

P3s AND COMMUNITY BENEFITS AGREEMENTS IN CANADA



Constructive  Edge

The Canadian Council for
Public-Private Partnerships



Le Conseil Canadien pour
les Partenariats Public-Privé

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About The Canadian Council for Public-Private Partnerships (CCPPP)

Established in 1993, CCPPP is a national not-for-profit non-partisan, member-based organization with broad representation from across the public and private sectors. Our mission is to collaborate with all levels of government, Indigenous communities and the private sector to enable smart, innovative and sustainable approaches to developing and maintaining infrastructure that achieve the best outcomes for Canadians. The Council is a proponent of evidence-based public policy in support of P3s, facilitates the adoption of international best practices, and educates stakeholders and the community on the economic and social benefits of public-private partnerships.

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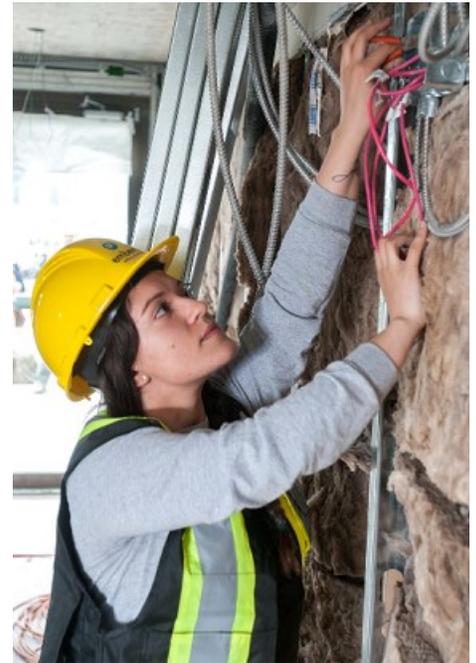
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Executive Summary

Since they first emerged in Los Angeles in 2001, Community Benefit Agreements (CBAs) have been designed to share the benefits of infrastructure more widely — literally from the ground up. Although projects like transit, bridges, highways and hospitals provide incredible long-term social and economic benefits to communities, it was felt more was needed to ensure those directly impacted by construction also benefitted more immediately from these critical projects, through local job programs to community improvement initiatives.

CBAs are gaining traction across Canada and are developing a strong track record. The first major Canadian infrastructure project to include a CBA was Vancouver’s Olympic Village. The federal government and several provinces have instituted variations on CBAs, while other provinces and territories have legislation or guidelines respecting community benefits in procurement. Many municipalities have also embraced social procurement and community benefits policies. Several NGOs are monitoring the emergence and evolution of CBAs.

This report delves into the history of CBAs to date in Canada, tracing their origins to the use of long-established social procurement vehicles in other industries such as defence, mining and energy, to the emergence of best practices in other countries such as the United States and the United Kingdom.

While it is clear there is growing community and government interest in making infrastructure projects more inclusive, there is also a growing acknowledgement that CBAs need to be structured to provide real benefits to communities while not unduly burdening the companies delivering the project.

Industry experts with experience dealing with CBA requirements on projects argue there is a great need for standardized definitions in these agreements to fully explore what is meant by “community” and “benefits,” as well as who receives the benefits and how.

Given the complexity and substantial investment involved in these projects, industry also needs to know about a CBA requirement as early as possible to ensure costs are clearly understood before project contracts are signed. Realistic and fair targets require independent assessment of a project’s local labour force.

The contractual nature of public-private partnerships and their ability to share risks lend themselves well to codifying community benefits. This report covers several ongoing Canadian P3 projects with CBA requirements. These projects need to be monitored to assess what works to the satisfaction of all parties — while periodic reporting of key metrics is often a legal condition of CBAs, a centralized “dashboard” of standardized metrics across projects would provide valuable hard data.



Introduction

The Canadian Council for Public-Private Partnerships (CCPPP) collaborated with Constructive Edge to prepare this report on Community Benefits Agreements (CBAs).

This report focuses on CBAs used on infrastructure projects, in Canada and abroad, with an overview of similar socio-economic advancement policies used in Canada. CBAs can apply in other contexts, and there are other forms of social procurement, but these are beyond the scope of this report.

“Community benefits” are physical or socio-economic benefits for a local community, leveraged by dollars already committed to major infrastructure and land development projects. A CBA is a legally binding and enforceable contract specifying a community’s benefits from a specific infrastructure or development project.

CBAs are a form of social procurement. Their development in Canada has been influenced by their evolution abroad, where they are common in the United States and the United Kingdom for infrastructure development projects, and, to a smaller extent, by their use in other Canadian industries such as aerospace and resource extraction.

CBAs should not impede growth, large projects or P3s. CBAs should ensure local benefits — job creation, local economic improvements, housing, etc. — really happen and assist those who are most affected by the project.

An analysis of eight CBAs in the United States showed the incremental costs of CBAs range from 0.5 per cent to 2.5 per cent of overall project cost. This is within the three per cent guideline for socio-economic advancement programs of many types used around the world in various industries.

In Canada, federal and provincial governments have instituted variations on CBAs. Several provinces and territories have legislation or guidelines respecting community benefits in procurement, including British Columbia, Manitoba, Nova Scotia, Ontario, Quebec and Yukon. Infrastructure-specific CBAs have been developed in British Columbia, Manitoba and Ontario.

Municipal governments have most strongly embraced policies around social procurement and community benefits. Typically, municipalities first look at social procurement generally, and then look at community benefits policies, sometimes via a “test case” CBA and sometimes via a community benefits framework (CBF) that will inform or direct subsequent public CBAs.

Given the known future requirement for construction labour, it appears natural CBAs in Canada emphasize such labour development. In non-residential construction, almost 132,000 workers will retire between 2019 and 2028, and more than 32,000 new positions are forecast, meaning firms will need to attract and retain more than 164,000 new employees within the next decade.



Artistic rendering of the final 2020 design for the new Pattullo Bridge.

P3s AND COMMUNITY BENEFITS AGREEMENTS IN CANADA



Since infrastructure CBAs in Canada have been used mainly by municipalities for smaller local infrastructure projects, the number of public-private partnerships with CBAs is currently fairly small.

No central database exists that enumerates all the CBAs in Canada. Some organizations are attempting to collect and detail this information at the provincial level. This report, therefore, is not an exhaustive analysis, but it does cover the CBAs attached to several high-profile P3 projects.

In addition to reviewing secondary sources, comments were obtained from public sector representatives, and senior executives were interviewed from the private sector who are involved in P3 projects with CBA requirements.



Background

Community benefits can be determined by a community engagement process (“grassroots” or “bottom-up”), or through government policy (“top-down”). Benefits typically include:

- Jobs, apprenticeships or training – often targeted to low-income or disadvantaged communities
- Procurement directed to local suppliers and/or social enterprises
- Affordable housing
- Community amenities, from grocery stores and daycares to park space and public art.

A CBA is a legally binding and enforceable contract that sets forth specific community benefits for an infrastructure or development project. The key difference between a Community Benefits **Framework** and a Community Benefits **Agreement** is that a CBA is legally binding: if the agreement’s terms are not met, legal recourse can be made. A CBF is a set of guidelines, which can be enacted by a government for public procurement projects.

There are three main formats of CBAs:

- Private CBAs are legal agreements signed between developers and community groups
- Public CBAs include community benefits requirements in public Requests for Proposals
- Hybrid CBAs are multi-party agreements with developers, governments and community groups.



Other Industries in Canada Using Socio-Economic Pro- curement

While infrastructure CBAs are relatively new in Canada, other sectors of the economy that involve public procurement have been using socio-economic advancement programs for several decades.

Aerospace & Defence

Canada was one of the first countries to use offsets, when Air Canada was still a Crown corporation. Foreign vendors of passenger aircraft were required to show how their bids benefitted Canada's economy. Offsets involve activities designed to benefit the Canadian aerospace and defence industry.

- In direct offset, the exporter may be required to establish manufacturing facilities in the importing country or use a specified percentage of components in the product from the importer's country.
- In indirect offset, the exporter may be obliged to buy goods or services from the importing country without any link to the product sold.

The word "offset" was a generic term, now called industrial co-operation, industrial benefits or local participation.

The Ministry of Innovation, Science and Economic Development Canada (ISED) manages Canada's Industrial and Technological Benefits (ITB) program. This requires bidders to provide proposals covering 100 per cent of a contract's value. The policy defines parameters to guide bidders on how to accomplish these requirements. Canadian and foreign companies are all required to provide offset proposals, ensuring a level playing field.

The ITB program requires companies to provide a Value Proposition, which is weighted and rated against competitive bids. A company promising a strong Value Proposition can score points that its competitors cannot. Creativity in designing proposals can be rewarded with 10 or more points out of 100, depending on the procurement.

Canada realizes public procurements are an important socio-economic advancement tool. Canada's example spread rapidly to other jurisdictions. The ways that bidding companies can meet obligations vary by country. Nordic countries, for example, value proposals that include:

- Marketing and export development assistance;
- Technology cooperation with resident countries;
- Purchases of goods and services;
- R&D cooperation
- Subcontracting small- and medium-sized companies.

Canada has a regional development requirement; bidders commit to providing benefits in defined regions of the country. Canada is particularly interested in how bidders can involve local companies in international markets through their supply chains. Companies need to provide an export strategy as part of the bid. Canada asks bidders to provide a plan that outlines how it will deal with gender and Indigenous issues, although this is not a scored item. Canada also values investments in companies and, to a limited extent, venture capital investments.

All countries value direct purchases from within their borders. In all nations, the theme is the same: how public procurement can increase the industrial base, to promote socio-economic advancement within their jurisdiction.

Resource Extraction

Impact and Benefit Agreements (IBAs) have been in place in Canada's North for decades.

Like a CBA, an IBA is a legally binding agreement developed through consultation and negotiation with the relevant Indigenous communities. They outline any negative impacts that may result from resource exploitation, any mitigation efforts and how the community will benefit via employment, economic development or other initiatives. Note that the Crown has a "duty to consult" with Indigenous peoples affected by projects on or near their lands. While this legal duty does not apply to the private sector, resource companies see such practices as being in their best CSR interest.

Canada's First Nations and Inuit have developed a research and resource network to advance their ability to negotiate IBAs with mining corporations. This includes a repository of agreements. The Gordon Foundation supported an IBA toolkit that has many parallels with the issues facing CBAs.

Another process that could become a standard feature of public infrastructure agreements comes from northern resource development. Of \$1 billion for infrastructure to reach the Ring of Fire in Ontario's north, the Government of Ontario set aside \$6.9 million to negotiate with Matawa First Nations. Similarly, funds might be earmarked for the use of a community to prepare itself for public infrastructure investment negotiations.

Mining corporations have become leaders in engaging local small- and medium-sized enterprises (SMEs), which helps miners support the local communities, promotes sustainable development and enhances the firm's standing in the local area. Many mining companies know working with local communities is essential for their "social licence to operate" – the goodwill that enables them to work.

Diavik Diamond Mines Inc., a Rio Tinto subsidiary based in Yellowknife, is one example of successful local collaboration. Early in the project development, Diavik committed to providing significant training, employment and business opportunities to residents of the Northwest Territories and the West Kitikmeot region of Nunavut. Diavik formalized these commitments in 1999 in a socio-economic monitoring agreement (SEMA), which it entered into with five local Indigenous groups and the Government of the Northwest Territories.

Restor-Action Nunavik Fund

Many former mineral exploration sites located in northern Quebec needed clean up and reclamation. This created an opportunity to establish partnerships with regional stakeholders so the work could proceed, and it created employment opportunities for the local population. The Restor-Action Nunavik Fund was created with funding from the Government of Quebec and participating mining companies.

This initiative, which also involves the Kativik Regional Government, was instrumental in the reclamation of several mine sites and in the creation of jobs in the local communities. The Fund contributes to community readiness by reinforcing the capacities of local populations.

Electrical Utilities

In addition to the construction phase of utilities infrastructure, the ongoing operations require staff and suppliers, so local training, hiring, and procurement have been part of these contracts for some time. Local ownership of part of the revenue or profit stream is also often a feature of energy projects.

The newly operational North Kent Wind facility near Chatham, ON, employed approximately 175 skilled construction workers, all from Ontario with the majority from the local area. The facility employs 10 permanent staff, plus several local contractors, for operations and maintenance. Samsung and Pattern Development, who developed and built the project, are contributing \$4 million to the Municipality of Chatham-Kent as a community benefit, to be used at the Council's discretion. The municipality and Bkejwanong First Nation each hold a 15 per cent equity interest in North Kent Wind

The Hydro Northern Training Initiative in Manitoba was a \$60.3 million, multi-year initiative (2001-2010) to train more than 1,000 northern Indigenous residents for 800 hydro construction and related employment opportunities. This provided the knowledge and skills for planned construction projects throughout Manitoba. Leveraging hydroelectric projects for long-term community development also supported the development of northern businesses and community ventures. By the end of 2010: 2,670 people participated in this initiative; 1,876 completed one or more training courses; and 1,395 found employment.

The CCPPP gave the Fort McMurray West 500-kV Transmission Project a gold award for project financing in 2018. The socio-economic benefits of this P3 project included Indigenous contracting and equity ownership. APL, the developer, awarded \$85 million in contracts to Indigenous communities and Indigenous contractors. These contracts helped create jobs and opportunities for skills training and contributed to local economic development.



CBA's Abroad

CBA's have been used in the United States and the United Kingdom for nearly two decades.

USA

In the United States, private CBA's have become increasingly common in major infrastructure and development projects. Most CBA's in the USA are private agreements, driven by communities and involving private partners (and occasionally local authorities) who provide benefits in exchange for community support of the project, including communities agreeing to refrain from litigation.

Usually, coalitions of community groups lead these CBA's, organizing evidence-based campaigns to ensure the project meets a range of local needs. Developers agree to CBA's in exchange for local community support, often in a formal co-operation agreement. Community engagement allows the project to proceed quickly and easily through regulatory approvals, allows the addressing of community concerns from the outset, and forestalls litigation — all saving the developer money while enhancing the developer's reputation as a responsible corporate citizen.

An analysis of eight major CBA's showed the incremental costs of CBA's range from 0.5 per cent to 2.5 per cent of overall project cost.

In 2001, Los Angeles was one of the first cities to incorporate community benefits. Coalitions in Los Angeles have negotiated several CBA's since then, obtaining benefits ranging from living wage requirements to investments in parks and recreation. In 2012, the Los Angeles County Metropolitan Transit Agency adopted hiring measures for all projects as part of a 30-year, multibillion-dollar transit initiative. The measures were adopted through a Construction Careers Policy and a Project Labor Agreement to allocate 40 per cent of construction jobs and provide training to low-income populations.

In December 2004, community organizations and labor unions in Los Angeles entered into the largest CBA to date, addressing the Los Angeles International Airport (LAX) \$11-billion modernization plan. The benefits obtained through this CBA have been valued at half a billion dollars, including:

- \$15 million in job training funds for airport and aviation-related jobs;
- A local hiring program to give priority for jobs at LAX to local residents and low-income and special needs individuals;
- Increased opportunities for local, minority and female-owned businesses in the modernization of LAX.

The LAX CBA has detailed monitoring and enforcement provisions. The administrator of the Federal Aviation Administration (FAA) hailed it as a model for future airport development nationally

In 2011, San Francisco's Public Utilities Commission passed a community benefits policy that embeds community benefits criteria in Requests for Proposals (RFPs) valued at more than \$5 million.

At the Park East Redevelopment Compact (PERC) in Milwaukee, 25 per cent of construction jobs in the redevelopment must originate from enterprises classified as disadvantaged business enterprises/minority business enterprises, plus five per cent from female business enterprises. PERC also requires training and apprenticeships for low-income residents.

The City of Oakland, Calif., developed a CBA with the East Bay Alliance for a Sustainable Economy for the redevelopment of a decommissioned army base. Nearly half of the workers on the project are local, and one-quarter of the hours have gone to disadvantaged workers. The jobs centre enjoys a high placement rate. The Good Jobs Policy created 3,000 living-wage jobs, includes protections for temporary workers, and makes it easier for the formerly incarcerated to find work.

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CBA in the USA have included a wide range of benefits:

HOUSING	Affordable housing (units in market-rate projects or geared to low-income households),
JOBS & SUPPLIERS	Recruitment and referral system for targeted communities via existing agencies or new
	Fund for pre-apprenticeship and apprenticeship or job training. In Los Angeles and San Francisco, developer funds went to seed and operate a non-profit to co-ordinate train-
	Jobs and/or apprenticeships for local residents on construction project
	Ongoing post-construction jobs for local residents
	Living wage provisions
	Local procurement/supplier provisions. Federal government programs for minority-owned, female-owned, and locally owned business enterprises often target such bene-
COMMUNITY ASSETS & PUBLIC REALM	Parks, open space and streetscapes (creation/redevelopment/planning studies)
	Funding or space for arts or public art
	Space for local retailers and other businesses
	Support for social programming (for youth, seniors, newcomers, etc.), local non-profit
	Space and/or support for community space, such as community centres, childcare centres, seniors' centre, community kitchen, community gardens and schools. The West Harlem CBA included significant and wide ranging contributions to education from Columbia University.
	Health clinic/funding for medical care
	Food market to increase availability of fresh and affordable food
	Residential or other parking
OTHER BENEFITS	Interest-free or affordable loans to non-profits
	Free or subsidized Internet access and/or computer hardware for low-income residents, public libraries, parks, non-profits and/or schools. The Minneapolis CBA was a "digital
	Donations to the city (general funding) or public transit system. In New Haven, Conn.,

United Kingdom

Scotland

Pilot projects by public bodies in 2006 emphasized targeted recruitment and training, as well as social procurement. A 2008 report, published by the Scottish government, outlined a method for including CBA clauses in public contracts. Community benefits clauses are now standard in the public sector. Hosting the Glasgow 2014 Commonwealth Games was a key project that encouraged public authorities to implement community benefits clauses.

The *Procurement Reform (Scotland) Act 2014* applies to the awarding of public contracts. It requires community benefits be considered as part of procurements for all projects valued at £4 million or more. The act came into force in spring 2016 but is considered far behind the state of actual practice. Community Enterprise in Scotland, a social enterprise support agency, has said community benefits are so well accepted “the question is no longer whether to have community benefits clauses, but how.”

Community benefits clauses in Scotland have focused primarily on workforce training, and only secondarily on local supplier or social enterprise opportunities.

Community benefits clauses are generated “top-down” in Scotland, with little community consultation. A Community Benefits Champions Network, started by the Scottish government in the late 1990s, brought together procurement officers from public organizations and agencies to exchange best practices about community benefits. The network provides a discussion forum for current issues and best practices.

Since the government drove community benefits in Scotland, considerable documentation has been generated about processes, methods and impact. A report by the University of Glasgow provided a comprehensive analysis of the impact and value of community benefits clauses in contracts. This report was based on a large-scale survey of public organizations and an in-depth analysis of 24 contracts, ranging from £700,000 to £842 million (about CAD\$1.4 million to \$1.7 billion).

While private developers in Scotland have not adopted community benefits clauses as quickly, private contractors have seen community benefits become standard in the public sector and are adopting CBAs to improve their position when bidding on future public contracts. With experience, private contractors are becoming more creative in how they develop community benefits programs.

Many local authorities are implementing community benefits clauses into smaller projects, as small as £50,000. Experience with other CBA projects guides them to determine benefits they can include without risking quality or slowing the process.

UNIVERSITY OF GLASGOW STUDY OF SCOTTISH CBAs

62 public organizations used community benefits clauses between 2009 and 2014. Of those, 59 per cent had a designated “champion” or procurement officer responsible for community benefits.

Based on 24 contracts analyzed:

- More than 1,000 people from priority groups recruited as a result of the contracts, 38 per cent of whom would not otherwise have been recruited
- Over 200 apprentices from targeted groups recruited, 73 per cent as a direct result of the contracts
- 650 people from priority groups accessed work placement, 72 per cent as a direct result of the contracts
- Over 6,700 people from priority groups received training
- Targets exceeded: job opportunities, apprenticeships, work placements and training for priority groups

Employment sustainability reached 75 per cent for priority groups recruited through community benefits clauses (many contracts were still ongoing)

A senior executive at a large Canadian construction firm told us of bidding on a school in Scotland. The agricultural community had a wool processing plant that was in financial difficulty. His firm examined the feasibility of using wool insulation in the school, which was common before fibreglass was developed, and proposed this in their bid. This gave the mill both a short-term boost and a new product line to improve its fortunes in the long term.

England

The Green Skills Partnership for London is a coalition of trade unions, employers, training providers, community representatives, sector skills councils, local governments and Job Centre Plus, an organization that delivers working age support services. The GSP's aim is to create local jobs, apprenticeships and access to accredited courses. One project, the Elephant & Castle redevelopment construction project in central London, created 450 living-wage employment opportunities for unemployed residents, emphasizing the most disadvantaged. The project's goal was to revitalize and incorporate a shopping centre, post-secondary institution and nearby road into attractive and usable space. In addition, it included employment and sustainability:

- Innovative engagement of local communities to tackle climate change and build sustainable communities;
- Support for vulnerable groups and unemployed to develop environmental literacy;
- Progression routes for job seekers;
- Supporting disadvantaged and young people to find training and work in the green economy.

Wales

In 2003, the Welsh Community Benefits in Public Procurement initiative began with a pilot project focused on construction, aiming to incentivize contractors to employ and train a percentage of its workforce from among the unemployed. Of the first 35 projects worth £465 million, 85 per cent was reinvested in Wales, with £124 million directly affecting the salaries of citizens and £366 million towards businesses in Wales. Additionally, 562 disadvantaged people received 15,460 weeks of training. While community benefits were not enacted in legislation, the Welsh finance minister has stated that adoption is not optional and legislation will be considered if needed.

Northern Ireland

In Northern Ireland, "Buy Social" requirements apply to procurement in excess of £2 million for construction and £4 million for civil engineering. This has been in place since April 2016.



CBAs in Canada

Canada has experimented with several CBA models:

- The Vancouver 2010 Olympic and Paralympic Winter Village site in the city's Southeast False Creek neighbourhood used a hybrid CBA. In 2005, a new non-profit, Building Inner City Businesses (BOB), was created for "revitalization of the inner city without displacement." BOB led several community groups as the primary negotiator on a CBA signed with the City of Vancouver and the developer, Millennium Properties Ltd., to provide jobs for inner-city residents and procurement targeted to inner-city businesses.
- In Toronto, Toronto Community Housing Corp. partnered with Daniels Corp., a private developer, to transform a low-income social housing development in Regent Park into a mixed-use community, combining affordable housing with market-price condominiums, commercial and retail spaces, community facilities, a cultural centre and parks. Community consultation, construction jobs and training, and employment opportunities with the retail tenants, were all part of the project.

Most CBAs in Canada have been successful in employing low-income or traditionally disadvantaged populations, creating apprenticeship opportunities and economic benefits for local businesses.

Given the known future labour requirements in the construction sector, CBAs in Canada emphasize labour development. The latest BuildForce forecast for 2019 to 2028 shows that in non-residential construction, 131,900 workers will retire and 32,400 new positions will be created, requiring firms to attract and retain 164,300 new employees. A similar number will be required in residential construction.

Federal initiatives

In 2018, the Government of Canada began encouraging community employment benefits initiatives in projects funded by the federal government through the *Investing in Canada* infrastructure program. This voluntary initiative established a framework for creating targets and reporting on outcomes related to employment, training and procurement opportunities for target groups, including: apprentices, Indigenous peoples, women, persons with disabilities, veterans, youth, recent immigrants, and SMEs and social enterprises.

Additional measures ensure employment opportunities for a range of under-represented populations on projects through a Community Employment Benefits framework. Measures ensure Indigenous communities have access to and can benefit from Infrastructure Canada's programs, including:

- Minimum levels a province or territory must invest in cultural and recreational infrastructure benefitting urban Indigenous peoples
- A distinct federal cost-share of 75 per cent and federal stacking provisions of 100 per cent for all Indigenous recipients
- A more inclusive description of eligible Indigenous recipients
- Exceptional project eligibility for health and education projects that address Truth and Reconciliation.

Federal-provincial infrastructure funding will also require community benefits.



Ontario

The *Infrastructure for Jobs and Prosperity Act of 2015* and the *Long Term Infrastructure Plan of 2017* commit to the use of community benefits in all major public infrastructure projects by 2020.

The IJPA’s purpose is to encourage evidence-based, strategic, and long-term infrastructure planning to support job creation, training opportunities and economic growth. During the procurement process, a plan must be developed outlining the number of apprentices that will be involved, as well as information on how they will be supported — particularly highlighting women, newcomers, at-risk youth, veterans and Indigenous populations. Few details are currently available on whether there will be consultations between the public sector and communities or how benefits will be tracked.

The LTIP is a strategic plan for Ontario infrastructure planning and investment and is a key step in meeting the requirements of the IJPA. It commits to develop a policy framework for community benefits, focusing on workforce development opportunities for traditionally disadvantaged communities, underrepresented workers and local residents; social procurement initiatives for the purchase of goods and services from local or social enterprises; and supplementary benefit initiatives, which are other benefits requested by a local community in a neighbourhood affected by an infrastructure project.

The LTIP sets out a process for community benefits pilot projects to test different approaches, the development of a community benefits framework in partnership with stakeholders and partners, and application of the framework to all major public infrastructure projects by 2020.

Whether the current provincial government continues with these initiatives is unclear.

Manitoba

In 2010, Manitoba’s East Side Road Authority (ESRA) launched a series of CBAs with First Nations communities affected by this 30-year development. The CBAs align with the *Aboriginal Procurement Initiative*, aiming to increase aboriginal Indigenous involvement in Manitoba’s procurement processes. The CBAs provide contracts and training to community-owned construction companies for pre-construction work. The CBAs establish hiring requirements in construction tenders: 30 per cent of total in-scope contract hours to be worked by residents of the eastern side of Lake Winnipeg for road construction, and 20 per cent for bridge construction. ESRA invested more than \$80 million into First Nation communities and around 600 job opportunities have been created.

“Under the previous government, the Ministry of Infrastructure commenced several Community Benefits Agreement pilot projects. These pilot projects are continuing under the current government, though on a voluntary market participation basis.

“No additional pilots are planned.

“Going forward, learnings from the pilots could be used to inform government policy.

“We continue to encourage project sponsors to work with partners to undertake community benefits initiatives in circumstances where they deem it appropriate.”

An official at the Ontario Minister of Infrastructure’s office - September 2019

Trees and Transit Mural



British Columbia

The province's Community Benefits Agreement requires employers to hire locally, provide apprenticeship training, and give Indigenous people and women new opportunities. Any contractor in the construction industry can bid on and perform project work. The agreement includes:

- A commitment to hire workers within a 100-kilometre radius of the construction site
- Indigenous people will have first priority for hiring and training
- Women in trades and other disadvantaged groups will have priority in all hiring and training on government-funded projects
- Projects will target an apprenticeship ratio of 25 per cent, variable on a trade-by-trade basis
- Every worker will be paid union wages
- Wages and benefits will be increased by two per cent each year to 2024
- A no-strike, no-lockout clause.

The government created BC Infrastructure Benefits Inc. (BCIB), a Crown corporation to handle hiring and paying workers. It is the employer of all employees working under the CBA. BCIB also handles union dues deductions.

Open-shop companies can bid on projects but their employees are required to join a designated union, the new Allied Infrastructure and Related Construction Council of BC, after 30 days on the job.

British Columbia's CBA is not a CBA in the standard sense since it applies to many projects across an entire province. CBAs are typically project- and locality-specific. Its labour requirements make it closer to a Project Labour Agreement (PLA), which is essentially an agreement to use only union labour on a job site. PLAs often accompany CBAs in the United States, but again are project specific.

An analysis by the Canadian Federation of Independent Business indicates British Columbia's CBA could add anywhere from \$2.4 billion to \$4.8 billion more to the cost of public projects. For the Pattullo Bridge replacement project, the transportation minister originally announced the CBA would add seven per cent to the cost, or about \$100 million, but a subsequent ministry statement said there had been no change to the project budget of \$1.38 billion. However, the cost for the Trans-Canada Highway widening project in British Columbia increased 35 per cent, due partly to escalating costs of materials, labour and the complexity of work.

At the time this report was written, a coalition of construction associations in opposition to the province's CBA's (specifically a requirement involving workers to have joined one of 19 trade boards) had filed suit in BC's Supreme Court.



Municipal Initiatives

A growing number of Canadian municipalities are investigating or implementing social procurement, including CBFs or CBAs. The list includes:

- Cumberland, BC
- Victoria
- Vancouver
- Calgary
- Edmonton
- Wood Buffalo, AB
- Toronto
- Hamilton
- Windsor, ON
- Montreal

In British Columbia, purchasing managers from several organizations, including the Westbank First Nation, are exploring Community Benefit Agreements as a tool for social impact in the Okanagan.

City of Vancouver

In 2018, the City of Vancouver was the first Canadian municipality to adopt a Community Benefits Agreement Policy. Under this policy, developer applications for rezoning that exceed 500,000 sq. feet are subject to community benefits requirements requiring 10 per cent local employment and 10 per cent local procurement. The city planned to engage a third-party organization to fulfil the employment liaison role between local job seekers and Community Benefits Agreement employers.

City of Victoria

Victoria has been a participant in launching the Coastal Communities Initiative, a Community Benefits Hub on Vancouver Island involving eight communities and two regional districts.

City of Toronto

Toronto had experience with CBAs before instituting a social procurement policy, and then a CBF in 2019. In 2016, city council adopted the Social Procurement Policy and Program to leverage the city's purchasing power by achieving socio-economic impacts for Indigenous peoples and equity-seeking residents.

The Rexdale Casino - Woodbine Community Benefits Agreement (CBA) included specific socio-economic benefit requirements from One Toronto Gaming:

- 40 per cent of new hires (of a projected 4,600) through local and social hiring
- 50 per cent of total employees to have full-time positions
- 10 per cent of construction hours to local and social hires
- 10 per cent of non-construction procurement with local or diverse suppliers
- Maximum \$5 million towards developing a child-care centre for staff and the community
- Public reporting, quarterly and annually
- Convene two committees and one working group to ensure accountability and monitoring

"Over time, I have come to see how Community Benefits Agreements can have a positive impact when they are done in a careful way which focuses on the community that ultimately will be supporting a development. I look at the success of the Woodbine community benefits agreement that City Council approved in 2018 as a good example of how these can be done in the right way. The CBA makes sure people in that area are benefitting from the jobs and economic development opportunities being created by the Woodbine expansion."

Mayor John Tory, City of Toronto - September 2019

Public-Private Partnership Projects with CBAs

Since most CBAs in Canada are for smaller, municipal-level projects, and public-private partnerships are typically used for larger projects, there are few P3 projects with CBAs. At the time this report was written, P3s with CBAs included projects in Ontario and British Columbia:

- Finch West Light-Rail Transit (LRT)
- Eglinton Crosstown LRT
- Hurontario LRT
- Macdonald Block Reconstruction
- West Park Healthcare Centre Development
- Gordie Howe International Bridge
- Thunder Bay Correctional Complex
- Pattullo Bridge
- Millennium Line Broadway Extension (SkyTrain)

LEED® (Leadership in Energy and Environmental Design) is specified in some CBAs. For some P3 projects in Ontario, including the Thunder Bay Correctional Complex, achieving LEED® silver certification is part of the CBA.

The Gordie Howe International Bridge project is providing targeted community benefits on both sides of the border but the two points addressed here are specifically on the Windsor, ON, side:

The Workforce Development and Participation Strategy is geared to engaging businesses and focuses on supporting workforce, training, and pre-apprenticeship and apprenticeship opportunities, including for Indigenous peoples, women and youth.

The Neighbourhood Infrastructure Strategy is a \$20-million investment designed to reflect input from stakeholders and community members to address regional priorities such as community partnerships, trail connections, aesthetics and landscaping.

Metrolinx, Ontario's regional transit agency, negotiated a CBF with the Toronto Community Benefits Network for the Eglinton Crosstown LRT project. It outlines the roles and responsibilities of four partners in implementing targeted workforce and economic development goals: Metrolinx; the Ministry of Advanced Education and Skills Development; the builder (Crosslinx Transit Solutions); and the Toronto Community Benefits Network, representing the community-labour partnership. The province finalized this agreement to support people from historically disadvantaged communities and equity-seeking groups along the Crosstown route, setting a goal of 10 per cent of all trade and craft working hours needed for the project will be performed by apprentices and journeypersons who are historically disadvantaged in the job market.

Through the CBF, close to 200 people have been hired from local communities in construction and PAT jobs, and more than \$6 million spent on purchasing from local small- and medium-sized businesses. Partners are ensuring outreach efforts to communities not traditionally represented in the trades. Job seekers can join training programs, get the certifications needed and start their new careers on the job.



P3s AND COMMUNITY BENEFITS AGREEMENTS IN CANADA

Highlights of some P3 projects and their CBA requirements:

P3 Project	CBA Benefits
Finch West LRT	<p>Pilot Project</p> <ul style="list-style-type: none"> - Generate employment opportunities - Produce significant benefits for commuters - Revitalize development along Finch West - Provide a portion of land at Yorkgate and Finch to build a community space
Eglinton Crosstown LRT	<ul style="list-style-type: none"> - Recruit for Crosslinx employment opportunities - Provide training and workforce development opportunities to youth and others facing barriers to employment - Procure goods and services from local businesses and social enterprises whenever possible - Undertake community engagement
West Park Healthcare Centre Development	<p>Pilot Project</p> <ul style="list-style-type: none"> - Adhere to guidelines and sustainability principles of the Leadership in Energy and Envi-
Hurontario LRT	<ul style="list-style-type: none"> - Ensure Peel residents have the opportunity to access employment opportunities - Opportunities for social enterprises to benefit from project procurement - Focus on youth for apprenticeship - Focus on newcomers and foreign-trained professionals (PAT Jobs) - Opportunities for residents to enter a career in their area of expertise (PAT Jobs)
Gordie Howe International Bridge	<ul style="list-style-type: none"> - Committing multi-year financial support to United Way/Centraide Windsor-Essex County for investment in the ProsperUS program to support the work of cradle-to-career with programming specifically in Sandwich - Regional, Small-Business Procurement Protocol for purchases less than \$25,000 where possible - In partnership with the City of Windsor Ojibway Nature Centre, provide seed-funding for an eco-passage bridge for area wildlife between Black Oak Heritage Park and Ojibway park - At least 20 per cent of new hires from the Windsor area for construction and permanent jobs

What Do Major P3 Players Think?

We interviewed senior executives from the private sector who are involved in P3 projects with CBA requirements. Among our information objectives:

- What are the trends in CBAs?
- What does industry want?
- What is not working?
- Examples of good CBAs?
- Who supports vs. opposes the concept?
- Are CBAs different in a P3 vs. a regular bid/project?

The spectrum of opinion within the industry about CBAs ranges from strong opposition to strong support. However, regardless of their basic position, all players stress the need for a standard definition of “community” and of “benefits,” and of who receives the benefits, and how. The industry needs to know about a CBA as early as possible, preferably before RFQ and certainly before financial close.

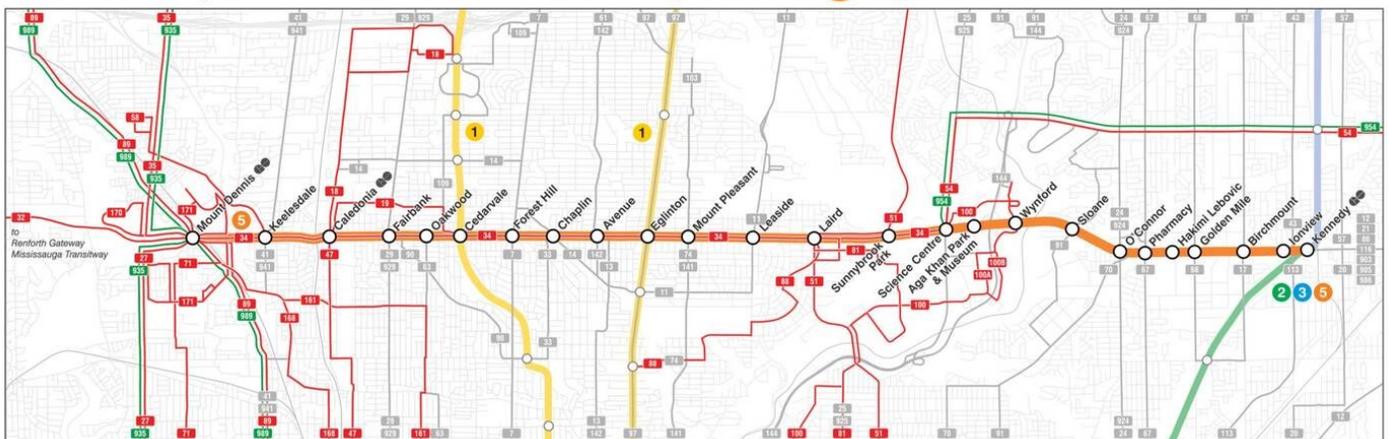
There is also a strong call for factual assessment and realistic development of a project’s local labour force, on both the supply and demand sides. The realities of how many new workers can be hired, at what levels, and for how long, is something that appears to not be sufficiently understood by governments or community advocates.

In addition, community advocates do not always understand CBAs are project specific, and the benefits available in one project’s CBA are not necessarily in place for other projects.

P3 practitioners caution that, although P3s are big projects, this does not mean there is necessarily more time to advance training or apprenticeship for new hires. Who is required, when and for how long can be unknown in the early days of the project, and the requirement for specific trades can be of short duration, even on multi-year projects.

When we asked for examples of successful CBAs, three projects were mentioned: the Vancouver 2010 Olympic and Paralympic Village, the Eglinton LRT, and Rexdale Casino-Woodbine Casino (the last of which while not a formal P3, was a successful CBA nonetheless).

Conceptual TTC Routes Connecting to Line 5 Eglinton



P3s AND COMMUNITY BENEFITS AGREEMENTS IN CANADA

Comments from members of the infrastructure industry on CBAs ...

Social procurement can and should be used as a force for good . . . You get grateful, engaged and productive workers, and reduce the strain on public funding.

There is no data supporting the claim that social procurement costs more. Our own data doesn't show that. Hard targets often drive up costs.

We're avoiding British Columbia altogether. Their CBA prevents us proposing on projects.

Define the target groups and areas.

Some contractors embrace it, others not so much. It's part of their CSR, their brand. Some contractors want to learn best practices.

They're terrible. A 10 per cent target is not possible. What's a "community?"

CBAs sound great but money is wasted on administration. Local partners can become your advocacy groups.

They will do the legwork, minimizing red tape and cost. Don't conflate unions and CBAs. CBAs started as something different. Traditionally they were to provide added value. For example, higher density residential required green space or a park. What does the community want? What does the area contain now? Before 2005, if a project came in under budget, you would add a library or community centre, or augment a green space with a pavilion.

It created problems: it created expectations of jobs. You end up answering difficult questions. Layoffs are a fact of life.

We need a framework with flexibility for all parties to ensure success. What a CBA is, what it does, how it does it.

In Los Angeles and Scotland, CBAs revitalized economies.

CBAs have been done wrong by overzealous civil servants.

Partner with social enterprises to find people from under-represented groups.

Much of this intent we already do on most projects: apprenticing, training, hiring local, whether mandated or not. We have no difficulty meeting requirements.

Targets and metrics ...

We're constantly managing pushback. For example, having on-site daycare to help women in trades. Daycare, parks, green space are "benefits" but they're not in this contract.

Be really clear it's aspirational but transparent.

Some people don't want to be identified as visible minority or immigrant.

I agree holistically, but it's done with the wrong metrics, implemented badly.

P3s AND COMMUNITY BENEFITS AGREEMENTS IN CANADA

Labour force ...

80 per cent of labour is already “local.” The battle is capturing this information to satisfy government, community representatives and the locals. The right data needs to be captured and conveyed. Industry needs to know the local labour profile.

Industry is happy to develop the labour force.

Contractors need a steady stream of people at the right time. As best as possible, know labour and procurement needs.

Planning at the consortia/RFP stage needs to be included in the labour plan.

You might sink shovels when only 30 per cent of the plan is complete. You rarely have detailed drawings on Day 1. It’s not as cut and dried as a lot of people think it is.

If there’s a job component, a CBA needs to recognize and be directed by the labour pool in the defined area. The jobs have to be meaningful; it can’t create positions just for its own sake.

The Hurontario LRT will take seven years. But it’s not all construction; that includes design, etc. No one player will be there for seven years using the same people.

Training and Apprenticeship ...

Apprenticeship was thrown into one recent RFP at the last minute, requiring 10 multi-disciplinary trades.

We need to get people in specific trades.

Someone hired under a CBA might not be transferable to another job — different subcontractors or unions. “General labour” is unemployable.

Electricians need university-level math. It’s skilled work, with hands and minds.

Unions have the best apprenticeship.

Highly specialized technical work can’t use trainees

We have heard that flexibility is needed in determining what local means. For example, if an apprentice starts on Finch West LRT and comes from say Jane/Finch area, and that same company wins say a subway contract, that company should have opportunity to move apprentice from project to project as local should have a bigger net.



International Trade Agreements

Socio-economic advancement programs are often constrained by international trade agreements. All agreements to which Canada is party bind federal government procurements in some way, but not all trade agreements bind provinces or local governments.

Several trade agreements bind municipalities: the Canada-European Union Comprehensive Economic and Trade Agreement (CETA), the Canadian Free Trade Agreement (CFTA), the New West Partnership Trade Agreement (NWPTA) and the Ontario-Quebec Trade and Cooperation Agreement (OQTCA). They prohibit a municipality from giving local preference, which complicates the targeting of local businesses through CBAs.

- CETA (also known as the Canada Europe Trade Agreement) does not apply to construction services under \$8.5 million, and allows preferences for Indigenous peoples. Some CETA rules do not apply to P3s, when the supplier of construction services has temporary ownership, or a right to control, operate and earn revenue from a building or works.
- CFTA prohibits discrimination based on the province or territory of origin for goods, services, workers and investments. For municipalities, it applies to procurement of construction services over \$250,000. Procurement from Indigenous peoples is exempt. Exceptions exist for poverty reduction and small business set-aside programs, with certain conditions.
- OQTCA aligns with the CFTA, prohibiting preference for local goods, services and suppliers.
- NWPTA requires open, non-discriminatory procurement where anticipated construction costs are at least \$200,000.

There are three possible ways to avoid trade issues when designing CBAs:

- Giving preference to local vendors for contracts below defined dollar thresholds.
- Trade agreements contain exceptions for areas like poverty reduction and Indigenous peoples.
- Wording procurement requirements to use criteria that a SME or social enterprise in any province (or European country, in the case of CETA) can meet but would be met most efficiently by a local business. (Infrastructure Ontario’s “local knowledge” criterion accomplishes this.)

Private CBAs are not subject to these restrictions. Some hybrid CBAs, involving a municipality and a private developer, might not be subject to trade agreements.



Concluding Comments

This report is written to explore the state-of-play of community benefits in Canada, today. It is not a “how-to” manual for developers on how to manage CBAs, nor is it one for the public sector on the manner in which CBAs need to be designed and implemented. It is meant to explore questions like: can CBAs be used as a tool to improve local economies, and if so, do they represent a viable tool for governments to supercharge the economic benefits resulting from infrastructure spending and on P3 projects in particular? Do they represent a tool for business development professionals within the infrastructure industry to gain a competitive edge? This report does try to suggest some “do's and don'ts” based on Constructive Edge's principals' many years of experience with requests by governments for socio-economic packages associated with defence and civil contracts around the globe.

Such a “how-to” manual would be difficult to write when CBA requirements differ so broadly by jurisdiction in Canada. However, business development professionals need to be aware of the current environment for CBAs, a changing and challenging one, especially in the manner in which they will need to be aware of how these agreements can and will affect the way they conduct their affairs. Governments need to be cognizant of the criticisms around CBAs and therefore how they can be designed in ways to benefit their constituencies.

Since every community has different profiles and needs, and every infrastructure project has basic specifications, room for creativity and negotiation is required in any policy, framework, or agreement that asks for local socio-economic advancement. The community or public sector needs to ensure that a realistic community profile is available. The scoring of this “ask” in a proposal has to have a worthwhile weight – at least 10 per cent – to ensure serious consideration by all bidders. Yet the assessment of this piece needs to be flexible, allowing open-ended creativity rather than strictly prescriptive boxes to check.

There are clear and well defined procedures that can be drawn from examples of formal civil and defence offsets, forms of socio-economic agreements associated with large civil and defence offsets that can be used as a roadmap for companies in the P3 space and more broadly, in infrastructure development. Government should be encouraged to examine the kinds of agreements that exist in Canada.

Infrastructure CBAs are growing in Canada. While federal and provincial governments might not take consistent positions, local governments (both regional and municipal) are showing increased interest.

Implementing CBAs successfully requires several conditions to be met. For both the public and private sectors common requirements include:

- Clear and measurable targets
- Defined outcomes, roles and responsibilities
- Implementation guidelines and tactics
- Monitoring and enforcement of obligations
- Transparent and regular reporting
- Active community engagement

The main point of difference between community advocates and the private sector is whether labour targets should be “hard” or “aspirational.”

Much of the criticism of CBAs has been around the issue of added layers of complexity they create and therefore added costs. CBAs represent a potentially powerful tool for the development of communities and expansion of socio-economics benefits, but only if done right. Rules and regulations around CBAs need to be flexible within defined but broad parameters so that those bidding to build infrastructure can engage with the broadest number of stakeholders and therefore ideas for reimagining, reinventing, revitalizing and rebuilding communities. Building the rules around only one narrow set of stakeholders reduces the degrees of freedom developers have and ultimately the quality of the final result, and quite likely increases costs and complexity. The benefits of CBAs must surely outweigh their costs. Developers' offerings need to be evaluated in ways that will encourage them to provide the best proposals possible.

Glossary

CBA: Community Benefits Agreement

CBF: Community Benefits Framework

CCA: Canadian Construction Association

CETA: Officially, The Canada-European Union Comprehensive Economic and Trade Agreement (informally the Canada-European Trade Agreement)

CFTA: Canadian Free Trade Agreement

CSR: Corporate Social Responsibility

IBA: Impact and Benefit Agreements

IJPA: Infrastructure for Jobs and Prosperity Act (Ontario)

ISED: Ministry of Innovation, Science and Economic Development (federal)

ITB: Industrial and Technological Benefits program (federal)

LAX: Los Angeles International Airport

LEED®: Leadership in Energy and Environmental Design, the world's most widely used green building rating system.

LTIP: Long Term Infrastructure Plan (Ontario)

Local hiring: recruiting people who live close to the place of work.

NWPTA: New West Partnership Trade Agreement. A partnership among the western provincial Governments of British Columbia, Alberta, Saskatchewan and Manitoba.

Offset: A type of counter trade transaction used by an importer's government as a condition for approval of major sales agreements. The exporter agrees to invest in, or buy goods or services from, the importer's country.

PAT jobs: Professional-Administrative-Technical jobs

PLA: A Project Labor Agreement, also known as a Community Workforce Agreement, is a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project.

RFP: Request for Proposal

SME: Small- and Medium-sized Enterprises. (SMB in the USA.)

Social enterprises: have a mission that is focused on advancing outcomes for people or planet

Social hiring: recruiting candidates who self-identify with an equity-seeking group or people who face unique barriers to employment.

Social procurement: leverages or directs existing purchasing to ensure or increase community benefits.

Sources & Acknowledgements

We conducted interviews, by telephone or email, with senior executives at these companies and organizations:

Chandos Construction Consulting Engineers of Ontario Metrolinx SNC-Lavalin
Ontario Sewer and Watermain Construction Association PCL Construction Walsh Group

We also acknowledge the assistance of several organizations in the CBA space, as we enumerated the CBAs in place in Canada:

Buy Social Canada Ontario Construction Secretariat Scale Collaborative
Toronto Community Benefits Network United Way Centraide Canada

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P3s AND COMMUNITY BENEFITS AGREEMENTS IN CANADA

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Mines Canada
Mosaic Transit Group
P3 Spectrum
Partnership for Working Families
ReNew Canada
Tamarack Institute
Windsor/Essex Community Benefits Coalition (ON)
Wood Buffalo Community Benefits Network (AB)
Village of Cumberland (BC)
York Region (ON)

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Page 3: Community Benefits Coalition of BC (L); Toronto Region Board of Trade (R & lower)
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Page 7: CCPPP
Page 11: Elephant & Castle Partnership
Page 12: Millennium Water Village
Page 13: Eglinton Crosstown LRT
Page 14: TransLink
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