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Related to NWAC's Engagement on the
**Indigenous Impact
Assessment
Co-Administration
Agreement Regulations**

Feedback Report October 2024



Native Women's
Association of Canada

L'Association des
femmes autochtones
du Canada



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About the Native Women's Association of Canada (NWAC)

Founded in 1974, the Native Women's Association of Canada (NWAC) is a National Indigenous Organization (NIO) representing Indigenous women, girls, Two-Spirit, transgender and gender-diverse people (WG2STGD+) in Canada and is inclusive of First Nations on and off reserve, status and non-status, disenfranchised, Métis, and Inuit. NWAC engages in national and international advocacy for policy reforms that promote equality for Indigenous WG2STGD+.

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NWAC was founded on the collective goal to enhance, promote, and foster the social, economic, cultural, and political well-being of Indigenous WG2STGD+ within their respective communities and Canadian societies.

Through advocacy, policy, and legislative analysis, NWAC works to preserve Indigenous culture and advance the

well-being of all Indigenous women, girls, Two-Spirit, transgender, and gender-diverse people, as well as their families and communities.

NWAC works on a variety of issues such as employment, labour and business, health, violence prevention and safety, justice and human rights, environment, early learning childcare, and international affairs. To develop our policy reports and recommendations, we consult with Indigenous WG2STGD+ through in-person/virtual engagements nationwide.

NWAC has long supported Environmental sustainability and in extension, climate action and conservation, in efforts to advocate and protect the natural environment.







SECTION ONE:

Proposed Amendments to the *Impact Assessment Act of Canada*

The Impact Assessment Agency of Canada (IAAC) convened a series of discussion dialogues to engage Indigenous Peoples, stakeholders as well as the public on the proposed changes to three regulatory initiatives under the Impact Assessment Act (IAA), namely:

1. Review of *Physical Activities Regulations*
2. The Designated Classes of Projects Order
3. *Indigenous Impact Assessment: Co-Administration Agreement Regulations*

The *Indigenous Impact Assessment Co-Administration Agreement Regulations* are a proposed piece of legislation aimed at enhancing the role of Indigenous governing bodies in the impact assessment process conducted on their territories. This legislation seeks to ensure that Indigenous communities have a greater voice and influence during each assessment phase.



NWAC's Engagement on the *Indigenous Impact Assessment: Co-Administration Agreement Regulations*

NWAC hosted two engagement sessions on the topic of *Indigenous Impact Assessment: Co-Administration Agreement Regulations*. The first was an in-person roundtable on September 20, 2024, from 10:00am-12:00pm Eastern Standard Time (EST). The second was via Zoom on October 10, 2024, from 2:00-4:00pm EST. The goal of these sessions was to allow Indigenous WG2STGD+ People to share their perspectives, knowledge and lived experiences on the proposed new legislation of co-administration agreements between Indigenous communities and the Canadian government.

Both sessions began with a presentation by the IAAC on this new legislation. This was then followed by a group discussion with the participants asking questions and giving feedback based on their perspectives.

Indigenous Participation

For the in-person roundtable, **fourteen (14)** participants originally signed up, however only **nine (9)** attended the session. Due to the small size, there was only participation from Alberta (AB), Northwest Territories (NWT), British Columbia (BC), Manitoba (MB) and New Brunswick (NB).

Forty-eight (48) participants signed up for the online engagement session, however only **thirty-one (31)** attended from across Canada. Unfortunately, there were no participants from New Brunswick (NB), Prince Edward Island (PEI), Northwest Territories (NWT), Yukon (YT) or Newfoundland and Labrador (NL).

About the Report

This report represents the feedback, i.e., questions and comments of participants, and NWAC's recommendations related to the IAAC's engagement session on the *Indigenous Impact Assessment Co-Administration Agreement Regulations* discussion paper. The questions and comments from participants are supplemented by responses and recommendations from NWAC. These responses and recommendations are supported by case study evidence on the Impact Assessment process in Canada.

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Limitations

The IAAC proposed a list of questions in Annex A at the end of the discussion paper to guide public engagement and feedback. Unfortunately, during NWAC's engagement, the discussion did not always follow a structured format based on the questions. However, the questions along with the responses can be found in **section two** below.






SECTION TWO:

Indigenous Impact Assessment Co-Administration Regulations

The following questions were presented to the participants after the IAAC gave their presentation. The responses provided are from their lived experiences.



Maximizing Indigenous Partnership in Impact Assessment

Question 1:

For members of Indigenous groups, how could a co-administration agreement help to advance your leadership in impact assessment?

Participant Responses:

A co-administration agreement could significantly enhance Indigenous leadership in the impact assessment process in several ways:

- a. **Recognition of Authority:** This new form of regulation acknowledges the authority of Indigenous governing bodies in decision-making, empowering them to play a more active role in shaping assessments.
- b. **Integration of Traditional Knowledge:** The agreement would facilitate the incorporation of Traditional Knowledge, values, and environmental priorities into impact assessments. This integration is essential for ensuring that assessments reflect the cultural and ecological realities of Indigenous communities.
- c. **Culturally and Ecologically Relevant Outcomes:** By allowing Indigenous communities to influence the process, we can achieve more meaningful outcomes that respect and uphold Indigenous ways of life and environmental stewardship.

Overall, a co-administration agreement has the potential to transform the impact assessment landscape, allowing Indigenous Peoples to lead in ways that are aligned with their values and priorities.





Question 2:

Conversely, do any of the options discussed in this paper risk limiting the ability of Indigenous Peoples to carry out their responsibilities to protect the environment in their territories?

Participant Responses:

Limit on Indigenous Engagement

Some options in this paper risk limiting Indigenous Peoples' ability to fulfill environmental responsibilities because certain government frameworks may impose regulations that conflict with Indigenous values and practices. This can reduce Indigenous participation which impacts their influence and control over environmental protection in their territories.

Lack of Adequate Resources to Take on Formal Responsibilities

Consideration should be given to the perspectives of Indigenous communities that might prefer collaboration over formal responsibilities:

- Many Indigenous groups may lack the resources to undertake the full administrative duties required for participants in impact assessment.
- Communities may prefer to share their knowledge and guidance without the burden of formal obligations.
- Communities may seek additional resources to allow them to better and more fulsomely participate in the impact assessment process.

Inadequate Time for Culturally Sensitive Engagement

Engaging the community in a culturally sensitive manner is time-consuming and complex:

- There is a pressing need for accessible including plain language documents and culturally appropriate translations.
- These tasks demand significant effort and resources.

Another critical issue is that the voices of the most vulnerable individuals—those directly impacted by environmental decisions—often go unheard in online processes:

- Inclusive dialogue requires clearly identifying who should be involved in discussions.
- Advocates may struggle to represent their communities effectively due to the overwhelming time and effort required.

Question 3:

Do you think that an overall approach to partnership with Indigenous Peoples that includes Indigenous co-administration agreements along with other collaboration opportunities is a viable long-term path for Indigenous governing bodies to actualize their governing authorities in impact assessment?

NWAC believes an overall approach to partnership with Indigenous Peoples including Indigenous co-administration agreements, along with other collaborative opportunities, is a viable long-term path for Indigenous governing bodies to actualize their governing authorities in impact assessment.

Empowerment of Indigenous Governance

Co-administration agreements/collaboration opportunities with sufficient resources required empower Indigenous communities by recognizing their authority and enabling them to actively participate in decision-making processes that affect their lands and resources. This aligns with the principles of self-determination and sovereignty¹.

Integration of Indigenous Knowledge

Collaborative frameworks that involve Indigenous governance bodies and their members ensure that traditional ecological knowledge is integrated into impact assessments. This can lead to more holistic and effective evaluations that consider both scientific and Indigenous perspectives².

¹ Suzanne von der Porten, Rob de Loë, and Ryan Plummer, "Research Article: Collaborative Environmental Governance and Indigenous Peoples: Recommendations for Practice," *Environmental Practice* 17, no. 2 (June 2015): 134–44, <https://doi.org/10.1017/s146604661500006x>.

² R. Michael O'Flaherty, Iain J. Davidson-Hunt, and Micheline Manseau, "Indigenous Knowledge and Values in Planning for Sustainable Forestry: Pikangikum First Nation and the Whitefeather Forest Initiative," *Ecology and Society* 13, no. 1 (2008), <https://doi.org/10.5751/es-02284-130106>.



Capacity Development

Establishing meaningful and respectful partnerships can enhance the capacity of Indigenous communities to engage in impact assessments. Co-administration and collaboration opportunities allow for knowledge sharing, training, and resource provision, equipping communities to navigate complex regulatory processes³.

Trust and Relationship Building

Long-term partnerships foster trust between Indigenous governing bodies and governmental agencies. Building these relationships is crucial for successful collaboration and for addressing ongoing concerns related to environmental stewardship⁴.

Tailored Decision-Making

Co-administration agreements and other collaboration opportunities can lead to more tailored decision-making processes that reflect the unique values and priorities of Indigenous communities, ultimately resulting in more culturally appropriate and sustainable outcomes⁵.

Context: Taking on or sharing decision-making or other responsibilities related to impact assessment provides opportunities, but also comes with associated responsibilities and potential legal implications. There are also many opportunities for Indigenous groups to participate in or partner with the Impact Assessment Agency of Canada during impact assessments that are already available, without needing a co-administration agreement.

³ Robyn K. Rowe, Julie R. Bull, and Jennifer D. Walker, "Indigenous Self-Determination and Data Governance in the Canadian Policy Context," in *Indigenous Data Sovereignty and Policy*, ed. Maggie Walter et al. (Routledge, 2020), 81-95.

⁴ Lynne Davis, "The High Stakes of Protecting Indigenous Homelands," *International Journal of Canadian Studies* 39, no. 39-40 (2009): 137-59, <https://doi.org/10.7202/040827ar>.

⁵ Rasmus Kløcker Larsen, "Impact Assessment and Indigenous Self-Determination: A Scalar Framework of Participation Options," *Impact Assessment and Project Appraisal* 36, no. 3 (October 23, 2017): 208-19, <https://doi.org/10.1080/14615517.2017.1390874>.

Question 4A:

What are some key impact assessment responsibilities or decisions that your community would be interested in taking or sharing responsibility for undertaking through a co-administration agreement?

Participant Responses:

In considering a co-administration agreement, Indigenous communities would be interested in taking or sharing responsibility for several key impact assessment tasks:

Environmental Monitoring

Engaging in ongoing monitoring of environmental conditions to ensure compliance with assessment outcomes and to protect our lands and resources.

Decision-Making on Mitigation Measures

Participating in the decision-making process regarding mitigation strategies to address potential impacts, ensures that they align with the communities' values and priorities.

Integration of Indigenous Knowledge

Actively incorporating Indigenous Knowledge into the assessment process would enrich the evaluation with culturally relevant insights and practices.

Authority Over Key Phases of Assessments

Having decision-making authority in critical phases of impact assessments would empower Indigenous communities to influence outcomes meaningfully and ensure that our voices are heard throughout the process.

These responsibilities would not only enhance Indigenous leadership in impact assessments but also ensure that the assessments reflect the communities' priorities and ecological knowledge.





Question 4B:

What are some key areas where you see your community preference to be collaboration with the Impact Assessment Agency of Canada, rather than taking on formal responsibilities or decisions during impact assessments?

Participant Responses:

Imposition on Rights to Consultation

Regarding question 4 (b) one participant raised concerns about the potential limitations that co-administration agreements may impose on the existing rights for consultation and consideration established in the Impact Assessment Act. If only one potential community has a co-administration agreement, does this fulfill the 'right of consultation' within the act even though other communities could be affected by the project?

- “It does sound like it is setting some kind of limitation. So, one community, I am thinking have that serious impact where there are two communities, but water moves. So, if it is affected right here next to my community and it is going all the way down to her, it is still going to affect her. But, if I am in a legal agreement that I am the one who has something to say, and they do not, I worry about the limitations and authority. I do not need to even consult with you.”
- So, if you are going through the legal pieces ... around this table, only three people can sign. Is it then only those three people are the considerations that you are making in the decision making? Are there limitations when you are trying to make that agreement because you are legally finding out who can be a part of how we are delivering that agreement? So, does that eliminate other First Nations communities?”

These concerns from participants point to apprehension that entering into co-administration agreements could place Indigenous governing bodies and their communities in a precarious position, possibly resulting in outcomes that might be perceived as setting them up to fail or making them scapegoats, particularly given the more binding nature of co-administration agreements.

Building Capacity and Readiness

Question 5:

For members of Indigenous communities that anticipate an interest in co-administration agreements, do you see this as a tool that you could use immediately? Or a future objective to work towards? In your reflection, are there any additional 'readiness' considerations that were not reflected in the paper?

Participant Responses:

Future objective

For many Indigenous communities, co-administration agreements may be seen as a future objective to work towards rather than an immediate tool for implementation. While there is potential for these agreements, immediate readiness can be challenging, especially for communities that need to build capacity in areas related to:

- **Legal Frameworks:** Developing an understanding of the legal implications and requirements associated with co-administration.
- **Technical Expertise:** Gaining the necessary technical knowledge to engage effectively in impact assessments and decision-making processes.
- **Governance Infrastructure:** Strengthening Indigenous governance structures to support participation in these agreements.



Capacity building required at the community level

There was consensus among participants that the groundwork must be laid within the communities before moving forward with co-administration agreements. This preparation is essential to ensure that the communities are adequately equipped to participate meaningfully.

- “**Immediate readiness** could potentially be a challenge in particular for communities that need to build capacity in areas such as legal frameworks and technical expertise or governance infrastructure.”

Federal government support for Indigenous communities

- In assessing readiness, the Canadian federal government supports Indigenous communities in evaluating their preparedness for economic advancement. This would be advantageous, as it provides an established framework to guide the assessment process.

Other considerations

- **Existing Capacity:** Determine whether the community has the necessary legal, technical, and governance capabilities in place.
- **Community Engagement:** Assess the level of community interest and support for pursuing co-administration agreements.
- **Resource Availability:** Identify the resources, both financial and human, available to support engagement in the process⁶.

⁶ Government of Canada; Indigenous Services Canada, “Community Opportunity Readiness,” www.sac-isc.gc.ca, April 22, 2020, <https://www.sac-isc.gc.ca/eng/1587563567774/1587563589262>.

Question 6:

What are some measures that could help to support the readiness of Indigenous governing bodies to negotiate and implement co-administration agreements?

Participant Responses:

To support the readiness of Indigenous governing bodies in negotiating and implementing co-administration agreements, several measures could be put in place:

Funding for Training and Capacity-Building

Providing financial resources for training programs and capacity-building initiatives is essential. This includes training in **governance** and **negotiation skills**.

Technical Assistance

Offering access to legal and environmental experts can help Indigenous communities effectively negotiate agreements that reflect their **unique needs** and **priorities**.

Development of Governance Frameworks

Supporting the creation of clear governance frameworks will facilitate shared decision-making and enhance the community's ability to engage in negotiations.

Knowledge Exchange Platforms

Establishing platforms for knowledge sharing can foster collaboration and build capacity among Indigenous governing bodies.

Consultation Protocols

Developing clear guidelines for engagement, communication, and dispute resolution between parties will promote effective collaboration.



Community Engagement

Directly meeting with community members is crucial for assessing readiness. Using surveys may present barriers, so ensuring that discussions are conducted in community languages is important.

Employment and Volunteer Opportunities

Creating opportunities for employment, placements, and volunteer roles can further enhance community involvement and capacity.

Implementing these measures would significantly strengthen the readiness of Indigenous governing bodies to navigate the complexities of co-administration agreements.

- “Measures include providing training in governance, offering legal, technical support and creating platforms for knowledge exchange to build capacity for negotiations and implementation.”
- “There could be capacity building through training, resources, adequate funding for negotiation and implementation, and clear frameworks for shared decision-making can be made.”
- “The measures could include funding for training programs, capacity-building initiatives, and technical assistance. Additionally, in supporting the development of governance frameworks, access to legal and environmental experts would also be essential for Indigenous communities to negotiate agreements that reflect and prioritize their unique needs.”



Regulations and Policy Framework

Context: Implementation of co-administration agreements would require both a supporting policy framework and regulations. Regulations are a legal instrument, so they create legal requirements, but it is generally a long process to amend them. Policy, although not legally-binding, can generally be developed and amended in less time. It is therefore more flexible and adaptable, although the Circle of Experts cautions that policy should be co-developed, and that shared decision-making should be required to amend the policy. In addition to enabling the Minister of the Environment to enter into agreements, the paper proposes that regulations require consideration of the Indigenous governing body's authorization to represent rights holders, and readiness to exercise powers in a way that is consistent with the *Impact Assessment Act*. Policy could guide negotiation and implementation of agreements, including establishing criteria for sharing certain powers.

Question 7:

What are the types of legal requirements that you see being included in the regulations themselves?

Participant Responses:

- Implementing co-administration agreements alongside robust policies and regulations requires careful consideration of several legal requirements. Based on the concerns raised, here are some potential legal elements to include in the regulations:

Responsibility for Community Safety

Regulations could mandate that companies demonstrate a commitment to community safety, particularly for vulnerable groups like women. This could involve requiring specific safety protocols and community engagement plans as part of the project approval process.

- “I am from Alberta, and we were trying to look at how industry affects the community especially women when they have big projects coming through. So, what we did was we tried to see what is in the policy [Alberta environmental protection & Alberta labour], like whose responsibility is it to keep women safe in the communities regarding big jobs that are happening. We found out that nobody takes responsibility for that.”



Training and Employment Standards

There should be requirements for companies to provide meaningful training and employment opportunities for local Indigenous communities. Regulations could specify training standards and ensure that residents are prioritized for higher-skilled positions rather than just low-level jobs.

- “It is good to add that they always promise jobs, and then when they come along, then our people are usually not qualified for a majority of the positions. You are lucky to get a flag job. Before they come along, are you going to provide that real certification training for our people so that they actually can have a good paying long-term position that is not just flagging or something simple? That gets missed a lot.
- “Big companies promise that they are going to come and provide training, where men have heavy equipment training or are able to drive big trucks. Where is the real training to provide that job that you are promising to the communities? I know that has nothing to do with you. That is individual people who are coming in and doing a project, but just to add to her consideration because that is a lot.”

Monitoring and Accountability Mechanisms

Establishing legal frameworks for ongoing monitoring of projects is crucial. This could include requirements for regular reporting on community impacts, adherence to safety protocols, and employment commitments, with specific consequences for non-compliance.

- “So, looking into what makes a good statement is where the accountability can actually lie and where within knowing the statements and who is consulted and how to actually go through the channels to make sure that they are impactful to get those decisions.”

Addressing Systemic Issues

Regulations may need to tackle the broader systemic issues that lead to neglect of community concerns, such as a lack of accountability mechanisms for companies. This might involve creating a framework for independent audits and reviews of company practices

- “It is one of the main problems when it comes to employees and the pipeline, specifically because they came through my town. Part of the conditions that were set out was to have a certain amount of Indigenous Peoples working on a project. However, they skirted around that issue by the wording of ‘hire.’ So, a certain amount of

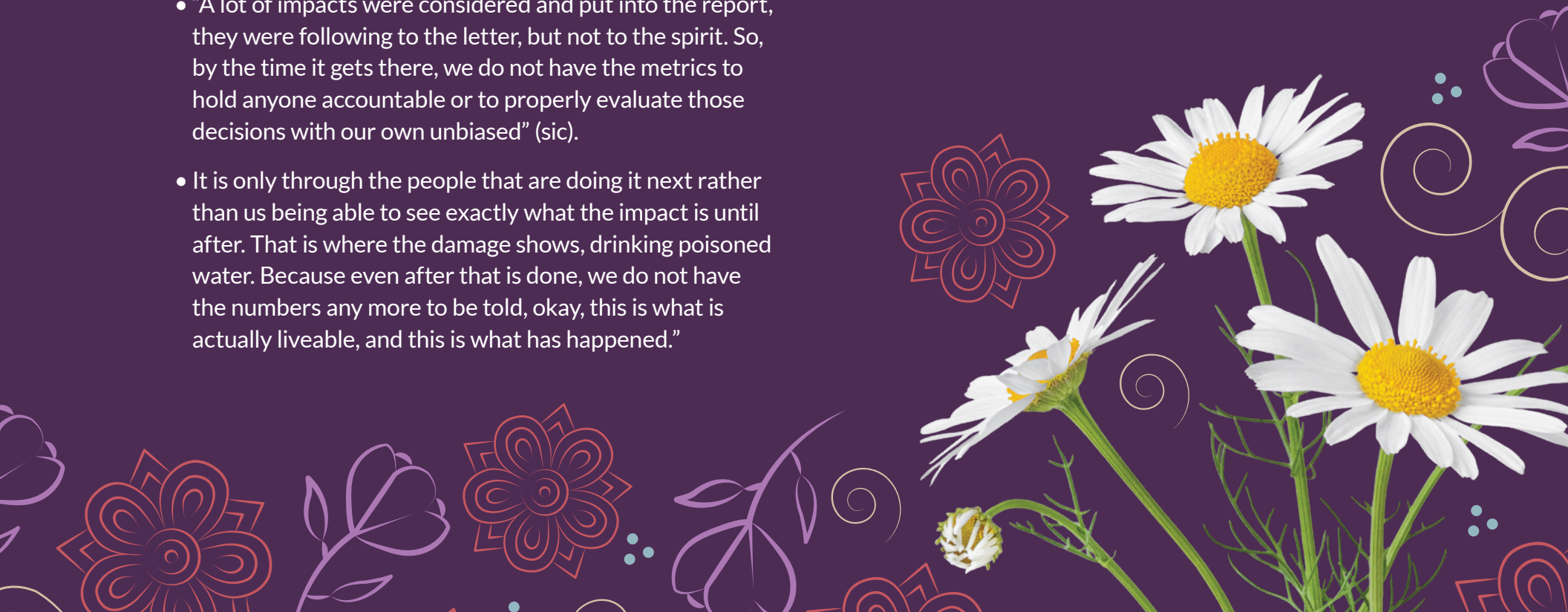
businesspeople were hired, and then methodically and systematically taken out of the workforce until there was none left. So, part of the post-decision making is they might follow the words now, but they will never follow the spirit of it.”

- “Unfortunately, it has been happening in every community. So, in the valley, there are five reservations that are all surrounding one town, and then, further than that, you get a lot of really close ones. We are all very small communities but a lot of different ones. Every single one of those projects either systematically fired for no just cause where no one has the money to actually do so and go to courts.”
- “A lot of impacts were considered and put into the report, they were following to the letter, but not to the spirit. So, by the time it gets there, we do not have the metrics to hold anyone accountable or to properly evaluate those decisions with our own unbiased” (sic).
- It is only through the people that are doing it next rather than us being able to see exactly what the impact is until after. That is where the damage shows, drinking poisoned water. Because even after that is done, we do not have the numbers any more to be told, okay, this is what is actually liveable, and this is what has happened.”

Integration of Traditional Knowledge

Legal requirements could encourage the integration of Indigenous knowledge systems in the planning and assessment phases, ensuring that community perspectives are reflected in decision-making processes.

- By incorporating these legal requirements into the regulations, the intention would be to create a framework that not only protects community interests but also fosters accountability and meaningful engagement between companies and Indigenous communities.



Negotiating Agreements

Question 8:

As an Indigenous group, proponent, or stakeholder, would having formal agreements negotiated ahead of assessments increase certainty in the process for you?

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Participant Responses:

Having formal agreements negotiated ahead of assessments would significantly increase certainty for Indigenous groups, proponents, and stakeholders. These agreements could provide a framework that clearly defines roles, responsibilities, and expectations for all parties involved, which helps to prevent potential conflicts before the impact assessment begins.

Benefits of a formal agreement

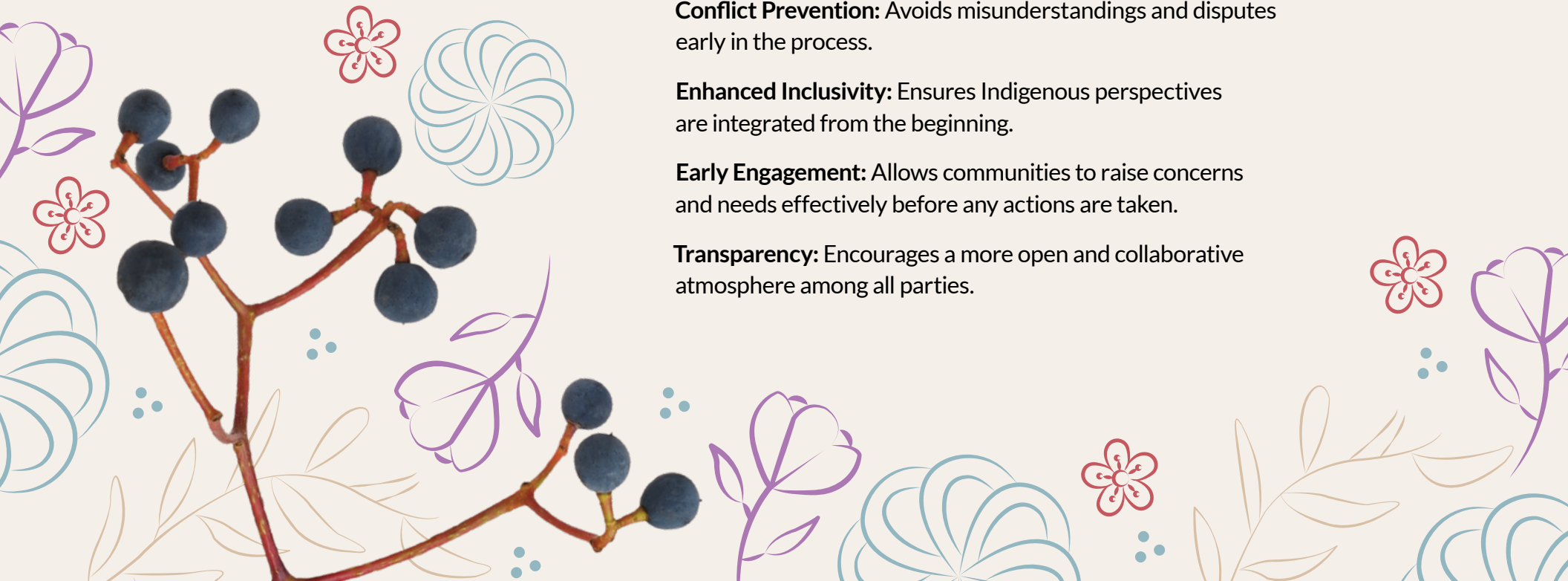
Increased Certainty: Clarifies roles and responsibilities for all stakeholders.

Conflict Prevention: Avoids misunderstandings and disputes early in the process.

Enhanced Inclusivity: Ensures Indigenous perspectives are integrated from the beginning.

Early Engagement: Allows communities to raise concerns and needs effectively before any actions are taken.

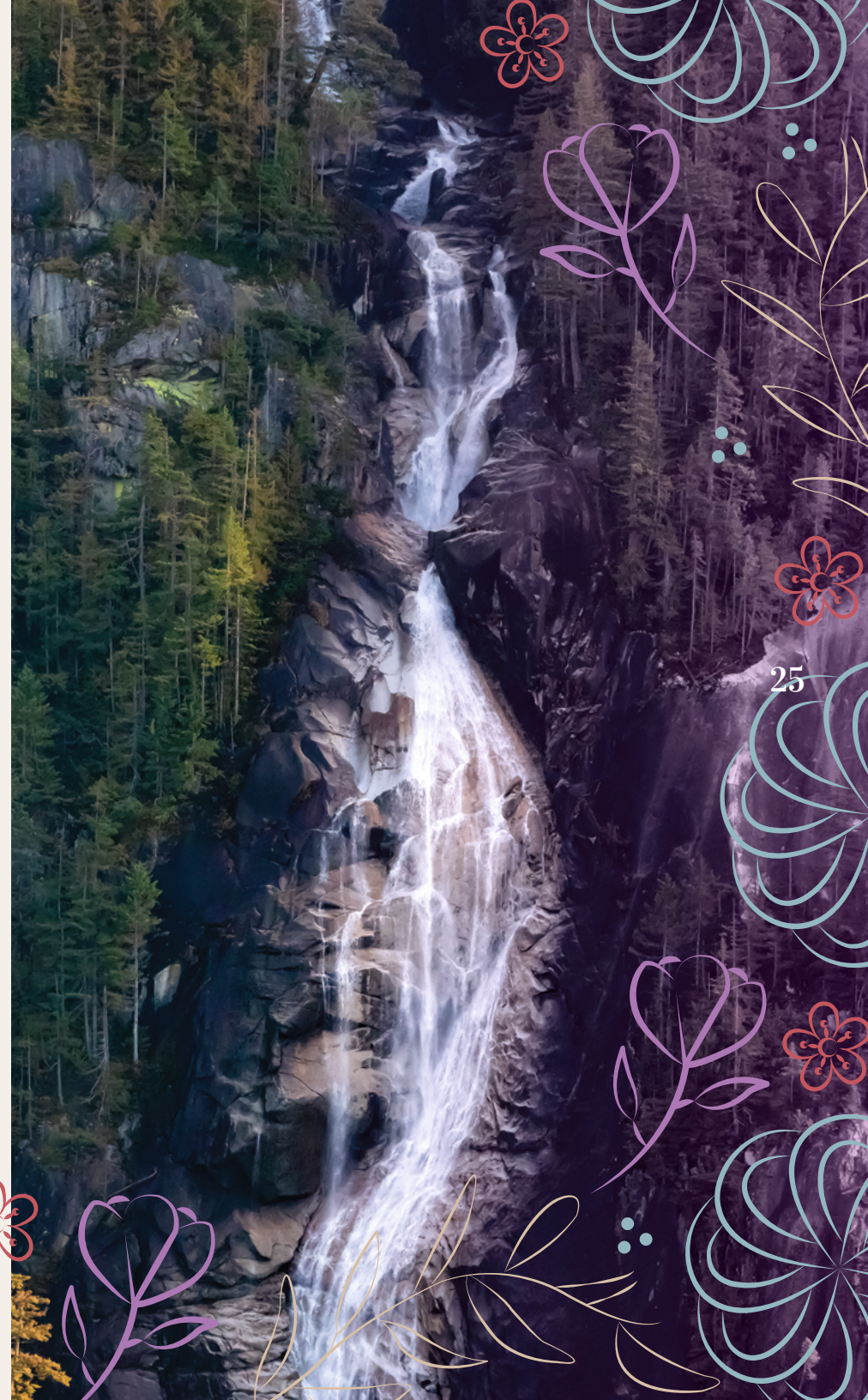
Transparency: Encourages a more open and collaborative atmosphere among all parties.



Overall, this proactive approach not only promotes accountability but also strengthens relationships between Indigenous communities and other stakeholders.

- “Yes, formal agreements would increase certainty by clearly defining roles, responsibilities, and expectations for all parties before the impact assessment process begins, thus avoiding potential conflicts.”
- “I feel pre-agreed formal agreements increase inclusivity of us Indigenous Peoples allowing us to raise our concerns before actualization.”

Context: Co-administration agreements must specify the lands where the agreements will apply. On lands where there is a history of shared use and occupation, it will be important to identify who exercises which powers on those lands and how jurisdictions will work together. The discussion paper identifies options to address this: joint representation through a tribal council or other joint entity, having an agreement with only one Indigenous governing body (with consultation/ collaboration of others), or having agreements with multiple Indigenous governing bodies on overlapping lands.



Question 9A:

What option(s) for managing this type of scenario do you think are most workable?

In managing co-administration agreements on lands with a history of shared use and occupation, joint representation through a tribal council or other joint entity appears to be the most workable option. It would provide a more inclusive and effective means of managing these co-administration agreements.

- “Joint representation through a tribal council or joint entity could be the most workable option, allowing multiple Indigenous governing bodies to collaborate effectively. Clear communication and established frameworks for shared decision-making would help avoid conflicts.”

Other options include:

Collaborative Decision-Making

A joint entity fosters cooperation among different Indigenous groups, allowing for shared decision-making and resource management.

Clear Communication

Establishing clear communication channels within the joint entity can help prevent misunderstandings and conflicts.

Defined Frameworks

Having an established framework for collaboration ensures that all parties understand their roles and responsibilities, promoting accountability and transparency.

Concern about multiple agreements

Having an established framework for collaboration ensures that all parties understand their roles and responsibilities, promoting accountability and transparency.



Question 9B:

What could the Impact Assessment Agency of Canada do to support Indigenous governing bodies who want to work together during assessments?

Participant Responses:

Potential roles for the IAAC

Facilitate Meetings: Organize and facilitate meetings among Indigenous groups to promote dialogue and foster relationships, helping to build trust and understanding.

Offer Mediation Services: Provide mediation services to help resolve any conflicts or disagreements that arise during the collaborative process, ensuring a smoother partnership.

Provide Legal and Technical Support: Offer resources and expertise in legal and technical matters, empowering Indigenous governing bodies to navigate the complexities of assessments more effectively.

- By taking these steps, the IAAC can enhance cooperation among Indigenous groups, ensuring that their collective voices are heard and respected throughout the assessment process. This support would ultimately lead to more equitable and informed decision-making regarding shared lands.
- “IAAC could facilitate meetings, offer mediation services, and provide legal and technical support to help Indigenous groups work together on shared lands.”



Joint Representation

NWAC agrees with the participants that joint representation either through a tribal council or joint entity is the best option for managing impact assessments in overlapping territories. As previously mentioned, it is more inclusive with all voices having equal weight.

Single Agreement with Collaboration from Others

This option grants a single Indigenous governing body greater authority within the decision-making process regarding overlapping lands, as only one community retains the final decision-making power, while the others participate as collaborators.

Multiple Agreements

Depending on the number of communities sharing the same overlapping territory, this option may become increasingly complex, as differing perspectives on management may arise among the communities. Each agreement must consider the others to ensure that rights established in adjacent agreements are not infringed upon.

Context: The Circle suggests establishing an Indigenous third party who would make recommendations to the Impact Assessment Agency of Canada and the Minister of the Environment about the eligibility and readiness of an Indigenous governing body to exercise specific impact assessment powers and the lands where a co-administration agreement would apply.

- A participant inquired about the criteria for selecting the third party. The IAAC responded that this aspect has not yet been determined and expressed a desire for feedback on the matter. Another participant subsequently provided a list of potential criteria for selecting third parties.

Criteria for Third Parties

- Experience in Indigenous Governance and Rights
- Expertise in Impact Assessment
- Cultural Competency
- Neutrality and Impartiality

Recommendation:

As the process for developing this legislation moves forward, NWAC believes that conducting additional engagement sessions and consultations to refine the criteria will lead to a transparent and collaborative outcome.



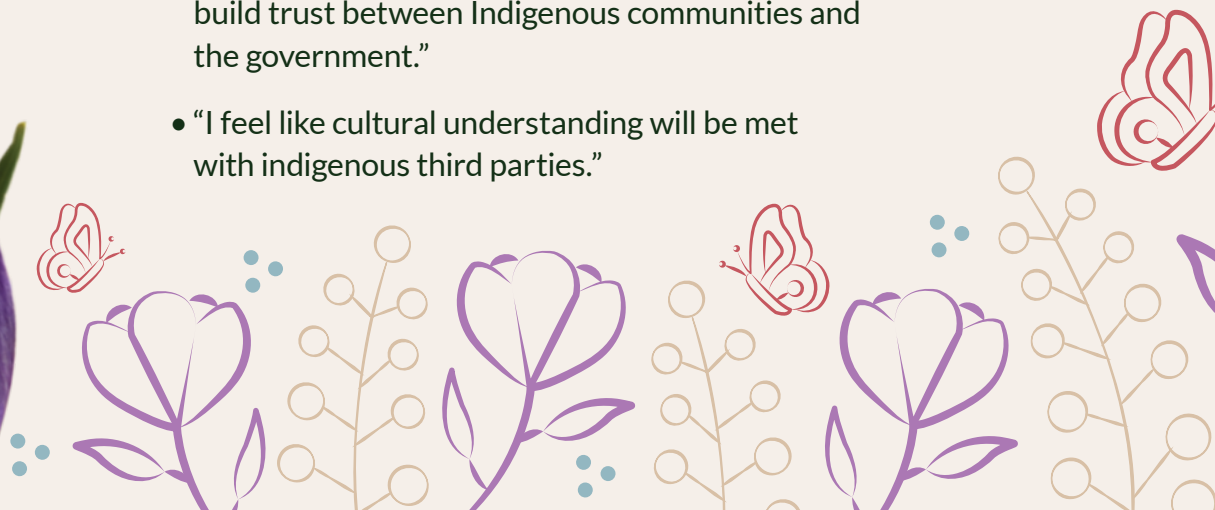


Question 10A:

Do you see this as a reasonable way to help ensure a fair and transparent process? Do you have alternative suggestions to ensure equity in this process?

- Establishing an Indigenous third party to make recommendations to the Impact Assessment Agency of Canada and the Minister of the Environment is a reasonable approach to ensure a fair and transparent process. This mechanism would provide a culturally appropriate way to evaluate the readiness and eligibility of Indigenous governing bodies for co-administration. Integrating cultural understanding and promoting accountability helps build trust between Indigenous communities and the government, while ensuring that communities maintain control over final decisions.

- “An Indigenous third party could provide a transparent and culturally appropriate mechanism to evaluate readiness and eligibility for co-administration. This approach ensures fairness and equity, although communities should retain control over final decisions.”
- “I agree with establishments of a third party it promotes accountability and ensures readiness.”
- “The establishment of Indigenous third parties could be a reasonable way to ensure a fair and transparent process. It could provide an independent perspective and help to build trust between Indigenous communities and the government.”
- “I feel like cultural understanding will be met with indigenous third parties.”



- A participant had Alternative Suggestions for Ensuring Equality:

- **“Increased Indigenous Representation:**

Involve Indigenous Peoples at all stages of the impact assessment process, from planning to decision-making.

- **Culturally Appropriate Methodologies:**

Use impact assessment methods that respect Indigenous cultural values and traditions.

- **Community-Based Monitoring:**

Allow Indigenous communities to monitor and evaluate the implementation of impact assessment decisions to ensure accountability.”

A participant proposed the concept of consensus-based decision-making as a means to promote equity and transparency throughout the process. Below are the criteria they recommended to facilitate cooperation among all parties involved.

Consensus-Based Decision-Making to Promote Cooperation

- Clear communication channels
- Shared goals
- Joint decision-making bodies
- Regular consultations
- Transparency in processes
- Respect for each jurisdiction’s authority

Age Inclusion:

Including youth voices in decision-making is also essential, as it ensures that the perspectives of younger generations are represented. Overall, these approaches aim to foster equity and inclusivity in the impact assessment process, supporting both Indigenous rights and community interests.

- “I feel like any criteria is best as long as there is equal representation of age most because I feel like young people need a voice in this too.”





Question 10B:

What would be an appropriate role for an Indigenous third party during the negotiation process?

The Indigenous third party should serve as an impartial advisor, facilitating negotiations, providing expertise, and ensuring that Indigenous voices are respected and heard throughout the process.

Appropriate Roles for an Indigenous Third Party

- a. **Facilitate dialogue:** Help to bridge the gap between Indigenous communities and government representatives.
- b. **Provide expertise:** Offer advice and guidance on Indigenous

3rd parties should be driven by Indigenous communities to ensure that those selected align with the values and governance principles of Indigenous People involved.

Selection Suggestion

Tribal councils could nominate candidates.

Implementing Agreements

Question 11:

Do you have ideas for how federal, provincial and Indigenous jurisdictions could work together effectively during impact assessment processes?

The federal and provincial governments must engage more meaningfully and view Indigenous jurisdictions as equals.

By actively listening and fostering a collaborative environment, federal, provincial, and Indigenous jurisdictions can work together more effectively, leading to more informed and equitable impact assessment processes.

- “I believe all 3 Levels of governments should be more involved and listen to us and have more of an understanding of what’s going on around them.”

Concern about the level of authority

- “Do the agreements aim to ensure Indigenous groups have the same level of influence as other jurisdictions (like provinces) in the assessment process. Is this part of the government’s commitment to building stronger relationships with Indigenous Peoples?”



Question 12:

What challenges do you see in the implementation of co-administration agreements? Do you have suggestions on how to avoid or overcome these challenges?

- Implementing co-administration agreements poses several challenges, including:

Challenges:

- **Resource Limitations:** Many Indigenous governing bodies face significant constraints in terms of financial and human resources, which can hinder their ability to engage fully in the agreements.
- **Differing Legal Frameworks:** The complexity of varying legal systems among federal, provincial, and Indigenous jurisdictions can create confusion and conflict in the implementation process.
- **Potential Conflicts Between Jurisdictions:** Disagreements may arise regarding authority and decision-making powers, particularly when multiple Indigenous communities are involved in shared resource management.
- By addressing these challenges with targeted strategies, co-administration agreements can be more effectively implemented, ensuring that all parties are equipped to contribute meaningfully to the process.



Question 13:

How can the Impact Assessment Agency of Canada work with proponents and other assessment participants to address challenges and support successful implementation of co-administration agreements?

Several proactive steps can be followed by the IAAC to work with proponents and other assessment participants to address challenges and support the successful implementation of co-administration agreements.

Strategies for Successful Implementation

- a. **Ongoing Support and Training:** The IAAC can provide continuous training and technical assistance to proponents and Indigenous governing bodies.
- b. **Regular Reviews of Agreements:** Establishing a routine for reviewing co-administration agreements is crucial. Regular assessments can ensure that the agreements remain relevant and effective considering evolving circumstances.
 - “Regular review is important. Often changes are made and policies and such stay stagnant even though things keep evolving and changing.”
 - “IAAC can offer ongoing support through training, technical assistance, and regular reviews of agreements. Flexibility in amending agreements when challenges arise could also be helpful.”
- c. **Flexibility with Guidelines:** While flexibility in amending agreements can help address challenges, it’s important to establish guidelines to prevent manipulation. Clear laws governing how changes can be made will protect the integrity of the agreements.
 - “But flexibility could lead people to change their view at their convenience, there should be laws governing the flexibility to avoid manipulation”



- d. **Facilitating Dialogue:** The IAAC can create forums for dialogue among all parties involved. This open communication fosters collaboration and helps build trust, ensuring that everyone feels heard and included.
- e. **Guidance on Best Practices:** Providing resources and guidance on best practices for implementing co-administration agreements can support all parties in achieving their goals effectively.
- f. **Resource Sharing:** Rather than focusing solely on resource availability, promoting resource sharing among communities and proponents can enhance collaboration and ensure that all parties have the tools they need for success.
 - “I don’t think it’s about resource availability but rather resource sharing.”
- g. **Monitoring and Compliance:** Establishing a monitoring system to track progress and ensure compliance with the agreements can help identify issues early on and promote accountability.
 - “I’d reiterate with the following, the following could be considered, dialogue between all parties, provide guidance on best practices: ensure resources for successful implementation and monitor progress to ensure compliance.”

- h. **Public Awareness and Participation:** Increasing awareness and encouraging public participation can help counter challenges. Engaging the community through art, videos, and storytelling can make the agreements more relatable and emotionally resonant, fostering a deeper connection to the process.

- “Creating awareness and public participation could counter the challenges, especially from the community.”
- “Does the website include or give the option to incorporate art, videos, and storytelling to explain the agreements’ importance. Perhaps this would engage emotions and connect more to the people.”

By implementing these strategies, the IAAC can facilitate a more collaborative and effective approach to co-administration agreements, ensuring that all stakeholders are engaged and supported throughout the impact assessment process.

- “We already said this, but collaboration with Indigenous communities to co-develop regulations and policies will help with long-term success.”



Next Steps

Question 14:

What should next steps be for working in consultation and cooperation with Indigenous Peoples to advance this work and to maximize Indigenous partnership broadly?

To effectively advance consultation and cooperation with Indigenous Peoples and maximize partnerships broadly, the following should be prioritized.

Build Trust Through Long-Term Relationships

Establish enduring connections with Indigenous communities by engaging them consistently over time. This builds trust and demonstrates a commitment to meaningful partnership.

- “All parties must and should attend our ceremonies.”

Recognize Sovereignty

Acknowledge and respect the sovereignty of Indigenous Peoples in all interactions. This includes their right to self-determination in decision-making processes.

Engage Early and Continuously

Involve Indigenous communities from the outset and maintain ongoing engagement throughout project development and implementation. This ensures that their perspectives are integrated into decision-making.

Free, Prior, and Informed Consent

Uphold the principle of free, prior, and informed consent in all initiatives, ensuring that Indigenous Peoples have the opportunity to fully understand and agree to projects that affect their lands and communities.

Co-Design Projects

Collaborate with Indigenous communities to co-design projects, incorporating their traditional knowledge and cultural values into the planning and execution phases.

Capacity-Building Resources

Provide resources and support for capacity-building within Indigenous communities. This can include funding for training, workshops, and access to legal, environmental, and governance resources.

Establish a Central Resource Hub

Create a centralized hub where Indigenous communities can access legal, environmental, and governance resources related to co-administration. This hub could include case studies, best practice examples, and expert assistance.

- “Is there a central resource hub for Indig communities to access legal, environmental, and governance resources related to co-admin. This may help everyone look forward to standardizing best practices and share successful experiences across communities; Access to expert assistance, case studies, and best practice examples.”

Promote Economic Opportunities

Advocate for economic initiatives that empower Indigenous communities, helping to create sustainable economic development and job opportunities.

Leverage the Media

Utilize social media/media as a powerful tool for communication and outreach, allowing Indigenous communities to share their experiences, challenges, and successes more broadly.

- “I think social media is a powerful tool.”
- “Any collaboration with Media?”



Access to Funding Guides

Provide clear guides and tools for accessing funding opportunities, such as grants and loans. Ensure that these resources are available in multiple Indigenous languages to facilitate wider access.

- “Access to funding guides or tools to help communities i.e. grants, loans, financial management of resources and in multi-Indigenous languages.”

By implementing these steps, we can create a more inclusive and equitable framework for partnership with Indigenous Peoples, fostering collaboration that respects their rights and integrates their knowledge and expertise into decision-making processes.

- “To maximize partnership with Indigenous Peoples, it’s essential to build trust through long-term relationships, recognize their sovereignty, and engage them early and continuously in decision-making. Efforts should respect their right to free, prior, and informed consent, co-design projects with Indigenous communities, and integrate their traditional knowledge. It’s also important to provide resources for capacity-building, ensure transparency and accountability, promote economic opportunities, and advocate for Indigenous rights to address historical injustices and ensure equitable partnerships.”







SECTION THREE:

General Comments

The comments and questions in this section do not directly address the guiding questions presented by the IAAC. However, they have been included to reflect some of the general concerns raised by participants during the discussion session.

Significance of Indigenous Perspectives

- “So that it is the point. They are saying you speak with Indigenous Peoples; we are right holders. That is the difference. You are making a scoping agreement with who is really able to be making those decisions. Well, you are making decisions with the rights holder who can legally be held up in the Supreme Court. That should be a big thing. So again, like she says, they were able to at least go to court after that. Really, we could. That is why we go to court all the time.”
- “Through all this assessment and then we sign an agreement with different parties but then it is economic development, and then they overturn everything regardless of our concerns. Do you know what I mean?”
- “In BC, the TransCanada pipeline, a lot of people in BC were against that but yet they were able to overturn everything and let it go through.”

- “Another example would be planning with the Yukon and Northwest Territories. A few years ago, they wanted to open up the Peel River watershed, which was the [water coming to our community and to others in the Yukon. Everyone was worried about that because they were making uranium, I guess they were trying to get it. They ended up in a sense in attack of water and

Terminology

During the engagement session, numerous participants highlighted the ambiguity of the terms ‘consider’, ‘consideration’, and ‘consultation’. Many expressed the sentiment that these terms feel like a mere box-checking exercise, suggesting that the knowledge and concerns shared by the communities are not given the significance they deserve.

- “So, the consideration, every department has to consider. Consider is a very broad term. What I am finding is that nobody really seems to have a process of how you are considering that information. You can engage. You can sit here and talk, and you can take your notes and then go back to the table. Maybe it is created around the table. And then, there is a checkmark. You said it. It was captured. It was considered. Is there a real process, an evaluation process that you are truly considering that I came and all the community concerns within that process and decision-making?”

our animals and so forth. Eventually, they did the whole impact statement, and the Yukon government changed the whole thing, and [] eventually got everything overturned, so it makes me kind of weary. Yes, you get our concerns, but will it have an impact? Yes, you can consider it but, in the end, if you are not going to listen to us, then why [ask]? You know what I mean?

- “You have said, “consider” multiple times. Consider is just a word, and it can be very much an easy checkmark. So, what does consideration really mean? And where is your process of consideration? How do I know that you are solely considering and that you really are taking it seriously and in the depth of your process? And it is not only your department but also many Federal departments. I say it in all the consultations. I have not received a good answer yet.”
- “Her stories [another participant’s] stories are very much what I am saying. The word consideration is very broad. It is a checkmark, and it does not have any real clout to making decisions on a project, period. You have it in your presentation, at the end of the day, the Minister is the one who makes the decision. There again, I did my check mark. You are sitting here with us around this table. You are hearing our voices, and it is being considered somewhere in a process that is not even made or written on paper.”

- “So that is where the frustration comes from. That is why it is hard to build really healthy relationships between rights holders and agencies and departments. I want to know when and where you are really having this process and evaluation process made. How are you really considering what we have, and the word consideration, that just needs to go right out the door because consideration is not good enough.”
- “Especially the way you speak about consultation. What do you mean by consultation? Is it a telephone call? Is it a meeting with Indigenous Peoples? What exactly is consultation?”
- “I appreciate you saying meaningful. That is actually a meaningful consideration. As you are saying you are still working on that process. So, when you are doing an evaluation, there is a whole bunch of information, and it funnels down to this. So that gap when you are doing this, where is that, how are you considering it, how is it really making a change in your decision making? I think that is big. And I think that is for all departments. I appreciate your response.”
- “So that tells me that there is not a process yet, but there is an opportunity to be building that process of what real consideration is. Can that consideration take place even if these agreements are not signed? Is it still within your impact assessment and your duty to consult?”



Alternative Perspective

- “I think also that is why these consultations are so important. Just because I think Indigenous Peoples, we see things differently. When we look at agreements, when we look at the land, when we look at the water, we see things differently. I think having these conversations is really important that you bring these thoughts to whoever is making those decisions so that they can start incorporating this mindset more into procedures. So, that it is not so to the book, but we can actually address the needs of not only Indigenous Peoples and communities but the lands.

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One participant emphasized that Indigenous leadership differs significantly from traditional Western leadership models. They argued that attempting to merge the two approaches may not be productive. Instead, fostering mutual respect is essential. This can be achieved by engaging in personal connections and genuinely seeking to understand each other’s perspectives.

Pilot Program

- One participant asked, “Do you have any pilot programs to test co-administration right now?”

Recommendation: This could be a great way to slowly introduce this legislation and work out any initial challenges that arise.

Accessing Traditional Knowledge

An important topic that many participants were concerned about is accessing Traditional Knowledge and ensuring that Elders would be included and have a safe place to participate throughout the policy development phases.

- “Wondering if we could get our Traditional Eldership to do Teachings on our Sacred Law and governance.”
- “We need to access our knowledge Keepers.”
- “Have a safe place for Elders to feel welcome.”



Opinions of the Platform

During the engagements, multiple participants expressed their appreciation for this platform and were pleased to have their voices heard. Others were thankful to be listened to, however cautious as to whether it would make a difference as they have had poor experiences in the past.

- “This platform empowers Indigenous groups to assert their leadership in environmental governance while fostering meaningful partnerships with federal agencies. Thank you.”
- “Thank you for the platform. It was very engaging.”
- “Grateful for the experience and being invited.”
- “It really helps us because we are giving our ideas and gets our voices heard.”

Concern

Some participants expressed apprehension regarding the consultation process, drawing on prior experiences where similar initiatives led to extensive dialogue but little action. Frequently, they reported outcomes from previous consultations that fell short of their expectations.

- “But it is exhausting for us to constantly be in all of the consultation engagement because that is where we want to be, but it is exhausting because it is a lot of work for us, and it is nothing more than a check mark right now. Nothing here has told me anything different.”
- “This has been the experience that I have had during consultation or engagement. I have seen that report. I have worked for Fisheries and Oceans Canada. I know what vetting is all about, and again because there is no real evaluation process, half of our concerns that really could be upheld in the report get vetted out before our report is done.”
- “Add to that vetting. When you are doing your nice reports, and there is consultation, and I have been in vetting, and at the end of the day, you can bet a whole lot of our concerns are out of there, so when the document finally gets to the Minister or whoever, it does not have half of what you heard during your consultation.”
- “So, my hope is that you are at the table and having discussions and you are hearing what we are saying and that you are bringing it up because sometimes we are not always at those tables. Sometimes we need reports because we are not there. I hope you voice some of this because we are not there.”





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