the mitigation of socio-economic and cultural impacts of large developments. The result is potentially a problem for decision-makers as they run the risk of unduly burdening the proponent with mitigation measures related to socio-economic matters because they do not have access to the results of the IBA negotiations. Likewise, aboriginal bodies may miss crucial impacts by completing IBAs before the SEIA is submitted.

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⁴ For example, the Nunavut Impact Review Board under the Nunavut land claim and the Mackenzie Valley Environmental Impact Review Board under the Mackenzie Valley land claims.

Consistent with the theme of this session, there is a need to consider the public policy issues raised by the implementation of IBAs concurrently with the implementation of the results of an SEIA. There is a tension, possibly overlap, between 1) the role of public government decision-making processes in social and economic matters, 2) the private negotiated agreements for impact benefits to deal with social and economic impacts to aboriginal populations, and 3) the overall coordination of these matters within the public policy process.

This paper will explore some of the challenges presented to EIA and consultation processes by the establishment of IBA requirements. Our effort will of necessity be an overview. We intend to focus on recent experience in the Northwest Territories although relevant issues and concerns from other areas of Canada will be discussed as well. Our paper will include:

- An overview of the nature and content of IBAs for first nations;
- A brief review of the new legal framework for IBA requirements in the NWT;
- A discussion of the tension between public EIA processes and private IBAs when they are brought to bear on the same development; and
- Suggestions for an approach to reconciling the use of these tools that encourages public participation, effective public decision-making and the mitigation of the socio-economic impacts.

2. Background

The current legal and policy framework for mitigating social and economic impacts in northern Canada results in the existence of two distinct but linked processes for identifying and mitigating potential social and economic impacts arising from large-scale projects. One process, based on the negotiation of IBAs, is a private arrangement between the proponent and affected parties. The other, SEIA is a public process. This situation poses a unique challenge for EIA decision-makers, to maintain fairness and openness in a public process when the IBA process is essentially a private contractual matter.

Canada has been promoting some form of impact and benefit arrangement for over 20 years. A recent survey of the potential types of impact and benefit arrangements⁵ identified arrangements where there was:

- (1) aboriginal ownership of land and resources;
- (2) a specific requirement of land claim agreements not directly tied to land ownership;
- (3) a statutory requirement⁶ or formal government policy;
- (4) an *ad hoc* government policy⁷; and finally,

⁵ Kennett, S.A. 1999. *A guide to impact and benefit agreements*. Canadian Institute of Resources Law.

⁶ These requirements only exist for the oil and gas industry pursuant to the *Canadian Petroleum Resources Act* and the *Canada Oil and Gas Operations Act* and they will not be further discussed since they do not involve negotiated agreements.

⁷ IBAs where land claims have yet to be settled e.g., BHP and Diavik Diamond Mine projects

(5) a social and economic agreement between the proponent and government⁸.

It should be noted that today the term IBA is used almost exclusively in relation to the negotiated arrangements between proponents and First Nations / aboriginal peoples.

In the first case, because of ownership of land, even if only surface lands, First Nations have the ability to insist on negotiation of an IBA as a part of access arrangements with subsurface or other interest holders. In the NWT and Nunavut, all settled claims require the negotiation of IBAs as part of the process for securing access to aboriginal settlement lands. Land claims may also include more general obligations for consultation or cooperation between industry and the First Nations before any exploration or development takes place.

Another type of situation giving rise to an IBA can be exemplified by the Minister of Indian Affairs and Northern Development's 1996 requirement that BHP Diamonds negotiate IBAs with First Nations affected by the proposed Ekati diamond mine project. This requirement was imposed even though there was no regulatory requirement for IBAs in the NWT in the mining development context or settled land claim in the affected area at the time.

The last type of agreement referred to above is the result of the decision of the Government of the Northwest Territories to negotiate agreements for the benefit of the non-aboriginal population in the NWT. The GNWT and the communities of Nunavut also desire to maximize the benefits of a development proposal and offset the costs incurred by the influx of non-resident workers or the increased demand on municipal services.

Social and economic impact assessment has been evolving in northern Canada. The *Canadian Environmental Assessment Act* (CEAA) promulgated in 1995 provided for the consideration of socio-economic impacts where they indirectly resulted from a change to the biophysical environment such as changes to traditional use of land. While this was the minimum standard under Canadian law, it did not prevent the reviews for large projects such as the BHP and Ekati diamond mines from considering direct socio-economic effects.

The land claim SEIA processes have been more explicit. The Nunavut Land Claim Agreement, the *Mackenzie Valley Resource Management Act* (MVRMA)⁹ and the *Yukon Environmental and Socio-economic Assessment Act* (YESAA)¹⁰ each has an explicit requirement for the evaluation of social and economic impacts resulting directly from a proposed project. These requirements may include economic impacts, cultural impacts such as hunting and trapping, and alcohol and drug abuse.

⁸ The Government of the Northwest Territories has negotiated its own social and economic agreements with the proponents of projects.

⁹ Resulting from the *Gwich'in Comprehensive Land Claim Agreement* and *Sahtu Dene-Metis Comprehensive Land Claim Agreement* in the NWT.

¹⁰ Resulting from the *Yukon Land Claim Final Agreement*

3. The nature and content of impact and benefit agreements and arrangements with First Nations

Impact and benefit agreements are contractual arrangements negotiated between a proponent and a First Nation. These IBAs are being used as a form of mitigation or compensation for potential social and economic impacts arising from the implementation of a development proposal. They have emerged as preferred tools for addressing the concerns of aboriginal people. The other function of IBAs is to offer access and opportunity to the benefits of development. Hence, the term *impact and benefits agreement*.

3.1 The nature and legal framework for IBAs in the NWT

Below we provide an overview of the legal framework for IBAs and related benefits in the NWT as an example of the types of requirements and contexts for the negotiation of such agreements.

3.1.1 Land Claim Agreements and the Law¹¹

There have been three comprehensive land claims settled in the Northwest Territories and the fourth awaits federal ratification legislation¹². In 1984, the *Inuvialuit Final Agreement* (IFA) was ratified¹³. This agreement covers an area of some 65,000 square miles onshore including the Mackenzie Delta, an area extending east past the community of Paulatuk, an area of the Yukon North Slope and Beaufort Sea west to the Alaska border and portions of the arctic islands. The *Gwich'in Comprehensive Land Claim Agreement* (GFA) was ratified in 1992¹⁴. This land claim settlement area encompasses some 22,000 square miles in the Mackenzie Delta area south and west of the Inuvialuit settlement area. In 1993, ratification of the Sahtu Dene and Metis Comprehensive Land Claim Agreement¹⁵ (SFA) took place. The SFA affects a settlement area of some 108,000 square miles along the Mackenzie River, south of the Inuvialuit and Gwich'in areas and bordered in the west by the Yukon NWT border and in the east by Great Bear Lake.

Part of the consideration for each of these agreements includes a grant of land, a portion of which includes ownership of the surface or subsurface. The land claims also include explicit provisions, which require the negotiation of agreements between the affected aboriginal nation and developers, the purpose of which is to ensure that some of the benefits of development accrue directly to the aboriginal beneficiaries of the claims whose traditional lands are in the vicinity of a project.

¹¹ The analysis in this paper is generally based on John Donihee, "Mineral Development and Aboriginal Benefits in Canada's Northern Territories" (December 1998) 7(4) *Mineral Resources Engineering* 315.

¹² The Tli Cho Agreement has been ratified by the Dogrib people and territorial ratification legislation has been passed.

¹³ The Western Arctic (Inuvialuit) Claims Settlement Act, S.C. 1984, c. 24, as amended.

¹⁴ The Gwich'in Land Claim Settlement Act, S.C. 1992, c. 53.

¹⁵ The Sahtu Dene and Metis Land Claim Settlement Act, S.C. 1993, c. 27.

Land claim agreements are ratified by federal legislation and they are protected by section 35 of the Canadian *Constitution Act*. The agreements and the ratification legislation provide explicitly that any laws, from whatever source, which are inconsistent with or conflict with the provisions of the land claims agreements are, to the extent of the conflict or inconsistency, of no force and effect¹⁶. Thus, the requirements to negotiate benefits agreements contained in the land claims are of legal force.

3.1.2 Requirements for Benefits Under Settled Land Claims

The specific nature of a negotiated benefits agreement will, of course, depend on the unique provisions of each land claim¹⁷. One distinction that must be kept in mind is that the types of benefits which may be derived from any given project will vary depending on the nature of the aboriginal beneficiaries' land tenure, i.e., surface, sub-surface or both. Also to be borne in mind are the extent of effects from the proposed project into adjacent territories. Land claims also have provision for benefit arrangements even where there is no direct impact on their land. Notwithstanding these distinctions, each negotiation is unique and the outcome is not prescribed.

3.1.2.1 Benefits Requirements under the Inuvialuit Final Agreement

a) Crown Surface and Sub-surface Land

Where there is a proposal to develop Crown surface or sub-surface lands, e.g., oil, gas or minerals, the IFA, namely subsection 16(11), requires that the federal government develop guidelines relating to social and economic interests including employment, education, training and business opportunities that favour Inuvialuit. These guidelines apply in each instance where application has been made for exploration production or development rights.

b) Inuvialuit Surface and Sub-surface Land

Two forms of benefits apply where Inuvialuit surface or sub-surface lands are involved. First, the benefits accessed for federal Crown land discussed above, subsection 16(11) of the IFA, also applies on Inuvialuit Lands. Second, commercial access for purposes of exploration development and production of oil, gas or minerals is subject to the negotiation of access to Inuvialuit lands, including payment of rent and fair compensation for any loss, damage or diminution in value of the land¹⁸. Before exercising a right of access, a developer must have concluded a **Participation Agreement**. Participation agreements are intended to be negotiated voluntarily and bilaterally between the developer and the Inuvialuit. If an agreement cannot be reached, the federal government of Canada may determine a timetable and procedures for the negotiations. Ultimately, if an agreement cannot be reached, the matter may be referred to the Arbitration Board under section 18 of the IFA.

¹⁶ See, for example, s. 3 of the IFA and s. 3.1.22 of the GFA.

¹⁷ The Gwich'in and Sahtu Dene Metis Comprehensive Agreements whose provisions with regard to benefits are virtually identical. As a result, I will only refer the provisions of the SFA below.

¹⁸ The Inuvialuit Lands Administration has developed the *Inuvialuit Land Administration Rules and Procedures*, issued April 1, 1986, to guide the management and disposition of interests in Inuvialuit lands.

Participation Agreements may include terms and conditions relating to the management of the land use, but they are primarily intended to ensure a sharing of economic opportunities and benefits from the development activity. They can, for example, include such matters as:

- costs associated with Inuvialuit Land Administration inspections;
- wildlife compensation, restoration and mitigation;
- employment, service and supply contracts;
- education and training; and
- equity participation or other similar types of participatory benefits¹⁹.

c) Inuvialuit Surface and Subsurface Lands: Grandfathered rights

Finally, where subsurface rights were issued by the Government of Canada before the settlement of the land claim, then those rights continue subject to the requirement for a **Participation Agreement**. That is, the rights holder must enter into a Participation Agreement with the Inuvialuit.

Otherwise, Inuvialuit oil, gas and mineral rights can be issued by way of a concession agreement negotiated with the Inuvialuit. Such agreements also address employment and training.

3.1.2.2 Benefits Requirements under the Sahtu Dene Metis and the Gwich'in Comprehensive Land Claims

a) Crown Surface and Subsurface Lands in the Sahtu Settlement Area²⁰

The holders of oil, gas and mineral rights, i.e., project proponents, must **consult** the beneficiaries before exploration begins and again before development of these minerals on such matters as environmental impact and mitigation, impacts on wildlife harvesting, location of camps, and employment of beneficiaries, business opportunities and contracts, training, counselling and working conditions for employees²¹. These consultation processes often generate jobs and business opportunities for first nations.

b) Sahtu or Gwich'in Surface Ownership and Crown Subsurface Ownership

The holders of oil, gas and mineral rights must **consult** the beneficiaries before beginning exploration activities and again before producing any oil, gas or minerals as outlined above. Oil and gas rights holders must submit a **benefits plan** covering training, employment and business opportunities prior to exploring, developing or producing oil or gas to the Minister of Indian Affairs and Northern Development and must consult the beneficiaries before the plan's submission and during its implementation²². Any oil,

¹⁹ IFA, s. 10(3).

²⁰ This discussion applies equally to the Sahtu and the Gwich'in land claims provisions. Only the numbers of the cited sections are different in the GFA.

²¹ See ss. 22.1.3 to 22.1.5 of the SFA. In the mining context these requirements would not apply to activities such as prospecting which would not require land use permits under the applicable land use legislation.

²² Section 22.2.1 of the SFA.

gas or mineral rights holder requiring access to Sahtu Dene/Metis or Gwich'in lands will need the landowner's agreement that is secured via a **negotiated access agreement**²³. Such agreements may provide for socio-economic benefits in addition to those committed to in a benefits plan. Any disputes over the terms of surface access to mineral resources will be resolved by the Surface Rights Tribunal²⁴.

c) Sahtu or Gwich'in Surface and Subsurface Ownership

Oil, gas and mineral rights are issued by way of a lease or licence negotiated directly between the potential developer and the beneficiaries. Authorisation for access is included in the contract, licence or lease. A land use permit will still be required and will be issued by government. The benefits and participation of beneficiaries are negotiated as part of the lease or licence.

3.2 IBA Content

The content, but not the function, of IBAs has changed over the years. In function, they continue to address social and economic impacts, and enhance benefits. The contents have continued to evolve as experience with IBA implementation accumulates and as the unique needs of regions and communities and differences between projects are accounted for. Generally, however, the matters addressed in an IBA include:

- employment;
- training;
- economic development and business opportunities;
- social, cultural and community support;
- financial provisions compensation and equity participation; and
- environmental protection and cultural resources.

Employment: IBAs seek to achieve high levels of aboriginal employment and some times including specific targets or quotas over specific periods. Employment preferences for suitable aboriginal candidates are also common. These commitments sometimes entail arrangements for monitoring progress toward the level set in the agreement. Frequently, the agreements recognize that targets may not be met due to a lack of qualified candidates or a lack of interest in employment in adjacent communities.

²³ The Gwich'in Lands Administration has published draft *Gwich'in Land Management and Control Rules* (Inuvik: 1999) which outline the rules for access to Gwich'in settlement lands. In the Sahtu, surface land management responsibility has been delegated to land-holding corporations in Tulita, Deline and Fort Good Hope. Arrangements for surface access to Sahtu settlement lands must be made through the appropriate land holding corporation depending on the location of the oil and gas activity. Subsurface interests in Sahtu lands are the responsibility of the Sahtu Secretariat Incorporated.

²⁴ Establishment of this Tribunal will require federal legislation. None has yet been drafted. In the absence of a Tribunal, access disputes may, to the extent that they are not dealt with in oil and gas legislation, be resolved by referral to an Arbitration Panel pursuant to Chapter 6 of the SFA.

Training: IBAs often include specific commitments to train suitable candidates, sometimes in coordination with government apprenticeship or other programs. Such training commitments may require that aboriginal trainees be assisted with translated materials when they are unilingual or when their facility with English as a second language limits their potential to be trained. On the job training is most common but commitments to other courses at vocational schools and colleges are also found. Scholarship programs for aboriginal students in the communities adjacent to the project are also common.

Transportation: Agreements often establish points of hire in adjacent communities and make provision for transportation of employees to and from the work site. Sometimes the mode of travel may be specified. The company may have their own means of transport and occasionally, a local aboriginal owned transportation company is specified. Subsidies for travel to and from remote work places are occasionally negotiated when employees have their own means of transportation.

Work Rotations and Vacations: Remote work sites often involve residence in camps for extended periods (two to three weeks) and a rotation home for time off. IBAs often include provisions to accommodate traditional lifestyles and to allow aboriginal employees extra time to hunt and conduct subsistence activities that may be important for their families.

Cross-Cultural Issues: IBAs address these issues by attempting to ensure that language is not a barrier to the employment of suitable candidates and to accommodate aboriginal employees. Cross cultural training for non-aboriginal employees may also be required. Country food may be purchased and made available for consumption by employees. Finally, counselling and employee support services are often included. These programs are sometimes also available to other family members affected by an employee's absence.

Business Opportunities: IBAs frequently include obligations for the company to assist in the identification of business opportunities and to advise the aboriginal party to the IBA. Aboriginal groups usually seek some form of preference for their firms or companies. Such preferences are often subject to the company's requirement for cost competitiveness and its discretion to determine capacity of the firm advancing a bid.

Contracting for Goods and Services: IBAs often include commitments that large contracts will be disaggregated in order that small local firms can bid on them. Some IBAs include provisions that require the proponent to give advanced notice of contract opportunities to aboriginal firms so that they can take steps to secure financing or to identify partners in order to bid on the contract. Some agreements include provisions that the proponent must apply in order to measure the Aboriginal content of contract bids in support of aboriginal preferences. IBAs often include provisions for monitoring and periodic reporting on contract services purchased from aboriginal companies.

Monitoring IBA Performance: IBAs will often include provisions for periodic monitoring of progress toward stated goals such as employment, training, contracting and other important provisions of the

agreements. Sometimes annual reports are prepared, and sometimes implementation committees are resorted to.

Other issues sometimes addressed in IBAs include annual cash payments for community support; security deposits for project site restoration and reclamation, where the project is on aboriginal owned lands; compensation for aboriginal harvesters affected by project activities; reimbursement of negotiation expenses; and reimbursement for the costs of administration, management and implementation of the IBA. Finally, IBAs may provide for joint ventures or equity participation with aboriginal companies participating in development activities or taking part ownership of a development.

In the end, the actual content of an IBA will be driven by the capacity of communities to take advantage of the opportunities, the lifespan of the project and the project itself i.e., diamond mines and gold mines generate entirely different revenues. The final outcome is also a negotiated product. Ultimately IBAs may be more important as a basis for a continuing relationship between a proponent and local communities. They make good business sense and can contribute to efficient and successful developments.

3.3 Conclusion

As indicated by this brief review of the legal framework for benefits agreements / arrangements in the NWT, the circumstances in which a requirement arises vary and can be quite complex. The important points for purposes of this paper are that IBAs are part of the legal framework of the NWT and other northern areas of Canada and that the effects resulting from their interaction with the EIA and SEIA frameworks of these jurisdictions are likely to be permanent. Consequently, these issues must be addressed. Below we consider the shape and content of SEIA in the northern impact assessment process.

4. Social and economic impact assessment in northern EIA processes

As previously mentioned, the northern claims EIA processes have been at the forefront in Canada on SEIA process and matters of social and economic impacts. The land claims require consideration of economic, social, cultural and archaeological impacts²⁵. The expectation is that the SEIA process will consider the direct, indirect and cumulative impacts that may result from a project. Socio-economic analysis in northern Canada considers any or all of the following:

- regional and community demographics and mobility;

²⁵ From the MVRMA para. 115(b). (b) “ the protection of the social, cultural and economic well-being of residents and communities in the Mackenzie Valley”.

From YESAA, definitions “socio-economic effects includes effects on economies, health, culture, traditions, lifestyles and heritage resources”.

- local, regional and territorial / national economies;
- education, training and skills;
- subsistence, sport and commercial harvesting;
- human health and community wellness;
- social and cultural patterns and cohesion;
- land use;
- infrastructure and institutional capacity;
- revenue, royalties, rents and taxes;
- incremental costs to government; and
- net revenues to the territorial and federal governments.

Being at the forefront of Canada's SEIA processes has been a challenge. The EIA practitioners have been tasked with the need to develop a body of practice²⁶ and procedure to match the expectations of the land claims processes, educate project proponents, regulators and the public on the new requirements, manage expectations as to what can be accomplished, and separate the socio-economic work being undertaken for IBAs from what needs to be accomplished for SEIA.

One of the areas where practice and procedure is being addressed is mitigation measures for socio-economic impacts. Impact and benefit agreements and socio-economic agreements fill in the gap where the regulatory processes have left off. Both are legally binding contractual arrangements. The problem, however, is that in the case of IBAs it is not possible to match the mitigation to the impacts identified in the SEIA. This leaves decision-makers in the dark as to whether all SEIA requirements have been met.

5. Discussion

As already introduced, decision makers in the northern EIA regimes are faced with the challenge of how to implement to both legally required processes dealing with the management of social and economic impacts, namely, IBAs and SEIA. For EIA practitioners, this has raised questions of how to maintain fairness and openness in a public SEIA process in the face of private negotiations that benefit only one portion of the population. Similarly, when recommending socio-economic mitigation measures, how not to put an unnecessary burden on proponents because IBA arrangements were not put on the public record.

5.1 Tension

During the implementation of the EIA process, decision-makers are faced with the challenge of reviewing and accepting recommendations for the mitigation of socio-economic impacts resulting from a large development proposal. On the one hand, the decision-makers have before them the documented recommendations for mitigation for populations not covered by IBAs, and on the other hand, they have the "word" that impacts to aboriginal beneficiaries will be dealt with through an IBA. This calls into

²⁶ Issues and recommendations for social and economic impact assessment in the Mackenzie Valley: A discussion paper prepared by the Review Board (October 2002)

question the fairness and efficacy of the SEIA process and whether all the requirements of the SEIA process are being met. That is, do decision-makers have the benefit of all the information and evidence necessary to make a reasonable decision about the impacts of a proposed project?

5.1.1 Fairness and participation in EIA

Environmental impact assessment procedures in northern Canada feature considerable requirements for procedural fairness and public participation. This is reflected in legislation, as well as, practice. There exist minimum periods of consultation and seeking of input on project proposals from affected parties. Further, proponents are also encouraged to seek public input and opinion early and often in the preparation of their environmental assessment reports and to report their findings.

In EIA, fairness and participation refers to the ability of affected and interested parties to be heard and express their views regarding a project proposal. This may be done by the decision-makers through a series of hearings, or by the proponent through consultations with the affected and interested parties as part of issue identification and mitigation discussions. There is an expectation within the EA procedures excluding the *Canadian Environmental Assessment Act* that participants officially register their interest with the appropriate EIA board to ensure their inclusion in all correspondence related to the project under consideration. In addition to the expectation of being able to participate in the EIA process, there is also an expectation that the decision-makers within the process will base their decisions on the evidence presented in the record of proceedings i.e., reports and comments received on the project.

5.1.2 Access to evidence

The northern EIA decision-making process relies on the information filed on the public record²⁷. In their instructions to proponents, the EIA boards request that a social and economic impact analysis be undertaken by the proponent among other environmental impacts from the proposed project. This information is summarized in an environmental assessment report that is put on the public record for evaluation and review.

Frequently, in the assessment process, either the proponent or the affected First Nations will make declarations regarding the social and economic issues related to a project and that an IBA is under negotiation to deal with these issues. This information is a private contractual matter between the proponent and the affected First Nation and is not put on the public record. This creates a situation where the decision-making party may be asked to make a decision regarding impacts in the absence of any evidence being filed.

²⁷ The land claim boards of EIA are boards of public government and operate in a quasi-judicial manner with respect to the hearing of evidence and considering what is filed on the public record. They are required to maintain a public registry of information and provide reasons of decision for any conclusions reached. The *Canadian Environmental Assessment Act* also requires the establishment of a public registry of information and reasons for decision to be provided for decisions reached.

6. Conclusion

The northern EIA process and IBA process have created a unique problem that needs care and thought to resolve. A solution for how to balance between the private socio-economic interests of aboriginal beneficiaries and the socio-economic interests of other members of the population needs to be found.

The northern claims processes have set in place requirements for both IBAs and SEIA. This has resulted in the potential for conflict in addressing the social and economic effects of a proposed development and enhancing benefits. The EIA process requires the consideration of social and economic impacts of proposed projects and the recommendation of appropriate mitigation measures. This is undertaken in a public forum. Impact and benefit agreements are also legally required arrangements to enhance the benefits of a proposed project. The latter is often arranged prior to the completion of the SEIA, but not presented in the EIA process and relevant to only a portion of the population.

In reality, the two processes are complimentary and the difficulty may rest with the absence of solid SEIA practice that could inform IBA negotiations and distill the anticipated impacts on the aboriginal populations. As has already been shown, the expected content of an SEIA (section 5.0) and the generic content of IBAs (see section 4.0) are similar. If the SEIA process could address this issue, the matter of fairness and participation in EIA could fall by the wayside. If the solution to the problem rests in part with improved SEIA, then what is required? To that problem, several options present themselves that need to be discussed and tested over the course of time. They are:

1. Tailor the SEIA process on only impacts to the non-aboriginal population and government.
2. Tailor the SEIA process to not consider matters that would typically be covered in the IBA process.
3. Require the proponent to better distinguish between the populations to be affected by the project and more clearly identify the impacts on discrete portions of the population.
4. Require the completion of a draft IBA prior to the completion of the EIA and require a summary of mitigation results to be put on the public record.

In closing, two new mechanisms for addressing social and economic impact of development have emerged in northern Canada. Both of these processes have advanced the management of social and economic impacts on their own. The issue now is to reconcile the two processes so that fairness and participation in the SEIA process is not lost.