

**Including Future Generations in Environmental Assessments and Impact and Benefit
Agreements: An Alternative Dispute Resolution Analysis**

ERS 411 Senior Honours Thesis

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Abstract

The purpose of this study is to use lessons from alternative dispute resolution (ADR) to address conflict and include concerns of future generations in the planning stages of mining projects. Particular attention is paid to application during review of mines' environmental assessments (EAs) and negotiation of impact and benefit agreements (IBA). This study developed six ADR criteria for evaluation to serve as a conceptual framework. The Voisey's Bay Nickel Mine was used as a case study to illustrate the legacy issues to be addressed by EA review panels and in IBAs and to apply the conceptual framework. The findings from the study show that ADR helps to explain the successes and failures of efforts to address conflict and include the interests of future generations in decision-making. The Voisey's Bay EA review panel's use of the expert panel as a form of third party helped to include future generations in the decision-making. By including all relevant stakeholders (except arguably future generations) both the EA and IBA processes were able to build strong relationships among their participants. Both the EA and IBA processes started early enough in the mine's planning stages that the proponent could be flexible and change the project plans, which reduced the likelihood of future conflict. There was a power imbalance in both processes. However, the memorandum of understanding establishing the EA review panel helped to give the Aboriginal communities more power in the decision-making process. The voice of future generations could have been better included in these processes by assigning an advocate for them in the EA review panel process and by using a third party in the IBA negotiations. Since the Voisey's Bay Nickel Mine is still in operation, further research is needed to know how the EA panel review and IBA negotiations will actually impact future generations of community members.

1 Introduction

There is a need to include the interests of future generations in the planning stages of mining projects. This need is illustrated in the fact that Canada's history of 'boom and bust' mining projects has resulted in undesirable long-term impacts on local communities, including Aboriginal communities. Generations after a mine's closure these communities can still feel its negative ecological, social, and economic effects (Gibson, 2005; Fidler & Hitch, 2007). By focusing on long-term sustainability when planning mining projects it may be possible to prevent serious negative impacts on communities and encourage lasting gains (Weiss, 1989). For example, incorporating attention to the interests of future generations during environmental assessment (EA) review panels and impact and benefit agreements (IBAs) could greatly improve the legacy of mines. However, there is often conflict between stakeholders during the planning and approval stages of mines. If this conflict is not addressed well, it may hamper planning for long-term benefits, including equity for future generations of community members (Ali, 2003). The purpose of this study is to use lessons from alternative dispute resolution (ADR) to address this conflict and include concerns of future generations in the planning stages of mining projects.

EA review panels and IBAs are two separate but related processes used in the deliberations on whether to approve proposed mining projects with what conditions. EA review panels are a government-led mechanism through which an independent body reviews a major proposed project, such as a mine. The panel hears concerns from different stakeholders, determines the potential impacts of the project, and provides recommendations to decision makers to address these impacts (CEA Agency, 2012). By contrast, IBAs are privately negotiated agreements between mining companies and Aboriginal communities. IBAs arrange conditions for the mining project and detail benefits the Aboriginal groups will receive from the

mine (Hitch, 2006). They are frequently used by mining companies and Aboriginal communities to minimize the local harms and maximize the benefits of mining projects (Fidler & Hitch, 2007). EAs and IBAs are often described as parallel processes of Aboriginal engagement (Ali, 2003; Fidler, 2010), with both mechanisms able to strongly influence the direction of a proposed mining project (Fidler, 2010). Researchers have raised questions surrounding the legacy implications of EA review panels and IBAs (Sosa & Keenan, 2001; Gibson, 2005). There is a need for both of these processes to include legacy issues and concerns of future generations more effectively.

ADR refers to a wide range of conflict resolution processes that aim to provide fair means of preventing or resolving disputes outside of the litigation process (Swanson, 1995; Lewicki, Barry & Saunders, 2010). In fact, proponents of ADR argue that it is more likely to create satisfying and long-lasting agreements than litigation (Beierle & Cayford, 2003). ADR has been described as a “variety of approaches that allow the parties to meet face-to-face to reach a mutually acceptable resolution of the issues in a dispute or potentially controversial situations ... that involve some form of consensus building, joint problem solving, or negotiation” (Bingham, 1986, p. xv). ADR literature includes methods to include unrepresented parties, such as future generations, in ADR processes (Susskind, 1981). This thesis considers how ADR insights and approaches could be used to address conflict and include legacy concerns in EA review panels and IBAs.

ADR literature could provide insights for EA and IBA practitioners on how they can incorporate concerns of future generations, as unrepresented stakeholders, in EA processes and IBA negotiations (Brown, 2000). It is advantageous to address legacy issues in initial planning and approvals so that future generations are not left with serious and ever-worsening problems

(Worrall, Neil, Brereton, & Mulligan, 2009). EA review panels and IBAs can also prevent or reduce conflict between government, mining companies, and Aboriginal communities. As such, EA review panels and IBAs can each be viewed as a venue for ADR.

These issues are illustrated in the Voisey's Bay Nickel Mine case study. This study involves a controversial mining project, two separate Aboriginal groups with vested interests in the mine, an EA review panel, and two separate IBA negotiations (one for each Aboriginal group) (Ali, 2003). This case also includes conflict between the stakeholders. Furthermore, the Voisey's Bay EA Review Panel has been praised for its contribution to sustainable development and long-term thinking (Gibson, 2005). These factors make Voisey's Bay an excellent case to study how ADR principles could help to explain and contribute to conflict resolution and consideration of future generations in EA and IBA processes.

This study develops an ADR framework, centred on principles of collaborative conflict resolution, integrative negotiation, and third party intervention, to assess the current EA review panel and IBA norms and practices surrounding issues of long term well-being for future generations. It applies ADR insights on environmental conflict and unrepresented parties in negotiations to the EA review panel and IBA contexts. The framework is then applied to the Voisey's Bay Nickel Mine case study. Voisey's Bay provides an opportunity to test the usefulness of the ADR framework because it involves an EA joint review panel, an IBA between a private mining company and an Aboriginal community, and implications for future generations.

This topic is important because of the economic significance of mining projects in Canada and the common failure to deal adequately with their impacts, especially legacy effects on future generations. Mining projects, by nature, are short-term and non-renewable. This

research aims to discover ways to address long-term social, environmental, and economic viability concerns for future generations during the project agreement stage. This project is also potentially significant for Aboriginal communities involved in mining negotiations. The researcher is interested in this topic because it combines two of her areas of interest: environmental conflict and ADR. Furthermore, this topic is in a Canadian context and will provide the researcher the opportunity to learn more about environmental conflict policies and practices of her country of citizenship.

This paper begins with the study's research question followed by an outline of the methodology used for this study. Third, this paper provides an in-depth literature review on the concepts central to the research question and develops an ADR conceptual framework. Fourth, is a description of the Voisey's Bay case study, its EA review panel, IBAs, and legacy issues. Fifth, the paper will analyze the case study using the study's conceptual framework. Finally, this paper discusses conclusions, implications, and opportunities for the future.

1.1 Research Question

How can insights from ADR help in identifying opportunities and limitations for the Voisey's Bay EA and IBAs to prevent or resolve conflict and contribute to the long term well-being and interests of future generations of community members?

1.2 Methodology

The methods used for this research followed a qualitative case study approach. Based on the constructionist paradigm, a case study is an inductive research approach that explores the context of a phenomenon through many data sources (Baxter & Jack, 2008). A case study approach was appropriate for this study because it is answering a 'how' question; the research did not manipulate the subjects of the study; contextual considerations were important, and there

were unclear boundaries between the research subject and its context (Baxter & Jack, 2008). This study was grounded in an ADR conceptual framework that provided a boundary for the study and a perspective through which to view the results (Baxter & Jack, 2008). In this approach the researcher applied the ADR conceptual framework developed through the literature review to analyze the Voisey's Bay case study. The research methods were semi-structured interviews and document analysis. Through these research methods the researcher developed an ADR analytical framework through which to review and assess the EA review panel and IBA practice with regards to legacy issues and examine an illustrative case, the Voisey's Bay Nickel Mine.

The researcher conducted interviews as part of her research methods. She researched online to find stakeholders in the Voisey's Bay case study and experts in ADR, and emailed eleven potential interviewees. Three accepted the invitation to be interviewed, including two stakeholders who were involved in the Voisey's Bay EA review panel process and one ADR expert. The interviews all took place over the telephone or through Skype, were audio recorded to facilitate accurate note-taking, and lasted between 25 and 45 minutes in length. These semi-structured interviews featured questions prepared by the researcher with flexibility for the conversation to go in unanticipated directions (Bryman, Teevan, & Bell, 2009). The purpose of this research method was to discover how the interviewees interpret the issues and to gain new perspectives on the research topics (Bryman et al., 2009) which the researcher could not obtain using other methods. This purpose is consistent with the goals of a case study (Baxter & Jack, 2008).

The document analysis included a review of both primary and secondary resources. The primary resources consisted of the Voisey's Bay EA report and other government documents.

The secondary resources included existing academic literature, books, websites, and other publications. The purpose of this research method was to obtain data related to the research that had already been collected by other researchers. This research method was useful because there is already a vast amount of information available on the research topic, and it would have been extremely time-consuming and inefficient for the researcher to collect all of the primary data herself (Bryman et al., 2009).

1.3 Boundaries, Limitations, & Bias

The boundaries of this research were the country of Canada in general and the Voisey's Bay case study area in particular. Furthermore, the study only examined (1) how ADR can help to prevent or resolve conflict and (2) whether and, if so, how ADR can provide insights for legacy issues. There are many other important issues surrounding EA review panels, IBA negotiations, and ADR; however, it was not the purpose of this paper to explore those issues.

In addition to these boundaries there were several limitations to this study. First, temporal limitations confined this study to the eight months between September 2012 and April 2013. This limited the amount of research the researcher could complete. Second, there were financial limitations to this study. As a result, the researcher was not able to travel to the location of the case study. Furthermore, the researcher was not able to pay the Access to Information and Privacy fee to gain access to certain government documents. Third, the study was limited by the number of interviewees as only three respondents agreed to be interviewed. Fourth, the IBAs are confidential documents. Consequently, the researcher was not able to obtain these documents for her research and the study was limited by not having this information.

Finally, the researcher's worldview and personal biases have influenced this study. The researcher is an undergraduate student majoring in Environment and Resource Studies and minoring in Peace and Conflict Studies. Her bias is towards promoting long-term sustainability, including all stakeholders in collaborative conflict resolution processes, and negotiating using interests rather than positions. This had the potential to cause the research to be unfairly slanted towards the benefits of collaborative ADR. To attempt to mitigate this bias, the researcher consulted a wide variety of literature critiquing ADR.

2 Development of ADR Conceptual Framework

This chapter will explore the literature on a number of concepts related to its research question. It will begin by looking at ADR in its various forms and contexts. Next, it will discuss the two relevant decision-making processes, EA review panels and IBAs. Finally, six criteria for evaluation will be drawn from the literature to create an ADR conceptual framework.

2.1 Alternative Dispute Resolution

ADR refers to any number of collaborative dispute resolution processes that occur outside of the judicial process. These processes include negotiation between two or more parties, mediation with the use of a neutral third party, and consensus building (Swanson, 1995). The key criteria for ADR use are there is a specific dispute and clear issues to be addressed; the parties to be involved are readily identified; the relevant parties are few enough that they can all sit at a table; all significant interests can be represented; the parties volunteer to participate and are prepared to compromise; and the parties have decision-making authority (Swanson, 1995; Beierle & Cayford, 2003). Not every dispute meets these criteria, and some disputes may be better addressed through adjudication or other methods (Swanson, 1995; Emerson et al., 2003).

However, if the criteria do apply, ADR has many benefits. An ADR process may include the following stages (Moore, 2003):

1. Identifying Stakeholders. Parties with an interest in the conflict are identified and approached to participate in the ADR process. This may include identifying stakeholders that cannot represent themselves, for example future generations.
2. Opening. Participants are reminded of why they are present, how the process will progress, what they can expect from the process, the roles of everyone present, and guidelines for behaviour.
3. Hearing. Disputants each have an opportunity to share their story and position on the issues. The agenda of issues to be discussed for the rest of the process is decided (although more issues may evolve over the course of the process).
4. Building Understanding. The disputants (usually aided by a neutral third party) explore their positions in depth, try to uncover common interests, gain understanding of the opposing party's (or parties') intent, and ideally find common ground to work with.
5. Action Planning. Based on the issues discussed, the disputants come up with possible solutions that could work for all parties. This could include brainstorming, bargaining tactics, and open discussion.
6. Closing. Disputants identify their points of agreement and may choose to create a written agreement. Disputants may also develop a plan for their future interactions and how they will resolve future conflicts.

These stages are typical for a mediation process (Moore, 2003) and may change based on the type of ADR or the ADR practitioner who designs the process. For example, some consensus-building approaches have the participants structure their own process (Cormick et al.,

1996). However, this structure forms a good basis for understanding what ADR can look like in practice.

One main approach to ADR is collaborative conflict resolution. In this approach, the participants in the ADR process work together rather than compete with each other to find a resolution to the conflict. In other words, they focus on solving the problem rather than attacking each other (Bingham, Fairman, Fiorino, & O'Leary, 2003). Collaborative conflict resolution prioritizes the ability of all parties to work together to achieve their own objectives. The parties seek to maximize the gains for each side (Lewicki et al., 2010). Related to this is the Dual Concerns Model, which defines collaboration as a conflict resolution style where both the relationship between the parties and the ability to achieve substantive objectives are important (Shell, 2001). Collaborative processes strive to include the interests and voices of all stakeholders in a conflict to ensure the best solution possible is found (Bingham et al., 2003). Collaboration is best started as early in a conflict or project as possible. This is when positions are least firm and entrenched, parties are most open to discussions, and collaboration is most effective (Nolon, 2007; Emerson et al., 2003).

Third party intervention is another key approach in ADR. Third party intervention occurs when an outside party, who is not involved in the conflict, comes in to help facilitate the ADR process and guide the conversation. This often happens in the form of a mediator (Moore, 2003). Mediators do not have any authority over the outcome of the process (Emerson et al., 2003; Lewicki et al., 2010), rather they help to keep the parties on track in the process, guide the conversation, and enforce the agreed-upon guidelines (Lewicki et al., 2010). Third parties can also contribute to an ADR process by helping to select an appropriate conflict resolution process, developing agendas, balancing power between or among the disputants, coordinating

communication among multiple parties, and managing deadlines (Moore, 2003). Third party intervention often contributes to the success of an ADR process.

A third key ADR approach is interest-based negotiation. Negotiation can be confrontational (distributive) or cooperative (integrative) (Lewicki et al., 2010; Emerson et al., 2003). An integrative negotiation style builds on collaborative conflict resolution. This style of negotiation assumes that negotiations do not have to be win-lose; there is opportunity to find win-win solutions (Lewicki et al., 2010). Integrative negotiation is interest-based. Therefore, it looks at the underlying interests of each party's position to determine what is really important to them and to find common ground. (Lewicki et al., 2010). Integrative negotiation requires honesty, integrity, maturity, and active listening (Laubach, 1997). In addition, an integrative negotiation style does not subscribe to the notion of a 'fixed-pie' where a set amount of outcomes are divided between or among disputants. Rather, integrative negotiation frequently 'expands the pie' to bring in more issues and options for settlement so that all parties can be equally satisfied with the final agreement (Daniels & Walker, 2001). Collaborative conflict resolution, third party intervention, and interest-based negotiation are mutually compatible and can be used together in an ADR process. The conceptual framework developed in section 2.7 draws from this discussion of the ADR stages and approaches.

2.2 ADR in Environmental Conflict

There are many benefits to using ADR to address environmental conflict. First, ADR involves all necessary parties and addresses underlying conflict and environmental issues, which is absent in the litigation process (Swanson, 1995). Second through direct participation in the process, ADR can increase individual satisfaction and empowerment, relationship-building, capacity-building, and social-ecological benefits (Birkhoff & Lowry, 2003). Further benefits of

ADR over litigation include lower costs, higher efficiency, and a better chance of creating a lasting agreement that addresses all relevant issues (Emerson et al., 2003). In addition, participants in ADR have control over their mutual agreements, in contrast to processes involving adjudicators who create agreements on the disputants' behalf. Finally, when respected, diversity among the participants in ADR can increase the creativity of solutions (Cormick et al., 1996). In the context of IBA negotiations, the negotiation participants are highly diverse and therefore have great potential for developing creative agreements.

There are also limitations to ADR. For example, ADR does not guarantee a resolution and may not be able to achieve all outcomes desired by each party (Swanson, 1995). Furthermore, ADR may promote, or at least be skewed by, power imbalances between or among parties if the participants have unequal access to information and financial resources (Birkhoff & Lowry, 2003). This is a concern in the IBA context because private mining companies almost certainly have more clout and financial resources than Aboriginal communities. In addition, some critics argue that ADR requires negotiation and compromise, which does not work with some environmental issues that are non-negotiable (Daniels and Walker, 2001). A further critique of ADR is that ADR literature has a tendency to be celebratory to the extent that it is less critical of ADR (Emerson et al., 2003). Finally, it is difficult to quantify the success of ADR processes. This is because the most important measure of success is not reaching an agreement but the long term implementation of that agreement (Cormick et al., 1996). These limitations are important to acknowledge, and they can often be overcome (Emerson et al., 2003).

2.3 ADR on Behalf of Future Generations

ADR literature recognizes that future generations are stakeholders in environmental conflict (Brown, 2000; Menkel-Meadow, 2008; Susskind, 1981; Stulberg, 2012; Opatow &

Weiss, 2000; Abu-Nimer, 2006). The importance of future generations in ADR processes is very much dependent on culture. Western individualist cultures put emphasis on people directly related to the conflict while other cultures – for example Middle Eastern cultures – view future generations as central to ADR processes (Abu-Nimer, 2006). Indeed, Western styles of conflict resolution typically leave environmental problems for future generations to solve (Menkel-Meadow, 2008; Brown, 2000). In this way, future generations could be seen as bystanders and potential victims in ADR processes because they have a stake in the outcome but cannot participate in the ADR process (Lewicki et al., 2010). This is problematic because it can create major environmental problems for the future (Susskind, 1981).

A challenge for ADR, and conflict resolution in general, is finding a credible and effective advocate for future generations (Menkel-Meadows, 2008). This speaks to the importance of social and temporal considerations in environmental conflict and the issue of avoiding trade-offs between the interests of people in the present and the future (Milfront, Wilson, & Diniz, 2012). One way to include future generations in an ADR process is to assign a proxy to advocate for future generations' concerns (interviewee #3, February 14, 2013). Susskind (1981) argues that third parties, or mediators, in ADR should be responsible for ensuring that the interests of future generations are considered in ADR processes. To do this, third parties cannot remain passive in ADR processes (Susskind, 1981). Stulberg (2012) and Brown (2000) agree with Susskind. In fact, third parties in ADR may be better equipped to advocate for future generations than lawyers in litigation (Brown, 2000). This is because lawyers generally do not advocate for interests other than those of their clients, thereby leaving future generations without a voice. Furthermore, it is rare for an organization to claim to represent the voice of future generations (Stephens, Stephens, & Dukes, 1995), so lawyers would

rarely represent those clients. ADR may be a better process than litigation for promoting the interests of future generations (Brown, 2000).

A second approach to including future generations in ADR processes is by assigning a proxy or ombudsman to advocate for them. This person would represent the interests of future generations because these interests might be different than the interests of present generations (Weiss, 1989). While an advocate for future generations cannot commit future generations to doing something in the future, the advocate is able to raise moral concerns (Susskind, 1994). However, it is very difficult for proxies to anticipate what future generations will need and want. While assigning a spokesperson for future generations in ADR processes may work on a smaller scale, for example the Voisey's Bay case study, on a national or international scale they most likely would not be able to influence negotiations. Instead, having the whole process focus on sustainable development may be a better method of considering future generations' interests than assigning a particular spokesperson, because sustainability criteria can be incorporated into decision-making at global and national scales (Susskind, 1994). In the Voisey's Bay case study, both using an advocate for future generations and incorporating sustainable development in decision-making are valid approaches to contribute to the long term well-being and interests of future generations.

2.4 ADR in Aboriginal Context

The purpose of this section is to provide some general context on the key concerns when both Aboriginal and Western parties are involved in an ADR process. However, the researcher recognizes that these are broad generalizations covering significant differences within Western and Aboriginal practices. First, it is very important to consider the history of colonization and discrimination against Aboriginal people in Canada when discussing Aboriginal issues (Regan,

2010). Second, the Aboriginal approach to dispute resolution is very different from the Western approach. For example, the Aboriginal approach views dispute resolution as an ongoing process rather than a single event (UVic, 1996), emphasizes truth-telling (Regan, 2010), and holds the belief that if you take time to build a relationship it will be much easier to resolve the dispute (Victor, 2007). Third, it is important to understand and acknowledge that the two parties (or more) have very different reasons for being at the table (UVic, 1996). Fourth, everyone involved in the ADR process must be cognizant of power imbalances in ADR (Victor, 2007; Regan, 2010). This is especially important because participatory ADR processes created by federal or provincial governments “can reinforce socially embedded power relations that negatively impact indigenous groups” (Morton, Gunton, & Day, 2012, p. 510). This leads to a host of problems, including constructing racial stereotypes and pressuring Aboriginal groups to come to an agreement instead of pushing important issues. The use of “culturally appropriate planning methods and techniques” (Morton, Gunton, & Day, 2012, p. 511) may help to overcome these problems. Two further concerns are the language barrier between parties and the need to hear from Aboriginal women (Victor, 2007). Finally, Aboriginal communities are very concerned with the long term impacts of projects and negotiations (Regan, 2010).

The use of a third party also carries some concerns in ADR processes that involve Aboriginal participants. Much ADR literature stresses the importance of a neutral third party (Nolon, 2007; Emerson et al., 2003). However, the notion that a third party can be “neutral” is a Western concept (Victor, 2007; Regan, 2010). From an Aboriginal perspective, the third party should have knowledge of the relevant Aboriginal community’s culture, personal involvement and first-hand knowledge of the issue at hand, and be tied to the community and culture (Victor, 2007). Furthermore, if the third party is from the Western culture, this can lead to prejudice

against the Aboriginal party (Delgado et al., 1985). Related to this, the use of “neutral” third parties must be monitored as they are not actually neutral and can lead to power imbalances in the process (Regan, 2010).

These are all crucial considerations for applying an ADR framework to EA review panels and IBA negotiations, and this list is far from exhaustive. Furthermore, most literature reviewed for this paper comes from a Western perspective, and may not cover important considerations for cross-cultural ADR, especially with Aboriginal parties. However, time and space constraints did not allow the researcher to study this more in depth. Furthermore, it is not the purpose of this paper to explore specifically how Aboriginal considerations can be brought into ADR but rather how interests of future generations can be considered in ADR processes.

2.5 Environmental Assessment Review Panels

EAs are a legislated process of assessing initiatives for environmental, and sometimes socio-economic, impacts. In general, they aim to predict potential effects of proposed projects, provide mitigation measures for these effects, and develop a follow-up program for after project completion (CEA Agency, 2012). Sometimes EAs also compare alternatives and consider enhancement as well as mitigation needs. Review panels are one of two forms of federal EA in Canada under the *Canadian Environmental Assessment Act* (CEAA). They are used for large projects expected to have major environmental and social impacts and high public concern, for example a major mining project. Joint review panels may be appointed when there is jurisdictional overlap between, for example, the federal and provincial governments requiring project approval from both governments. In these cases the different governments consolidate part of their EA processes into one panel review (CEA Agency, 2012). Panels are made up of experts appointed by the government(s). They hold public hearings, have the capacity to

summon witnesses, and provide the government(s) responsible for decision-making with recommendations related to the project's proceeding. This process can take months to years to complete (CEA Agency, 2012). The Voisey's Bay case study includes a joint review panel.

To some extent, review panels could be seen as a third party in the EA process. Panels are experts, not stakeholders in the process, and so the individual panel members do not have a substantive interest in the outcome of the process. Furthermore, the panel process could be seen as "a mediated discussion, [with] the discussion [mediated] by the panel" (interviewee #1, February 12, 2013). However, review panels do have unavoidably substantive roles in the cases reviewed and are not true impartial parties. They create the recommendations, so they control both the process and the outcome. How best to enhance their impartiality is therefore crucial, including in cases involving Aboriginal parties. If review panels were to act more as impartial third parties, they could have a greater ability to balance power between the parties (Moore, 2003).

While there have been some groundbreaking EA review panels in Canada (Gibson, 2002) there are critiques of the process. For example, there is no evaluation of the review panel process itself after the panel has submitted its report (interviewee #1, February 12, 2013), which limits the potential for critically reflecting upon and improving the review panel process. In addition, there is no guarantee that the panel's recommendations will be followed, as the government authorities with decision-making authority have the final say in how the project will proceed (interviewee #1, February 12, 2013). Also, the rarity of effective follow-up programs leaves uncertainty about whether the recommendations have been implemented and what effects actually resulted. A third critique of federal EAs in Canada is restrictive scoping. Restrictive scoping limits what is included in the EA process and can exclude some important issues and

stakeholders (Whitelaw, McCarthy and Tsuji, 2009). Fourth, EAs have been criticized for focusing on mitigating the negative impacts of a project rather than on enhancing its lasting net benefits. IBAs (discussed below) have been suggested as a response to this shortcoming (Galbraith, Bradshaw, & Rutherford, 2007). These issues are important to address in the EA review panel process.

2.6 Impact and Benefit Agreements

The first IBAs in Canada were agreements between government agencies and private mining companies addressing opportunities for local employment in resource extraction projects (Sosa & Keenan, 2001). As there has been more recognition of Aboriginal rights, Aboriginal communities have taken over negotiating with private resource extraction companies for themselves (Sosa & Keenan, 2001). Now IBAs address a multitude of issues surrounding mining projects, most of which fall under two broad categories: maximizing the benefits resource extraction projects can bring to the community and minimizing the risks and adverse effects associated with resource extraction projects (Fidler & Hitch, 2007; Galbraith et al., 2007; Hitch, 2006; Sosa & Keenan, 2001). IBAs can benefit Aboriginal communities in many ways, however they have also been heavily critiqued (Fidler & Hitch, 2007).

IBAs allow Aboriginal communities to participate actively in the mining project planning process, if they are begun early enough (O’Faircheallaigh, 2007). IBAs typically include provisions for employment, education, environmental regulation, revenue sharing, effects monitoring, and social/cultural programs, among other considerations (Sosa & Keenan, 2001). This is designed so that the Aboriginal community will gain meaningful benefits from the mining project (Sosa & Keenan, 2001). Other benefits of IBAs are that they create a partnership and can promote understanding, trust, respect, and relationship-building between mining companies and

Aboriginal communities (Galbraith et al., 2007). Furthermore, IBAs can be a flexible process and provide opportunities for Aboriginal communities to be directly involved in environmental planning (O'Faircheallaigh, 2007).

There are, of course, also concerns relating to IBAs. Some critics view IBAs as one way the Canadian government has downloaded onto private companies its responsibilities to protect the interests of Aboriginal groups (Sosa & Keenan, 2001). A second main critique of IBAs is their private nature. IBAs are largely confidential, which can prevent learning from past IBAs (Fidler & Hitch, 2007), allow for exploitation of communities through a divide and conquer strategy (Gibson & O'Faircheallaigh, 2010), and raise questions when IBAs are required by the government (Sosa & Keenan, 2001). Third, the disconnection between IBAs and the formal EA process is cause for concern (Fidler & Hitch, 2007). This is because, as the IBA negotiations are confidential, EA practitioners do not know if their recommendations are redundant or relevant to what is being decided in the IBA negotiations (interviewee #1, February 12, 2013). EAs and IBAs have "overlapping objectives and blurred boundaries" which cannot be remedied unless EA and IBA practitioners work together somehow (Fidler & Hitch, 2007, p. 49).

In addition to the above concerns, a growing concern about IBAs is the issue of legacy effects (O'Faircheallaigh, 2007; Fidler & Hitch, 2007). This issue relates to the long term environmental, social, and economic effects of the mining project (Worrall et al., 2009; Veiga, Scoble, McAllister, 2001). Mining projects can seriously affect future generations, who are unable to participate in IBA negotiations (Brown, 2000; Wade-Benzoni, Hernandez, Medvec, & Messick, 2007). Often, mining companies limit their concern to the immediate impact of the mining project, and do not consider long-term impacts (O'Faircheallaigh, 2011). While some argue that IBAs can contribute to long term benefits (Manseau, Parlee & Agles, 2005), most

agree that IBAs do not adequately address the issues of legacy or future generations (Sosa & Keenan, 2001; Gailbraith et al., 2007; O' Faircheallaigh, 2007; Fidler & Hitch, 2007). ADR may be a useful tool to deal with IBAs' legacy shortcomings (Brown, 2000).

2.7 ADR Conceptual Framework

There is a need both to address evident or potential conflict effectively during the planning stages of large-scale mining projects and to incorporate the concerns of future generations. Six key ADR concepts, which emerged from the ADR, EA review panel, and IBA literature, can help to address this need. These criteria are including all potentially affected parties, prioritizing relationship-building, using interest-based negotiation, beginning early in the planning stages, balancing power, and using a third party. Incorporating these concepts into mining decision-making and planning will contribute to managing conflict and bringing in the voice of future generations. These six criteria, outlined below, are not mutually exclusive and often work best when used together.

1. Include all potentially affected parties. All parties that could be affected by the outcome of the decision-making process should be given an opportunity to influence the decision, or participate in the decision-making. Future generations are an impacted party because they will be impacted by the long term effects of the decision.
2. Prioritize relationship-building. Parties in the process should put effort into working together and building relationships rather than competing. This is a key aspect of collaborative conflict resolution and allows parties to focus their energy on solving the problem rather than competing with each other.
3. Negotiate using interests. Instead of using position-based negotiation, the process should use principles of integrative negotiation and focus on parties' underlying interests. By

doing this, the process will be more effective at building relationships and achieving each parties' substantive goals.

4. Begin early in the planning stages. At the beginning of a project, or a conflict, there is the most room for flexibility. By addressing conflict and bringing each party into the discussion early in the planning process, there is a greater chance that the project will be able to change to accommodate the different interests.
5. Balance power. Power imbalances undermine the equality of participants in an ADR or decision-making process. Maintaining equal levels of power, which relates to the capacity of participants, among the parties allows each participant in the process to have the same level of influence.
6. Include a third party. In this framework, third parties refer to mediators who are present to aid the process, but not to contribute substantive input to the discussion. While third parties will aim to be as unbiased and neutral as possible, this framework does not assume third party neutrality.

The six criteria outlined above are relevant to EA review panels and/or IBAs for several reasons. First, both EA review panels and IBAs should include all impacted parties, including future generations. Second, as the parties in review panels and IBAs will continue to interact after the process is over, they should work on building strong relationships with each other. Third, integrative negotiation is useful for IBA negotiations because it helps both the mining companies and the Aboriginal communities meet their underlying objectives. Fourth, EA review panels and IBAs occur relatively early on in a mining project's life. Fifth, these two processes each involve multiple parties with varying levels of power. Finally, review panels and IBAs

could each benefit from incorporating principles of third party intervention. The Voisey's Bay case study provides an opportunity to apply these six ADR criteria to an illustrative case.

3 Voisey's Bay Case Study

Voisey's Bay is located on the northern coast of Labrador, Canada. This region is within the traditional territories of Innu Nation and Labrador Inuit Association (now known as Nunatsiavut), both of whom filed comprehensive land claims in 1977 (O'Faircheallaigh, 2006). In 1993, a large nickel deposit was discovered at Voisey's Bay, before the land claims were settled (O'Faircheallaigh, 2006). Inco, a mining company, secured the rights to this deposit in 1996 and proposed a major mining project for the Voisey's Bay nickel deposit (Gibson, 2005). This proposal raised significant concerns among the Innu and Inuit of the region, including concerns about environmental protection, control of the project's implementation, and negative social and economic impacts (Ali, 2003). The Canadian federal government and the provincial government of Newfoundland and Labrador also had interests in the project, which triggered the need for an EA (Voisey's Bay EA Panel, 1999).

The EA process began in 1996, and in January 1997 four separate governments, Innu Nation, Labrador Inuit Association (LIA), Newfoundland and Labrador and the federal government of Canada signed a memorandum of understanding (MOU) that included all four parties in decision-making. This MOU is significant because it was the first of its kind in Canada (Ali, 2003) and marks the coming together of four parties with a history of conflict (Gibson, 2005). The five person panel held hearings in nine communities, and its review resulted in 107 recommendations for the Voisey's Bay Nickel Mine project, including that the project should go forward (Voisey's Bay EA Panel, 1999). While the panel process was

proceeding, the Innu and Inuit were each in the process of negotiating separate IBAs with Inco. In addition, the federal and provincial governments, Innu Nation, and LIA developed an Environmental Management Agreement (EMA) which subsequently created an Environmental Management Board (EMB). The EMB's purpose is to provide advice on the environmental management of the mine, and has given the Aboriginal groups opportunity for greater involvement in the mine's management. In 2002, the EMA was signed, the IBAs were signed between Inco and the two Aboriginal groups, and construction on the project began. The mine commenced production in November 2005 and its operation is ongoing (O'Faircheallaigh, 2006).

Ali (2003) emphasizes that the Innu and Inuit are two separate Aboriginal groups with a long history of territorial disputes, including battles. Having lived in the Voisey's Bay region for at least 6,000 years (O'Faircheallaigh, 2006) these groups traditionally lead very different lifestyles, with the Innu living mainly off the land and the Inuit off the sea (Ali, 2003; Gibson, 2005). Despite their differences, the Innu and Inuit worked together against a common enemy, Inco, to protest the mine construction in 1998 (Lowe, 1998). One interviewee recalls that that there were no major conflicts between the Innu and Inuit during the EA joint review panel hearings and that the two groups worked well together (interviewee #1, February 12, 2013). The threats and potential benefits of the nickel mine were similar for both groups (Gibson, 2005).

3.1 Voisey's Bay Environmental Assessment Joint Panel Review

As previously mentioned, under the MOU, the Voisey's Bay EA review panel was a joint process established by the federal and provincial governments, the Innu Nation, and LIA. This is significant for several reasons. First, it recognized the two Aboriginal parties as legitimate decision-makers in the process, even before land claims were settled (interviewee #1, February 12, 2013). One interviewee noted that "they [Innu and Inuit] didn't have as much clout as the

federal and provincial governments in the process but they were there as part owners of the process and it made a big difference” (interviewee #1, February 12, 2013). One of these big differences was that the Innu Nation and LIA each had their own tables at the panel hearings, which was unusual for panel hearings and made it a more equalized process (interviewee #1, February 12, 2013). Second, the fact that the Innu and Inuit felt like part owners of the process calmed down tensions that arose at the beginning of the panel process. Instead of trying to stop the project, the conversation shifted to focusing on how the project should best be carried out. The Aboriginal groups also became invaluable “reviewers and [critics] of all the information”, which was very helpful to the panel (interviewee #1, February 12, 2013). Including Innu Nation and LIA in the MOU was important to give them ownership of the EA process and encourage their valuable cooperation and participation in the panel hearings.

One main issue that was addressed in the EA review panel process was winter shipping. The Inuit were very concerned about this because winter shipping would break up the sea ice which they use for travel and hunting (Voisey’s Bay EA Panel, 1999). Breaking up the sea ice would compromise the sea ice stability and safety for the Inuit. In fact, the Inuit threatened to not support the project if the project included breaking ice (Pain & Paddon, 2008). The panel was also concerned about this issue and the long term impacts it could have on the Inuit. As a result, they asked the proponent to see if they could do the project without winter shipping (interviewee #1, February 12, 2013). The proponents, although preferring to do winter shipping, did find a way to eliminate shipping from their plan during a certain time in the winter. This would allow the sea ice to grow thick enough to be safe for Inuit purposes (Voisey’s Bay EA Panel, 1999). Details of the winter shipping plan were worked out by a separate group made up of local Aboriginal and proponent representatives. This group built trust and understanding over

a few years and created a separate shipping agreement (Pain & Paddon, 2008). Although some critics are sceptical of Inco's true motivations for cooperating on the winter shipping issue – one LIA member believes that technical barriers to shipping and not Aboriginal concerns were Inco's true motivations (Ali, 2003) – how the review panel handled the winter shipping issue demonstrates a high level of engagement of all parties and a successful outcome (interviewee #1, February 12, 2013).

The Voisey's Bay EA process was the first in Canada to use sustainability-based criteria (Fidler, 2010; Gibson, 2005). One key aspect that the panel was looking for in the project was how the mine would contribute positively to sustainability, which includes legacy effects of the mine (Gibson, 2005). This shows that the Voisey's Bay panel aimed to take its assessment further than merely mitigating adverse effects, setting it apart as a major contribution to sustainability assessment. A key factor in this was determining how the mine could leave a positive legacy, which was largely tied to extending the life of the mine (Gibson, 2013). Extending mine life (reducing the pace of exploitation by cutting the capacity of the concentrator plant) would create a longer period of benefits flowing to the Aboriginal communities and allow for greater capacity building to continue the benefits past the life of the mine (Voisey's Bay EA Panel, 1999). Inco agreed (with some resistance) to extend the life of the mine (Gibson, 2013). Now, the mine is expected to operate for 30 years, with the potential for extension pending further resource exploration (Vale, 2012). This is no doubt good for the Innu and Inuit communities of Voisey's Bay. The extended mine life ensures that they will receive more long-term economic benefits and opportunities to build capacities that will be useful after the mine closes. However, one interviewee noted that whether or not these communities will benefit from the project past the life of mine is up to the communities themselves: "it's up to them to make

sure that that money is used in such a way that there will be benefits down the road” (interviewee #2, February 14, 2013).

Despite these positive aspects, the review panel process had its shortcomings. First, although the MOU did create a level of equality between the federal/provincial and Aboriginal governments there was still a power imbalance between them. One interviewee stated that “there was an imbalance because ... the government had control over the money” and that it was “the federal and provincial governments that would have the power to see whether or not the recommendations would be followed through. So at that point ... the Aboriginal groups had no power anymore” (interviewee #2, February 14, 2013). Access to financial resources and final decision-making power separated the four parties and prevented true equality between them. Furthermore, a different interviewee explained how another shortcoming of the review panel process was the absence of follow-up. There was no evaluation of the success of the review panel and the panel had no way of knowing if their recommendations would be implemented, or implemented properly (interviewee #1, February 12, 2013). This speaks to a flaw in the larger Canadian federal EA process which limited the success of the Voisey’s Bay EA review panel. One further drawback of the EA review panel process is that it can only make recommendations and cannot force action by the federal or provincial governments (CEA Agency, 2012). In the case of Voisey’s Bay, one of the panel’s most important recommendations was to not give project approval until Aboriginal land claims were settled with the Innu Nation and LIA (interviewee #2, February 14, 2013; Voisey’s Bay EA Panel, 1999). However, the governments refused to comply with this recommendation (Gibson, 2005). Overall, four main limitations of the review panel process were the unequal access to financial resources, unequal power to

implement the recommendations, an absence of follow-up on the process, and a lack of enforcement power.

3.2 Voisey's Bay Impact and Benefit Agreements

The confidential IBA negotiations between Inco and Innu Nation, and between Inco and Labrador Inuit Association commenced in 1995 (Voisey's Bay EA Panel, 1999) and did not finish until June 2002 (Anon, 2002). There are a number of reasons the IBA negotiations took so long to complete. First, the company that discovered the Voisey's Bay mineral deposit, Diamond Fields, had little motivation to engage with Aboriginal groups because they only wanted to sell to a larger company. As a result, Diamond Fields treated the Innu and Inuit poorly, which gave mining companies a poor reputation and sparked protests from the Aboriginal groups (Ali, 2003). The Innu, who felt particularly disrespected by the government and industry stakeholders in the project, wrote a report explaining their apprehensions about the project and providing recommendations for Innu, government, and industry to overcome the cultural divide (Ali, 2003). Third, in 1997 Inco wanted to build a road for exploration purposes and thought that it should be seen as a separate project. However, the Innu and Inuit believed that under the MOU the road should not be built without their consent (Ali, 2003). This dispute between the Aboriginal groups and Inco, which the Innu and Inuit won, created further hostility. Despite initial setbacks and some serious resistance, the Innu, Inuit, and Inco were able to work together in the end to create mutually acceptable IBAs.

The review panel also assessed the impact of the IBA negotiations on the mining project and the Aboriginal communities. However, since the IBA negotiations were confidential, the panel did not know if their recommendations were redundant or relevant to what was occurring in the IBA negotiations (interviewee #2, February 14, 2013). The confidentiality was also an

issue when Inco told the panel that they would address adverse impacts from the project through the IBAs. This was a problem because the panel was not privy to the IBA negotiations, so they did not know how comprehensively or adequately those impacts would be addressed (interviewee #1, February 12, 2013). The panel recommended that there be no project authorizations before Innu Nation and LIA finished IBA negotiations with Inco (Voisey's Bay EA Panel, 1999). The federal and provincial governments abided by this recommendation, and issued project approval in 2002 when the IBAs had been signed (Anon., 2002; Gibson, 2005). These agreements were signed before the Aboriginal groups had land claims agreements in place with the government. As a result of this, the Innu and Inuit leadership felt that it was important to have their members vote to approve the IBAs. In the result, 82% of Inuit and 76% of Innu voted in favour of the IBAs (Pain & Paddon, 2008). This shows that even though not all of the review panel recommendations were followed, the Aboriginal groups still wanted the project to go forward.

While the IBA documents are confidential, a general idea of their contents is known or can be reasonably assumed. The objectives of both IBAs include maintaining respectful relationships between Inco and the Aboriginal groups, protecting the environment and socio-cultural values, and providing benefits and compensation to the Inuit and Innu (Pain & Paddon, 2008). The IBAs each include sections on education and training, employment, workplace conditions, business opportunities, environmental protection, shipping, implementation, finances, and dispute resolution. In addition, the IBAs each include sections on the winter shipping issue discussed above (Pain & Paddon, 2008). As per the agreement, the minimum percentage of Aboriginal employees at the mine is 25% with an objective of 50%. Furthermore, through the IBAs both the Innu and Inuit communities will receive an estimated \$300 million over the 30

year project (Ali, 2003). This is a significant amount of money and as one interviewee put it “under the [IBAs] there’s no doubt that they are benefiting” (interviewee #2, February 14, 2013). While the IBAs’ confidentiality does pose some problems and concerns, the IBAs do bring definite advantages to the Innu and Inuit communities.

3.3 Legacy Issues in Voisey’s Bay

As the Voisey’s Bay project is ongoing, it is not possible to determine its legacy effects on the Innu and Inuit communities. However, given the history of mining projects, the Voisey’s Bay Nickel Mine is expected to leave an ecological and socio-economic legacy after mining activities cease (Gibson, 2005). Potential negative legacy effects of the mine include environmental, economic, and social damage to the surrounding ecosystems and social systems. Potential positive legacy effects of the mine include a stronger economy and increased social programs. Many aspects of the EA review panel and IBA processes attempted to lessen potential negative legacy effects and encourage positive legacy effects. During the panel hearings, some Aboriginal people expressed concern that a mining project was not compatible with their “aspirations for the future” (Voisey’s Bay EA Panel, 1999, p. 15). Other concerns included doubts about the project’s ability to create lasting benefits for the Aboriginal communities. The panel found that “[durable] and equitable benefits are only achievable if the project lasts for 25 years”, and addressed this by recommending that Inco reduce its proposed rate of extraction to extend the life of the mine (Voisey’s Bay EA Panel, 1999, p. 22).

As previously stated, while access to the Voisey’s Bay IBAs is restricted and there is limited public knowledge about their contents, it is clear that the Aboriginal groups are now benefiting from the mining project. Whether or not those benefits will extend into the future is unknown and largely dependent upon the Aboriginal communities themselves (interviewee #2,

February 14, 2013). The Innu and Inuit have control over the benefits they have received and can determine how those benefits are used. Both communities have decided to manage their money from the mines through semi-independent trusts with clear rules for how the money can be spent, including cultural preservation and youth programming (Pain & Paddon, 2008). This is a positive sign for the legacy of the mine; however there are major social issues in the Aboriginal communities to be overcome, including high suicide rates and alcoholism (Ali, 2003). To reiterate, the legacy effects of the Voisey's Bay mine for the Innu and Inuit communities are still undetermined, however all are hoping for a positive ending to this story.

4 Analysis

The Voisey's Bay case study provides an opportunity to apply this study's conceptual framework. There were many positive aspects of both the Voisey's Bay EA review panel and IBA negotiation process that, even though they were not explicitly framed by ADR language, were consistent with recommendations and findings in ADR literature. However, there are also insights from ADR literature that could have strengthened conflict resolution and prevention and interests of future generations in the Voisey's Bay case. This chapter will provide an analysis of the Voisey's Bay EA review panel and IBA negotiations through the lens of the ADR framework.

4.1 Including All Potentially Affected Parties

The Voisey's Bay EA review panel and IBAs included many of the impacted parties. The review panel process gave most interested stakeholder groups the opportunity to voice their concerns (Voisey's Bay EA Panel, 1999). In particular, the MOU worked well to include the Aboriginal governments in decision-making. In terms of representing future generations, the

panel did advocate for sustainable development and for benefits past the life of the mine (Voisey's Bay EA Panel, 1999) so they arguably fulfilled this role. However, to represent the interests of future generations more explicitly, the panel could have assigned a proxy to speak on behalf of future generations (interviewee #3, February 14, 2013) in the panel hearings. Furthermore, the panel could have more clearly set out how the interests of future generation were to be included in a sustainability-based assessment. This would have helped to include all of the stakeholders in the conversation and may have improved the panel's recommendations. The IBA negotiations included the mining company and the Aboriginal groups as stakeholders, however they most likely did not include an advocate for future generations. Using a third party (discussed below) or including an assigned proxy for future generations could have ensured that this stakeholder was represented (Susskind, 1981; interviewee #3, February 14, 2012).

4.2 Prioritizing Relationships

The EA review panel and IBAs both included aspects of relationship-building. The review panel process considered both substantive and relational aspects of the process (Voisey's Bay EA Panel, 1999). Because the four parties of the MOU knew they would be working together long into the future after the review panel process ended, they had a vested interest in maintaining a positive relationship with each other. Since the IBA negotiations were confidential we do not know very much about the negotiation processes. However, we know that although there have been some disputes between the Aboriginal groups and the proponent, the overall relationship between these three parties has remained positive since the IBAs were negotiated (Pain & Paddon, 2008). This suggests that both substantive and relational issues were prioritized during the IBA negotiations, because the long-term relationship between the parties has been positive. However, general knowledge of the nature of IBA negotiations indicates that

they are not completely focused on building positive relationships (Fidler & Hitch, 2007). Mining companies and Aboriginal groups are typically motivated by their own financial and other interests. Based on this, one can assume that in IBA negotiations they are looking to maximize gains for only their own side, not both sides, which is part of building relationships (Bingham et al., 2003). If both parties did try to work toward mutual gain, a more comprehensive agreement might have been created. However, the confidential nature of the IBAs makes this difficult to know for sure.

4.3 Using Integrative Negotiation

The Voisey's Bay EA review panel process included some elements of integrative negotiation, and it could have benefited from others. First, the hearings allowed stakeholders to express their underlying interests related to the project. For example, with respect to the winter shipping issue, the Inuit explained their interest of maintaining travel routes and traditional harvesting practices and the proponent explained their interest of needing to ship its product during the winter to make a profit (Voisey's Bay EA Panel, 1999). In the end the parties were able to find a win-win solution to meet all of these interests. To do this, the parties used the principle of 'expanding the pie' (though not using this terminology) to find new creative ways to meet all parties' needs (Voisey's Bay EA Panel, 1999). In these ways, the EA review panel process used integrative negotiation principles.

However, as the review panel was not a negotiation process, it could not fully use all aspects of integrative negotiation. In the end no agreement was made; instead the panel made recommendations to the federal authority that had final decision-making power (Voisey's Bay EA Panel, 1999). The purpose of this process was to hear the interests of all stakeholders, which is part of integrative negotiation, and to make recommendations, which is not. In order for the

full benefits of integrative negotiation to be realized in the Voisey's Bay EA process, the review panel process itself would have to be completely changed so that the stakeholders would have the power to make their own agreement. A further concern is who defines interests in review panels. Should the panel try to decipher each parties' interests based on their stated position, or ask each party to state their interests and then attempt to find a solution that addresses all interests? Neither of these options is perfect, however encouragement of focus on interests rather than only positions is still helpful. Integrative negotiation is better demonstrated in the IBA negotiations.

Again, little is known about the process used to negotiate the Voisey's Bay IBAs. However, since these were true negotiations there is more possibility for integrative negotiation to be present than in the EA review panel. First, given the wide range of issues discussed in the IBA (Pain & Paddon, 2008), there was potential for the negotiation to 'expand the pie' and use multiple issues to satisfy the interests of the parties (Lewicki et al., 2010). This would have brought an element of integrative bargaining in to the IBA negotiations. Second, it is unknown if the IBA negotiations were focused on positions or interests. If they were focused on interests it is widely believed that both sides would be equally satisfied with the final agreement (Moore, 2003). Although, with past history of mining companies taking advantage of the confidential nature of IBA negotiations (Sosa & Keenan, 2001), it is very possible that distributive, not integrative, negotiation strategies were used. The confidential nature of the Voisey's Bay IBA negotiation processes make analysing them difficult, however integrative negotiation methods would have improved the processes.

4.4 Beginning Early

The Voisey's Bay EA review panel and IBAs started relatively early on in the project planning process (Voisey's Bay EA Panel, 1999). This made the processes more effective because project plans could still change and the parties were open to discussion. The review panel's winter shipping issue exemplifies how beginning a collaborative process early can enable changes in project planning. The proponent was able to make changes to its shipping plans to accommodate the Inuit concerns of sea ice stability in the winter (Pain & Paddon, 2012). Beginning early benefited the IBA processes because it meant that the proponent was more likely to be open to discussion about the project implementation and able to make changes based on their negotiations with the Innu Nation and LIA. This reduced the likelihood of future conflict between the stakeholders.

4.5 Balancing Power

The EA review panel and IBAs each include power imbalances. First, the MOU was the main mechanism of balancing power in the EA review panel process. This document ensured that the federal and provincial governments, Innu Nation, and LIA all worked together, giving the Aboriginal groups a strong voice they would not otherwise have had (interviewee #1, February 12, 2013). Furthermore, the panel members helped to balance power to an extent, for example through the layout of the room (interviewee #1, February 12, 2013) and inviting all stakeholders to the hearings. However, in the end the nature of the review panel process reflects an inequality in decision-making power and financial resources, which the panel cannot balance (Christie, 2008). Second, based on the limited available knowledge of IBA negotiations, it is assumed that there is a power imbalance between the mining companies and Aboriginal groups

because of unequal access to financial and information resources (Fidler & Hitch, 2007). The use of a third party, as discussed below, could help to address these concerns.

4.6 Using a Third Party

The review panel process included some, but not all, aspects of third party intervention. First, the five-person panel itself could be seen as a type of third party as they guided the conversation for the review. The panel also used their position to include concerns of future generations in the conversation, which is a potential role of third parties. In addition, the panel worked to balance power between the federal and provincial governments and Innu Nation and LIA by giving the Aboriginal groups their own tables at the hearings (interviewee #1, February 12, 2013). However, the panel was limited in its actions by CEAA and the government authorities it was working for (Christie, 2008). This means that the panel did not have the mandate or capacity to fulfill all the roles of a third party. A second difference between the panel and third parties is that the panel makes recommendations on substantive issues related to the project, while third parties in ADR only guide the process (Moore, 2003). The CEAA review panel process would have to be completely changed for a third party as described in ADR literature to work.

Once again, little is known about how the IBAs were negotiated. However, since they are described as ‘negotiations’ one can assume that there was no third party mediator to guide the process or else they most likely would be called ‘mediations.’ Including a third party in the Voisey’s Bay IBA negotiations could have brought many benefits to the process. First, although there is nothing to indicate that the IBAs do not include concerns for future generations, a third party could have advocated for future generations’ concerns (Susskind, 1981; interviewee #3, February 14, 2012). Second, the third party could help to balance power in a number of ways

including managing speaking time for each side and coaching each side on how to minimize the power imbalance (Moore, 2003). Third, the third party could have helped the parties use an integrative negotiation style. This may have helped the parties to reach an agreement that better meets their interests and needs (Moore, 2003). While it is not known whether or to what extent the interests of future generations, power balances, or integrative negotiation were involved in the Voisey's Bay IBA negotiations, these three aspects would more likely have been present in the negotiations if a third party had been involved.

5 Conclusion

This study aimed to analyze the potential for EA review panels and IBAs to serve as a means of ADR to address conflict resolution and legacy issues for Aboriginal communities. This paper identified six key ADR criteria to be used to evaluate EA review panels and IBAs: the inclusion of all potentially affected parties, the priority of relationship-building, the use of interests in negotiation, the timing of the process, the balance of power, and the inclusion of a third party. The Voisey's Bay Nickel Mine was used as a case study to apply these criteria. Voisey's Bay includes a joint EA review panel and one IBA for each of the two Aboriginal groups present, Innu Nation and LIA. Voisey's Bay is known for including sustainability assessment in its EA panel review, and this study intended to explain the successes and failures of this case at addressing conflict and incorporating future generations through the ADR framework.

The findings from the study show that the Voisey's Bay EA review panel and IBAs used some of the ADR criteria in their processes, and could have benefited from others. First, both processes were successful at including all important stakeholders, except perhaps future

generations. Second, the EA review panel built relationships between the participants well, and it is unknown what extent the IBA negotiations were successful at building relationships. Third, the IBAs most likely would have addressed conflict better by using interest-based negotiation, and the EA review panel gave stakeholders the opportunity to voice their interests and concerns about the mine. Fourth, both processes began early in the mine planning when the proponent was most flexible to change the project plans. Fifth, although the EA review panel did balance power to an extent through its MOU, unequal decision-making power and access to financial resources created a power imbalance in both processes. Finally, the expert panel acted as a form of third party in the EA, and the IBA negotiations may be benefitted from a third party to advocate for the concerns of future generations.

Insights from ADR help to identify opportunities and limitations for the Voisey's Bay EA and IBAs to prevent and resolve conflict and contribute to the long-term well being of future generations. ADR helps to provide insight in the successes and failures of the Voisey's Bay EA and IBAs in conflict resolution and consideration of future generations. It is not original to say that Voisey's Bay is a prime example of resolving conflict and considering the impacts on future generations as others have made this conclusion (Gibson, 2005; Fidler, 2010; Ali, 2003). However, explaining this success through the lens of ADR is a unique contribution. Including all stakeholders and using the expert panel as a form of third party advocate were the major reasons, from an ADR perspective that Voisey's Bay was successful at including concerns of future generations. In the end, however, the legacy of the Voisey's Bay nickel mine is still undetermined. The mine may still be in operation for over 20 years, so whether or not benefits to the communities extend past the life of the mine will be unknown for decades. However, this study has identified areas of learning that could be applied to other mining cases.

5.1 Implications and Opportunities

This study has identified several implications for EAs and IBAs in Canada and opportunities for further research. First, although the Voisey's Bay example of an EA that incorporates sustainability and legacy concerns has been available for fourteen years, the recent trend in Canadian EA has not been to incorporate more sustainability and legacy concerns. More federal support is needed in order to make the consideration of future generations included in EAs across Canada. Second, further exploration is needed on how EA review panels can be used as conflict resolution mechanisms. Although conflict resolution is not necessarily part of an EA's mandate, it does often bring together disputing stakeholders and could benefit from the application of more ADR principles. Related to this, a further opportunity to improve EA's conflict resolution capacity would be to balance power between/among the participants. For example, exploring ways for stakeholders to have more power in final decision-making, in part through collaborative efforts to reach agreement on matters raised in the EA deliberations, in the EA process would create a more balanced process. Fourth, related to both EAs and IBAs, a more practical explanation of how third parties and assigned proxies can advocate for future generations is needed. The discussion surrounding this in the literature is very theoretical and practical examples would be useful. Finally, the Voisey's Bay nickel mine provides an ideal opportunity for a longitudinal study on the outcomes of sustainability assessment. Future research could track the long term success of considering future generations in the Voisey's Bay EA to determine what kind of legacy the Voisey's Bay nickel mine will leave. This is the only way to determine how future generations will be impacted by the mine. It takes continued efforts and long-term collaboration with others to ensure a positive legacy and benefits for future generations (Voisey's Bay EA Panel, 1999).

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