

IIBAs – NLCA Course November 2009

-As their name suggests, Inuit Impact and Benefit Agreements, or IIBAs, are agreements to provide benefits to Inuit, and address impacts on Inuit, prior to the designation of a protected area, or a development project, in the Nunavut Settlement Area.

-In terms of legal status, IIBAs are legally binding contracts, and so invite contractual remedies in the event of their breach.

-IIBAs themselves are not land claims agreements for the purposes of section 35 of the *Constitution Act, 1982*. However, the obligation to negotiate IIBAs is contained in the NLCA (Articles 8 and 9 of respecting Parks and Conservation Areas, and Article 26 respecting development projects). So the right to an IIBA is constitutionally protected.

-As with all NLCA rights, these obligations also have the force of public law, and are binding on third parties under s. 4 of the *Nunavut Land Claims Agreement Act*.

-The obligation to negotiate in good faith for the purpose of concluding an IIBA is a mutual obligation of both the Designated Inuit Organization (DIO) and the Government.

-It is worth keeping in mind that these Articles were included in the NLCA, not because someone dreamed them up as a ready source of benefits, but rather in acknowledgement of the fact that ALL the lands in Nunavut are Inuit ancestral lands, which Inuit ceded, released and surrendered in exchange for the rights and benefits in the NLCA . . .

-So it is an exchange -- use of these lands, whether by Government for purposes of establishing protected areas, or by private developers for purposes of generating profit, necessarily entails a disruption of Inuit use of and values associated with the land. For this Inuit are, in effect, compensated by benefits, and measures to reduce impacts.

-I've sometimes been reminded that legislating protected areas for example, is not something conceptualized by Inuit – Inuit traditionally did not see to draw lines on maps for purposes of protecting wildlife, they used all the land.

-Because IIBAs are government or industry-driven initiatives, Inuit seek funding from Government or industry to cover negotiating costs, which, in the case of Government, Inuit have not always been successful in achieving.

-By way of example, the recently concluded Conservation Area IIBA (for National Wildlife Areas and Migratory Bird Sanctuaries) cost Inuit millions of dollars to negotiate over a period of about 4 years (and additional costs spent over 2 years thereafter in an effort to convince the Government to finalize and fund the IIBA), for which Inuit were not compensated.

-In terms of opportunities provided by IIBAs, the CA IIBA is state-of-the-art. It was negotiated as a comprehensive package to promote tourism development and capacity at the grass roots level, in the communities. The intended beneficiaries are existing or potential Inuit tourism providers – guides, outfitters, arts and crafts makers, bed and breakfasts, park interpreters, and so on.

-The central features of the IIBA are first, provisions to guide the development of inventories of natural and cultural resources (oral history and archaeological projects, wildlife inventories);

-Second, the creation of interpretative materials, based on the inventories, to profile the oral history, archaeological and natural features of the areas for the public, and for the use of Inuit guides and interpreters --signs, displays, brochures.

-Finally, a \$4 million Inuit Tourism Fund is established, to be utilized over the 7 year term of the IIBA, to develop locally based tourism capacity.

-Inuit have decided to use this money principally to fund 3 projects, one in each of the 3 Nunavut regions. Communities were chosen, which are most “market ready,” meaning that they have a combination of features which are most likely to lead to successful, and ultimately self-sustaining, tourism development.

-Under discussion, for example, is a proposal to develop a high-end tourism package that would combine seasonal wildlife viewing (polar bears in the fall and caribou migration in the spring) with a community cultural experience. The concept would be to upgrade existing hotel and camp facilities and hospitality capability within Arviat, to competitive standards, and to market this as a tourism package.

This approach is quite different from previous IIBAs, which have used IIBA moneys as a fund, which Inuit are able to access on the basis of proposals to a committee. The advantage of this more standard approach is that it is relatively easy to administer, but the down-side is that it lacks an overall strategy for tourism capacity development, and in fact, it has been found that funds have largely been unused to date.

-Among the many challenges with the new approach is that it is much more labour intensive for NTI and the RIAs to administer, but the payoffs are potentially much greater as well.

-The other type of IIBAs is the Major Project IIBA under Article 26, which are negotiated by our Regional Inuit Associations directly with developers.

-Article 26 IIBAs, which vary from region to region, may contain provisions for:

- Labour Force Development plans, which identify labour availability, barriers to employment, training programs, strategies for increasing employment and advancement of Inuit, and funding commitments
- commitments to specific numbers of trainee and apprenticeship positions
- scholarship funds
- preferential hiring commitments and employment targets
- contracting opportunities with minimum Inuit content levels and bid adjustment provisions
- language in the workplace provisions: translation, non-discrimination against unilingual speakers
- on site employment support, such as country food provisions, workshops on financial management, and counseling programs
- community initiatives, such as education and training in related sectors, and cultural, social and wellness activities
- funding for business development workshops, in areas such as developing business plans, mentoring, financial planning
- compensation for polar bear kills, and
- funding for post-closure community wellness strategies