

Principles to Inform Collaboration Agreements Between Indigenous Peoples and the Impact Assessment Agency of Canada

Indigenous peoples¹ and the Crown have a joint responsibility to co-develop processes that advance reconciliation and government-to-government, nation-to-nation relationships. By collaborating to assess the impacts of proposed projects, Indigenous jurisdictions² and the Impact Assessment Agency of Canada can ensure that Indigenous peoples' interests are fulfilled while meeting the statutory and legal obligations of the Crown.

There are many possible pathways for collaborating on an impact assessment. Indigenous jurisdictions have their own ways of engaging with other governments, while the Crown has established numerous provisions for collaboration in its *Impact Assessment Act*. The nature of collaboration in a given context will depend on the needs, interests, and worldviews of the parties involved.

A Collaboration Agreement clearly defines how Indigenous and Crown parties will work together to ensure that project impacts are assessed to their satisfaction. An Agreement may relate to a specific project or apply to all projects within a region. While no two agreements will be the same, the principles outlined in this document should be considered in the co-development of all Collaboration Agreements.

Collaboration Agreements are established between Indigenous jurisdictions and the Crown on a nation-to-nation basis. It is the responsibility of both parties to uphold the Agreement within their own sovereign jurisdiction and to ensure that other actors and processes involved in the impact assessment align with the Agreement. Most critically, this means setting clear expectations for the project proponent and ensuring compliance with the standards defined in the Agreement.

Five overarching principles are proposed. Each of these principles contains key provisions that, when taken together, collectively achieve the principle.

Collaboration Agreements Should be an Expression of Self-Determination

Collaboration Agreements should fundamentally be an expression of Indigenous peoples' inherent right to self-determination to the satisfaction of the Indigenous party to the Agreement. This could include (but is not limited to) recognizing and respecting that:

- Indigenous peoples have the **right to freely determine** their political status and freely and sustainably pursue their economic, social, and cultural development.
- Indigenous peoples have the right to **define their own structures of governance**, including their internal decision-making processes, the political institutions representative of proper title and rights holders, and their relationships with other jurisdictions.
- **Indigenous rights are inherent** and are not dependent upon further Court declaration, or recognition by the Crown, for their existence.

¹ First Nations, Inuit, and Métis peoples.

² For the purposes of this document, the definition of an “Indigenous jurisdiction” aligns with the criteria outlined in section 2 of the *Impact Assessment Act*.

- Indigenous **legal principles, practices, and structures** exist in parallel to and should be considered equally alongside those of the Crown. These principles, practices, and structures are solely determined by Indigenous peoples.

Collaboration Agreements Should be Relationship-based

Collaboration Agreement should be rooted in and contribute towards building a mutual, evolving relationship between the parties that is:

- Aimed at moving further on the path of **reconciliation**. This begins with trust and a respect for one another's unique cultures, languages, values, histories, traditions, knowledge, and worldviews.
- Based on a **government-to-government, nation-to-nation** understanding of Crown-Indigenous relations that recognizes each party has its own respective policies, governance systems, practices, and internal decision-making processes to support implementation of the Agreement.
- Based on **strong commitment** to each other and the process that ensures the long-term sustainability and effectiveness of the Agreement.
- **Clearly defined and explained**, including the roles, responsibilities, authorities, reporting requirements, and accountabilities of each of the parties.
- Respectful and supportive of the **cultural resurgence** led by Indigenous peoples in diverse ways across the country.

Collaboration Agreements Should Advance the Decolonisation of Law and Policy

Collaboration Agreements, both in form and outcome, should be a reflection of the major legal and policy directions, principles, and commitments driving decolonisation today, as well as contribute to ongoing decolonisation efforts. It should be clear within the Agreements that they contribute to the fulfillment of:

- The **Truth and Reconciliation Commission Calls to Action**, with a particular focus on rejecting laws, policies, and litigation strategies that continue to assert European sovereignty over Indigenous peoples and their lands (no. 45-47).
- The **United Nations Declaration on the Rights of Indigenous Peoples**, with a particular focus on three key articles:
 - Indigenous peoples' right to self-determination (Article 3).
 - Recognizing the inherent rights of Indigenous peoples to "the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired" (Article 26).
 - Fulfilling the obligation of the Crown to obtain "free and informed consent prior to the approval of any project affecting their lands or territories and other resources" (Article 32).
- Established **agreements and governance arrangements** that structure the relationship between Indigenous peoples and the Crown in a given area, including historic and modern

treaties, land claim agreements, self-government agreements, consultation protocols, and memorandums of understanding.

- The rights of the Indigenous peoples of Canada recognized and affirmed by **section 35 of the *Constitution Act, 1982***.
- **Distinctions-based approaches** to ensure that the unique rights, interests, and circumstances, as well as the diversity of identities, laws and policies, cultures, languages, customs, values, and practices of First Nations, Inuit, and Métis peoples are acknowledged, affirmed, and implemented.
- **Ongoing decolonisation efforts** by identifying and addressing existing Crown laws and policies that perpetuate colonial relationships and inhibit the participation of Indigenous parties in impact assessments as sovereign nations.

Collaboration Agreements Should Reflect Good Process

Collaboration Agreements should embed the following procedural principles to ensure fairness and to create the conditions to achieve credible, effective outcomes:

- **Consent-based:** the process secures the free, prior, and informed consent of all parties to the proposed path forward.
- **Empowered:** all parties designate representatives to participate in the collaborative process who have the authority to make decisions. Collaborative decisions made under the Agreement are then ratified by each party within their own governance system.
- **Clearly defined scope:** the goals and tasks are clearly defined, satisfactory, and mutually agreed to and accepted by all parties.
- **Cooperative:** while respecting the nation-to-nation relationship of the parties, the process should foster respectful and productive cooperation with the project proponent and other actors involved in the impact assessment.
- **Openness:** the parties are willing to share their perspectives, listen to each other's views, and find means of changing strategy when necessary.
- **Transparency:** transparency protocols are understood and agreed to by all parties. The transparency protocols should ensure that the parties' actions under the Agreement are clear, well-documented, and visible to each other and outside observers.
- **Accountability:** the Agreement clearly sets out the responsibilities of the parties, how they will meet these responsibilities, how the parties will share outcomes, and how each party secures approvals from within their own system at each stage of the process.
- **Information-sharing:** information is gathered, managed, and shared according to defined processes that are agreeable to all parties.
- **Data collection:** Indigenous peoples' data collected under the Agreement is governed by (i) the protocols of the relevant Indigenous party and (ii) the principles of ownership, control, access, and possession.
- **Timeliness:** engagement between the parties and activities under the Agreement are conducted according to reasonable, agreed-upon timelines.

- **Interests-based:** the parties will avoid taking positions and will attempt to resolve issues in an interest-based manner, where possible.
- **Evidence and knowledge-based:** outcomes and decision-making are based on an equal valuation of Western and Indigenous knowledge and science.
- **Dispute resolution:** the parties co-define a specific dispute resolution process that is based on the parties' ability and willingness to recognize, explore, and resolve differences that arise between them.
- **Outcome-oriented:** outcomes are clearly defined, monitored, and evaluated throughout the life of the Agreement.
- **Adaptive:** the Agreement is treated as a living document that may be modified as agreed to by the parties.
- **Resourced:** resources (may include funding) are identified and provided by the Crown to create and implement the Agreement.

Collaboration Agreements Should Ensure Good Decision-making Outcomes

Decisions made under Collaboration Agreements, including decisions regarding final approval of the project, should be:

- Based on information and conclusions reached through an **assessment framework that is co-designed and co-implemented** to meet the needs of all parties.
- Based on and value both **Indigenous and Western science and knowledge**.
- Based on a **reciprocal understanding** of the environment that honours and respects all life, land, and water.
- **Supported and championed** by all parties in their own governance and decision-making systems, where able and appropriate.
- Informed through **meaningful cooperation** with the project proponent and all other affected actors.
- Designed to create **sustainable, long-term positive outcomes** for the parties.
- **Monitored** to ensure fulfillment.