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Community Benefits Agreements: Empowering Communities to Maximize Returns on Public Infrastructure Investments

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at the University of Ottawa



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EXECUTIVE SUMMARY

- At least half a trillion dollars in public investments for infrastructure are about to flow over the next decade in Canada. This is the biggest public investment in community infrastructure in almost half a century (see Section 1).
- If designed to do so, these funds could be marshalled to align several public policy objectives at the federal level—repair and expand public assets and services, achieve greater energy efficiency, reduce poverty, and spur inclusive growth.
- Community benefits agreements can deliver training and job opportunities to marginalized or vulnerable groups, provide procurement opportunities for local suppliers offering needed goods and services, and lever supplementary benefits in the form of additional public assets (such as parks or daycare centres) and/or improve the utilization of existing public assets (such as improving traffic flows or reducing carbon emissions) (see Section 3). Any request for proposals can offer preferential consideration to living wage suppliers and supply chains. Any public infrastructure project can be improved by delivering more community benefits (see Section 5).
- The process of identifying, negotiating, monitoring, and evaluating community benefits while building community infrastructure is complex and can be technical and time-consuming. Communities engaging in such negotiations face vastly unequal expertise and bargaining power (see Sections 7 and 8). Supports for communities who attempt such negotiations are unevenly distributed both functionally and institutionally across Ontario and Canada, meaning community benefits agreements are the rarity rather than the norm. However, when communities are able to organize, they lever additional economic, human, and social capital. This builds future resilience and capacities for action—critical traits during economic downturns.
- Other partners are also essential in the planning, delivery and monitoring of community benefits agreements, including employers, governments and their agencies, labour unions, NGOs, academia and other funders. Building capacity, sharing best practices and investments in integration and coordination of efforts is an essential component of bringing community goals and aspirations into reality.
- Public infrastructure investments provide a remarkable opportunity to build community while building community infrastructure. This will not happen by accident. To achieve such outcomes, two elements are critical: a) enabling legislation that requires the consideration of community benefits and engagement with communities themselves in the process of investing in public infrastructure and b) an arm's-length agency whose primary function is to serve communities in which infrastructure projects are about to take place, supporting their development and engagement in the process by providing technical and legal expertise, a repository of information from other agreements, and a process for evaluating experience and best practice (see Section 9). The province of Ontario is the first to pass such enabling legislation, and the government of Canada has tabled a bill. No jurisdiction has, as yet, created a third-party agency to breathe life into the spirit of legislation and to both facilitate and enforce its intentions.

- Both legislation and institutional support are critical factors for success that can shape the marketplace for public infrastructure, from the tendering process to final delivery, building a private sector culture that competes on best practices as well as efficiencies in costs and timing.
- By supporting the learning process of communities, and by systematically evaluating and learning from experience, an arm's-length agency can help develop a body of evidence which will improve the disbursement of public funds in both its effectiveness and its accountability to citizens.
- There is a unique opportunity to reduce poverty and improve the quality of people's lives as well as infrastructure in neighbourhood after neighbourhood across Ontario. This requires a deliberate policy approach to go with the money that has been announced.

I INTRODUCTION

Canadian governments are committed to spending **at least half a trillion dollars¹ on public spending over the next decade, to repair and expand public infrastructure** that benefits households, businesses and communities and that creates a platform for future growth. We haven't seen that kind of public investment since the 1960s and early 1970s.

This presents a historic opportunity for guiding public spending to do double and triple duty, with each dollar purchasing not just economic value, but also social and environmental value in neighbourhoods across Ontario and Canada. It also offers a way to amplify policy commitments to reduce poverty. Increasing attention is being paid to the pursuit of community benefits as part of the process of public infrastructure investments because of

- The challenges of *slowth* (slow or no growth) and the need for more inclusive growth when economic activity does increase;
- The search for equity that is “baked in, not sprinkled on;” and
- The potential to lever new opportunities for marginalized individuals and communities as a natural by-product of public spending.

All infrastructure projects have the capacity to align with poverty reduction strategies, transforming both neighbourhoods and lives in the process. Community benefits agreements tied to public infrastructure funding can, for the same dollar value, boost local economies, lever additional community assets, build social capital, and enhance individual as well as place-based resilience—or not.

As this wave of taxpayer-funded investment flows into neighbourhoods across Ontario and Canada to repair and extend public infrastructure, it can also reduce poverty and build community assets. None of this will happen by accident, though: to make sure inclusive growth takes place, Canadians need a policy focus and legislative framework to accompany its fiscal plan for infrastructure investment.

Ontario is already a leader in this regard, passing the Infrastructure for Jobs and Prosperity Act in 2016.² At the federal level, legislation like Bill C-344—and its predecessor, Bill C-277—can align several government objectives, reducing poverty by ensuring that infrastructure investments build up communities while building community infrastructure.

II KEY FINDINGS

Review of the literature and interviews undertaken to produce this report can be summarized by three points:

1. The pursuit and successful implementation of community benefits are determined less by the scale of the project and more by the barriers that communities have to overcome.
2. While no consistent threshold for introducing community benefits can be defined, it is generally agreed that the greatest success is achieved when the community is engaged as early as possible in the project, and continues to be part of monitoring and evaluating progress.

3. Most communities need support to participate in this process, which can yield large returns to particular neighbourhoods and to taxpayers in general. Because the coming decade will represent the biggest wave of public investment in a half century, it is important to get community involvement right. And there are clear ways of increasing the likelihood of that happening. Third parties can provide assistance in negotiating, implementing, and monitoring community benefits agreements, but are not always available to play those roles. A single third-party entity systematically devoted to these functions and dedicated to serving residents would develop community capacity and improve accountability of all parties involved. Such an entity can also play a crucial enabling role during the delivery phase by providing information that supports all parties in planning, delivery and evaluation of community benefits programs. We won't get it perfect but, if we try, we can reduce errors and optimize both delivery and outcomes.

III WHAT DO WE MEAN BY “COMMUNITY BENEFITS”?

Infrastructure investment—and, in fact, any public procurement process—can involve three distinct types of community benefits:

- Jobs and/or training opportunities, including apprenticeships, for members of traditionally disadvantaged communities, for whom the experience can facilitate gaining and maintaining employment;
- Purchase of goods and services from local businesses or social enterprises to maximize the economic, social, or environmental impact of public procurement; and
- Supplementary benefits which are identified as priorities by the community to improve public space (e.g. request to develop a park on unused land, or reducing pollution). This can both build and improve the functionality of community assets, in response to or leveraged from the impact of an infrastructure project taking place.

While infrastructure investment can create jobs, training, and supply chain opportunities in a neighbourhood during the life of the project, supplementary benefits create community assets long after the project is done and can provide an asset-building project that provides an objective towards which communities can lever additional supports from other funding sources.

Supplementary benefits negotiated as part of community benefits agreements can create additional physical public assets such as: daycare facilities (for children, seniors, or the disabled); recreational centres, rinks, pools, and arenas; community centres and training centres; health and wellness clinics; libraries; and social housing (or the addition of affordable, publicly-subsidized private sector housing stock); parks; bike-paths; improved access to high-speed Wi-Fi; and new options for community transit needs.

Any request for proposals can offer preferential consideration to living wage suppliers and supply chains. Any public infrastructure project can be improved by delivering more community benefits.

The successful negotiation of such benefits enhances both the quality of life and the functionality of a neighbourhood, making it a better place to live, work and play... the goal of all public policy. These benefits can also be used to reduce poverty by generating new sources of income, and to improve the quality of life enjoyed in all neighbourhoods, including those marked by a concentration of low-income households.

Not only can this wave of public investment repair and expand access to public goods, services, and opportunities that help households, businesses, and communities thrive; the process of negotiating such benefits builds social capital. The deliberate coordination of community response builds skills, creates new networks, and increases social cohesion. Those traits build resilience in a community.

Like the infrastructure investments themselves, community benefits can develop place-based assets, but in the form of human, social, and public capital. Community benefits agreements can help build up communities as we build community infrastructure.

IV WHAT DOES SUCCESS LOOK LIKE?

Expenditures on infrastructure investment can deliver a three-fold return when community benefits agreements are successfully negotiated in the process of public spending:

- **Repair/build public goods** to help households, businesses, and communities thrive, often while reducing carbon emissions, pollution, traffic congestion, and noise;
- **Improve economic outcomes and boost the local economy** through more training, jobs, and vending opportunities, particularly for the most marginalized populations in a community; and
- **Build social capital** through the deliberate coordination of community response, which builds skills and creates new networks between neighbourhoods, businesses, civil society agencies, and governments. Communities enjoy less poverty, greater social cohesion, and increased resilience.

What's needed for success?

This report offers examples and mechanisms to inform and improve approaches to identifying, negotiating, implementing, and monitoring community benefits. It answers the following questions:

1. What criteria should be used to determine if a public infrastructure investment warrants the use of community benefits?
2. At what phase in the investment process should community benefits be introduced?
3. Once agreed upon, how can the design and delivery of community benefits be monitored?

Section 6 provides a number of best practice examples on how to get going, but the first question is this: Should every infrastructure investment project include a community benefits component? The short answer is almost always yes. That's the most common result of testing the proposition across a wide range of criteria, to which we now turn our attention.

V CRITERIA FOR PURSUING COMMUNITY BENEFITS AGREEMENTS

How do you know when to pursue community benefits agreements? Three approaches can be taken:

- **Functional—impact assessment**
 - Could this project add jobs, training, procurement, or physical assets to the neighbourhood that would not have otherwise occurred?
 - Could this project lever additional supports or potential, such as raising capital from other sources in the community, or lever more multi-purpose or better targeted use of assets?
 - Could this project improve the utilization of existing community assets, whether that is through social networks and talent pools, or physical assets such as land, social housing, schools, densification/utilization of public space, broadband, or traffic corridors?
 - Could this project be designed to reduce the production of “bads”, such as resident displacement, pollution, noise, carbon emissions, congestion, or waste?
- **Scale – expenditure thresholds**
 - Between “never” and “always”, is there an optimal scale for pursuing a community benefits agreement? Interestingly, the literature reveals no consistent operational threshold for pursuing such deals. Whether the infrastructure project is worth \$50,000 or billions of dollars, it is always possible to get a better result, sometimes within the confines of the deal and sometimes by leveraging additional support. But the community has to be ready to take on the task of identifying and negotiating community benefits.
 - Thresholds are less related to the scale of the infrastructure project than the barriers which need to be overcome to organize community engagement, identify community priorities, and lever action.
- **Checklist approach for getting operation-ready. Do you have**
 - Community representation:
 - Consensus on who speaks for the community; and
 - Inclusion of the traditionally underrepresented;
 - Needs assessment; demand prioritization;
 - Expertise/supports for negotiating;
 - The capacity to deliver:
 - Partnerships for recruitment of residents for employment opportunities; and
 - Workforce development pathways, social enterprise networks;
 - Measurable targets/progress indicators;
 - Dispute resolution mechanisms; and
 - Report/evaluation capability.

Since it is almost always possible to improve an infrastructure project by adding community benefits that provide additional returns for zero or very low marginal costs, some jurisdictions have sought

out the legislated requirement for consideration of community benefits in the process of granting and building public infrastructure proposals.

Critics of this approach in Canada are concerned that legislated requirements add unnecessary red tape and may duplicate what municipalities already do, as well as prolong the process, even for “shovel ready” projects.³

It is true that some municipalities do already provide community supports to engage in the negotiation, monitoring and evaluating of community benefits—for example, where municipalities include staffing for Community Development Officers. This work is not equivalent to the equally necessary bureaucratic functions of land use assessment and urban planning, which municipalities also undertake, so this is not a case of duplication of service. In addition, community-supporting services are neither common nor uniformly available in municipalities across Canada. Finally, there is no forum through which communities themselves or governments can learn from one another, to identify mistakes and adopt best practice in order to reduce costs and systemic error.

This report recommends a way to overcome these problems in Section 9 through the creation of an arm’s-length agency. In the event that the full range of these services already exists in a community, such an agency would be a less critical resource. Its purpose is not to duplicate service, but to provide supports to communities where none exist.

As for the concern that legislated requirements will result in additional time being spent on community engagement, slowing the deployment of infrastructure projects: this is inevitable; but getting it right is more important than just getting it done. Community benefits add value to public spending, can result in cost savings to the public purse, and build local economies. Carefully negotiated and deployed, community benefits agreements can do triple duty, generating economic, social, and human capital. So how do we get there?

VI AT WHAT PHASE OF THE INVESTMENT PROCESS SHOULD COMMUNITY BENEFITS AGREEMENTS BE INTRODUCED?

Community benefits such as training, jobs, or local economy procurement can occur anytime throughout the investment process:

- Design;
- Build/supply chain; and
- Operations/maintenance.

Because supplementary benefits create or improve public assets, or reduce negative impacts of projects, they must be introduced at the design stage. This is the ideal point of intervention for all forms of community benefits when negotiating agreements. There are several options for doing this:

- **Needs are pre-identified** by community (through local government and/or community-based processes of resource mapping and/or needs assessment). These needs are priorities and part of early discussions, advanced by communities, or governments.
- **Bidders propose ways to address community needs in RFP phase**, based on previous experience and/or community consultation. This may be voluntary (to establish competitive advantage), or as part of the RFP requirement.

- Communities can clarify priorities in the process of consultation for consideration of multiple proposals from proponents prior to the funder selecting the winning bid. This may be an **RFP requirement** or a **legislated requirement**.
- Winning bidders can work with community groups to refine and/or develop priorities.

There are five types of “best practice” for when to start the process:

- **In advance of the availability of funds for a specific project**
 - Saint John, New Brunswick’s needs assessment for community development was conducted through a process led by the Vibrant Communities process, including all sectors of the community to prioritize needs and aspirations.⁴
 - Community developers employed by the City of Toronto have done extensive mapping of community resources and gaps in service, particularly for priority neighbourhood improvement areas.⁵
- **Before the tendering process begins**
 - Detroit’s Del Ray Community has been organizing community response and identifying community priorities for years in advance of the building of the new Gordie Howe Bridge, the second Detroit-Windsor crossing to be built. In readying itself to negotiate with the proponents of the winning bid, this community prepared a list of demands to offset the expropriation of low-income residents, and increased noise and pollution from the increased traffic.⁶
- **As part of the tendering process**
 - RIBA (the Royal Institute of British Architects) holds design competitions for public projects. Those who are shortlisted receive a modest fee to fully develop their proposal. All the design ideas are owned by the community, and so can be incorporated into the final, winning development. A community/public board can mix and match the best ideas. This process has been used to develop schools, hospitals, and other public assets in the UK. Current competitions include an infrastructure project that seeks to ease traffic congestion, the revitalization of unused public land, and design for an “innovative co-living development” for those who are “priced out of the London housing market”.⁷
- **In consultation with the winning bidder**
 - Though the main design features of a new community pool had already been designed, residents of Regent Park negotiated with the developer to insure it would be built in a manner to make it more inclusive for Muslim women, a growing segment of the community.⁸
- **As part of delivering on community benefits goals and objectives**
 - To support Metrolinx’s Eglinton Crosstown Community Benefits Framework in Toronto, a construction employment coordination pathway was created, focused on streamlining the process and supporting target populations⁹ to successfully pursue a career in the trades, while at the same time providing construction employers with a reliable pipeline of high-quality labour to meet their needs. The partnership brings together the provincial government (Ministry of Advanced Education Skills and Development & Employment Ontario), the City of Toronto

(Employment and Social Services), and United Way Toronto and York Region to integrate recruitment, screening, and employment readiness resources, based on employer hiring needs. The initial focus is to prepare job seekers to meet the needs of Crosstown construction. In addition to providing and coordinating job skills training, the pathway delivers wrap-around supports such as childcare and assistance with purchasing tools or initial union dues in order to reduce barriers and help ensure apprentices to complete their training.

VII IDENTIFYING AND NEGOTIATING COMMUNITY BENEFITS AGREEMENTS

There are three guiding questions for identifying and negotiating community benefits agreements:

- Who represents community?
- What resources can help communities successfully negotiate targets and timetables?
- Are community benefits more likely to be achieved through frameworks or legal agreements?

Who represents community?

Community can be defined by geography, identity, or interest, or any combination of these. However, all infrastructure projects take place somewhere, which makes the geographic/neighbourhood dimension critical. In a given place, community is variously equated with:

- Residents (anyone living in the neighbourhood where the project is taking place, or within a given geographic radius);
- Members of an interest group affected by the project (for example, bicyclists, transit users, motorists);
- Third parties representing or facilitating a consortium of community interests (for example, United Way, community development officers, community-based coalitions); and
- Local government structures.

The guiding principle for those seeking representation is “no decision about me without me”.¹⁰ Successful negotiation is founded on successful representation. That said, there is great variance in a community’s ability to represent the plurality of residents’ interests, particularly among those who are traditionally underrepresented.¹⁰ A community’s traits can greatly shape its ability to represent itself:

- Communities that are already **serviced with a range of community agencies and/or public community development officers** dedicated to soliciting community input and organizing community priorities;
- Communities with **pockets of established expertise** (resident associations, bikers, parents’ groups, immigrant clusters), but with disparate interests;
- Communities with **homogenous socio-economic** traits; and
- Communities with **diverse socio-economic** traits.

There are numerous ways that funders can facilitate the identification of relevant community representation. Often—arguably too often—this process is funded by philanthropic or civil society initiatives. But there are also examples of government-backed processes that help identify and support

voices in community. For example:

- The federal government's Homelessness Partnering Strategy includes a process by which a community can convene to identify the most appropriate voice to partner with the federal government in advancing supports to the homeless. Funds are available to support this process.¹²
- The federal government also has renewed and increased its support for the identification and formation of community interest through funding Charter challenges, a program that goes back to 1978.¹³ Making sure citizens have access to the courts to exercise their legal rights and improve public policy is a quintessential public interest issue.
- Finally, multiple levels of government provide supports for the formation and development of community associations for business, in the form of Business Improvement Associations.¹⁴

In short, there are plenty of precedents where governments help communities organize themselves.

The elephant in the room: Uneven bargaining power

However, in addition to the self-identification hurdle that communities often face before entering negotiations, once they sit at the bargaining table there is an elephant in the room: uneven bargaining power. The more frequently developers are legally or procedurally required to consult with communities, the more experienced, competitive, and adept they become at identifying community benefits. This will continue to accelerate over the coming decade, as more and more jurisdictions undertake infrastructure investments, often with large contractors that work in multiple jurisdictions and have become familiar with the process.

For communities, however, they are likely to only engage in the process once. Whether spurred by a legislated requirement or acknowledged good practice, engagement requires organization and often lengthy exchange. This is costly in terms of time and money, making it more difficult for some communities to engage than others. These issues are compounded when “the” community is defined by a large geographic expanse or is made up of a large diversity of voice. Irrespective of their level of social cohesion and self-awareness, most communities have little experience with dealing with large-scale developers.

There are a number of ways to work around these problems:

- Local governments and/or funders of infrastructure projects can facilitate consultations and meetings.
- Community development exercises (by local government or community agencies) can map both resources and gaps, identifying where outreach could naturally occur (residents' associations, community hubs) and where outreach needs to be extended to reach underrepresented groups.
- Third-party organizations can support and, in some cases, facilitate coalition building and community-organizing.
- Some funding may be required for resident/community agency time devoted to the process.
- The community itself may be able to raise further funds and/or expertise through individual networks.

Organizing a community response takes organization. There are no successful alternatives to leadership, vision and strategies for marshalling human and financial resources. Two notable examples of organizing worth studying are:

- **LAANE** (Los Angeles Alliance for A New Economy) was behind the forces that led to the original CBA in California, ultimately involving over 30 community-based groups. It all started with (and still mostly relies on) philanthropic funds.¹⁵
- **TCBN** (Toronto Community Benefits Network) has been the backbone of efforts to negotiate community benefits related to the Eglinton Crosstown transit project, a huge project both financially and geographically. While it receives a small amount of public money, it is mostly supported by non-governmental funding.¹⁶

The art of the deal... Takes time, expertise, networks, and resources

Once a community identifies and prioritizes its goals, it can maximize success in negotiating clear targets (a precursor to successful outcomes) if it has:

- A publicly-available repository of ideas/best practices in similar circumstances;
- Legal and technical expertise;
- Clear contacts for clarifying issues/concerns; and
- Some funding to pay for resident/community agency time devoted to the process.

Whereas the idea of community benefits agreements is relatively new, Impact and Benefit Agreements (IBAs) have been a fact of life in Canada's North for decades, as mining companies have sought to explore and develop resources. There is much to be learned from this experience, in large measure because it has been documented in a manner that permits us to learn from the experience.

- Canada's First Nations and Inuit have developed a **research and resource network** to advance their ability to negotiate Impact and Benefit Agreements (IBAs) with mining corporations. This includes a **repository of agreements with contacts**.¹⁷
- A foundation has also supported the development of an **IBA toolkit**, which has many parallels with the issues facing CBAs.¹⁸

Another example of a process with great potential to become a standard feature of public infrastructure agreements can be taken from the north:

- Of \$1 billion set aside for infrastructure to reach the mineral rich Ring of Fire in Ontario's north, the Government of Ontario has set aside \$6.9 million to negotiate with Matawa First Nations. Funds could be similarly earmarked for the use of the community to prepare itself for these and other public infrastructure investment negotiations.¹⁹

The importance of negotiating clear targets and timelines

The development of the Staples Centre in Los Angeles is among the earliest but possibly the best-known examples of a successful community benefits agreement. The deal started with mutually-accepted targets that were not formulated in writing, including supplementary benefits such as a developer-funded assessment of park and recreational needs within a 1-mile radius of the project, and developer-funded parking for residents. These objectives, and others, were ultimately met when

stipulated and negotiated in legally-binding written form.²⁰ Many community-based organizations shy away from legal requirements because they feel a) that entering such negotiations may erode fragile and new relationships of trust and b) that they may get outfoxed and lose more than they are told they can win because of legal technicalities. Over time, however, agreements are replacing non-enforceable framework deals, for several reasons:

- More jurisdictions are requiring community consultation as a precondition to accepting bids or condition of flowing public infrastructure dollars.²¹
- Identifying, prioritizing, and assessing the feasibility of community benefits require significant time (organizing and negotiating) and expertise. This time-intensive process applies to both frameworks and agreements.
- Frameworks are an improvement over the status quo but can be ignored. Participants can feel they wasted their time or were gamed. The result: worse relations, less trust, and sub-optimal built and social outcomes.²²
- Codified, enforceable agreements create more certainty, clearer value (asset-based, economic, and social), and greater accountability. They tend to improve corporate, governance, and community practices, as well as trust.²³
- Agreements can be problematic if terms are not negotiated or enforced well, and if there are many changes in the course of contract completion.²⁴

How to get to “yes”, and what “yes” means

- Technical expertise will assist in negotiating achievable objectives, given space/cost limitations and service gaps to be filled; or target reductions in, for example, emissions.
- Communities can often lever additional funds for key objectives. Ancillary amounts and timelines to raise funds should be included in agreements if critical to reach goals.
- Specifications for agreed-to community benefits may be harder to achieve than initially bargained, as new factors emerge. The process is like finishing home renovations, though scales differ.
- Deals should include clear steps to be undertaken for renegotiating or reinforcing terms of the agreement should timelines or targets be missed by either party.
- Resources and tools crucial to the delivery of community benefits goals should be also be made available to community partners and governments.

Should community agencies be signatories of a community benefits agreement?

The answer is: sometimes.²⁵ Community groups can be signatories of a community benefits agreement:

1. With private sector developers (for private sector developments).
2. In the case of public sector developments, community benefits agreements can be signed:
 - a) between the public sector founder and the private sector developer, without **a formal signatory from the community**;
 - b) between the agent representing the community and the private sector developer, in a **separate agreement** from the document signed between the [public] funder and the [private sector] developer[s]; or
 - c) as a **tri-partite agreement**, where the representative agent for the community is an official co-signer of the agreement.

Even when there are clearly designated representatives of a community, they don't need to be signatory to a community benefits agreement. However, communities need to confirm that:

- The agreement includes a clear monitoring and compliance process in which community representatives are mandated to participate;
- There is a mandatory reporting requirement insuring data which track progress are accessible and transparent to community members; and
- Whatever mechanisms that are in place to enforce codified terms of a deal can be triggered by signatories and/or the community in which the development is taking place.

VIII IMPLEMENTING AND MONITORING COMMUNITY BENEFITS AGREEMENTS

Once having achieved an agreement, neither the funder (the government) nor the community's work is over. The achievement of progress now must be monitored. The literature shows a handful of factors that can smooth discussion, expedite deliverables, and minimize friction. They include:

- A **baseline** of information regarding the parameters for success (for example: daycare centres or playgrounds with capacity to serve x kids; kms of bike paths; # units of affordable/accessible housing; limits on noise/light pollution or usage of green energy);
- Mutually agreed-to **benchmarks** for progress in given time frames;
- **Measurable indicators** which are mutually determined and tracked by data specific to the project or externally available;
- **Mandatory reports on progress** at agreed intervals; and
- These are more likely to be enforced if **codified** in an **agreement** rather than developed in a framework, though metrics may evolve if it is mutually agreed to renegotiate.

An example of success: The YWCA²⁶ built a 770-unit supportive housing development in Toronto with a mix of government and community funding. Infrastructure Ontario provided a guarantee for the mortgage and consequently demanded a seat at monthly project management meetings. The expertise of this partner—with more experience in large construction than anyone else at the table except the developer—provided YWCA with a critically important perspective on what indicators were of greatest significance in the course of the project's evolution and helped circumvent potentially big problems as the project evolved.

Disagreements

It is not uncommon for disagreements to arise in the course of a project over the interpretation of objectives, benchmarks of progress, data, timing, or responsibilities. Best practice shows that:

- Targets, timetables, and progress on benchmarks can all be renegotiated if mutually agreed. Indeed, most deals are tweaked over the course of a project.
- In the event that significant disputes emerge over implementation or progress, the terms of agreement should provide for a dispute resolution mechanism.
- Dispute resolution often involves a third party.

Third parties are often more effective than governments as disputes arise between communities and developers, since governments can often be “captured” by the political influence of more powerful

players. A high-quality, trusted and prestigious partner such as the United Nations Development Program has proved effective in achieving success in some emerging nation/mining agreements.²⁷

The Raglan Agreement (1995) was the first Impact and Benefit agreement to be negotiated and signed between a mining company and the Aboriginal groups ultimately affected by the mining operation. Among other provisions, it provided detailed dispute resolution mechanisms outside of the court system up to and including third-party arbitration.²⁸

Fiscal pressures on revenue because of population aging, and the large sums that are about to be spent on infrastructure beg, for a built-in system of evaluation that is publicly accountable.

Evaluation

- Provides a feedback loop to improve outcomes;
- Improves financial accountability;
- Demonstrates value to taxpayers;
- Reduces error and malfeasance;
- Tracks social impact (trends in social inclusion, safety, other indicators of well-being);
- Sets new standards and contracting norms creating a larger market that integrates community benefits into development and procurement practice of public and private sector enterprises; and
- Aligns government objectives.

One of the best practices in evaluation is the US-based Democracy Collaborative²⁹, which developed a Dashboard³⁰ in 2013 to assist anchor institutions to measure the community impacts of their hiring, purchasing, environmental and expansion decisions. Thus far six U.S. universities are using the online tool. Uploading their data allows aggregation of results and evaluation across institutes. Pooling and sharing data offers deeper insights, best practice analysis, and more rapid evolution of practice. This evaluation function is not within the purview of a community based organization, but could and should inform its practice. More importantly, it could and should inform the performance of taxpayers' investments in building communities.

A good example of success in this regard, the federal government's Social Research and Development Corporation was spun out of Human Resources and Skills Development Canada to test "what works" without interference from political pressure. It was created as an arm's length agency to develop, field test, and rigorously evaluate new programs with a mission of identifying policies and programs that improve the well-being of all Canadians, with a special concern for the effects on the disadvantaged.³¹

Another relevant example is the Canada Millennium Scholarship Foundation (MSF), created through an Act of Parliament in 1998.³² Its independent status as an arm's-length agency was guaranteed by an endowment from federal budgetary surplus. Until 2008, it distributed bursaries and scholarships to post-secondary students across Canada, an arena of inter-governmental relations that can be contentious. The existence of this organization made it possible to focus on improving the program, rather than engage in horse-trading for health or other federal transfers.

Whereas all the agreements were identical at the beginning, over time these bilateral federal-provincial deals evolved into better target pockets of disadvantage within regions, a difficult accomplishment for federal programs which mostly demand inscrutably equal treatment. But, as anyone engaged in policy

development understands, equal treatment does not ensure equal outcomes. MSF developed the Millennium Research Program to analyze barriers to the pursuit of post-secondary education, providing an evidence basis for policy development and further depoliticizing the disbursement of federal funds.

Canada Millennium Scholarship Foundation also convened annual meetings which increased awareness of best practice and challenge, and helped create a culture that could move towards a shared post-secondary agenda—a challenge for a diverse federation.

Again, there are precedents that can be marshalled to help pave the road forward, providing leadership and support to ensure that taxpayers' funds are put to the best use. With half a trillion dollars in infrastructure expenditures set to flow into communities across Canada, it is time to establish such a capacity to determine “**what works**” in maximizing community benefits, showcasing both best practice and challenges in the effort to help communities take full advantage of this historic opportunity.

IX A WAY FORWARD - PROPOSAL FOR A THIRD-PARTY ENTITY

Integrating third-party functions into one agency

Third parties currently play a role in organizing, negotiating, monitoring, resolving disputes and evaluating community benefits. These practices can optimize performance but are not systematically deployed. They should be. Ontario has already played a leadership role in creating a legislative framework for incorporating community benefits into public infrastructure investments. With \$190 billion in infrastructure spending planned over 13 years starting in 2014-15, of which \$156 billion will be spent between fiscal years 2017-18 and 2026-27³³, Ontario could lead by example, launching an initiative that encourages and fosters collaboration and learning between municipalities and communities, with the goal of maximizing returns from publicly-funded infrastructure investments over the course of the next decade.

This is a policy area that is as critical to get right as responses to climate change. The multipliers associated with action and inaction are very large, and can appear as genuine progress or tragically missed opportunity. Ensuring that community benefits are a standard feature of the infrastructure program going forward is desirable for multiple policy objectives, including poverty reduction; but for alignment of objectives to become a reality requires a focused plan. If community benefits agreements become the necessary par for the course in public infrastructure investment deals—and we hope the case for that conclusion has been forcefully made—communities across Ontario will need to increase their competencies dramatically, as will their partners who will be essential in creating pathways to employment and development over short and long-term periods of the agreements.” The government of Ontario can help level the playing field with an institution designed to support the development of community capacity.

An arm's-length third-party agency can play a critical role in enhancing the effectiveness of community engagement and accountability of public spending. An arm's-length third party can play the role of convener and interlocutor between parties (communities, developers, and governments). While capable of dealing with and convening all parties, its unambiguous focus would be on optimizing community engagement, and the community benefits flowing from infrastructure investments.

At the same time, such an entity would also be a resource to other parties key to the implementation of community benefits agreements, from workforce development agencies, to NGOs providing wrap-around supports for residents, labour and academia, governments and their agencies, as well as employers and their contractors. Getting the deal is an essential first step in community benefits. But it is only a first step that must be followed by a well-planned and executed implementation process that delivers tangible benefits for communities.

Sections 6, 7, and 8 of this report provide numerous examples of precedents showing how third-party agencies can enhance returns to investments in public spending through leveraging:

- Greater transparency;
- More systematic capacity building;
- Improved equity;
- Broader access to knowledge and expertise; and
- Better decision-making.

An arm's-length agency tasked with improving the achievement of community benefits flowing from public infrastructure investment would have as its purpose to:

- Support community development;
- Provide oversight and quality assurance;
- Build an evidence-based approach to policy evolution; and
- Support partners in the implementation of community benefits agreements.

The functions of this integrated third-party agency would include:

1. Supporting community-based organizing and capacity-building strategies;
2. Negotiating enforceable terms of agreement and targets;
3. Monitoring development/project management/dispute resolution;
4. Data collection and evaluation;
5. Online registries/best practices/data and resources (potentially also some interactive capacity for more rural/remote);
6. Sharing of best practices, resources and toolkits about implementation that are relevant to community and delivery partners;
7. Annual reporting; and
8. Convening annual conferences for communities who have, or will have infrastructure contracts tied to community benefits.

Bringing together this wide range of competencies into one agency can:

- Optimize learning between the different competencies;
- Speed the learning curve within the mission to build community assets and capacity using the funds governments reinvest in building community infrastructure;
- Facilitate the development and monitoring of meaningful indicators of progress, success and failure; and
- Create repositories/registries of legal agreements (like templates for mortgages, leasing arrangements) and link them to outcomes to serve all parties.

A one-stop model would create greater:

- Administrative efficiency;
- Mission coherence;
- Reinforced importance of all these functions, together, for achieving mission success;
- Accountability; and
- Depoliticization of what should not become, but often does become, politicized. This is particularly true since large amounts of money will be distributed over the coming decade.

Such an entity would support communities by providing:

- Techniques to build capacity to reflect on and prioritize needs;
- Technical and legal expertise for contract development and project management;
- Negotiating know-how;
- Insights and experience to improve monitoring;
- Relevant comparisons of CBAs in other jurisdictions;
- A resource centre (online, interactive); and
- A data hub for analysis and evaluation.

Such an agency would not replace community-based organizations, or operate in their stead. In addition, because it would be an agency created to serve and support communities, it would be in conflict of interest if it also provided dispute resolution; but it could act as liaison with such services.

The substance of the agency's work would be as a mechanism for building networks and capacity, a resource for diverse techniques, a repository of deals and follow-up data, a way to showcase best practice and learn from malpractice. The information and evaluation it could provide could assist any government or group of governments, but its purpose is to serve the Canadian citizen and taxpayer, not a particular government.

To assure its independence, such an agency should be self-financing, i.e. not subject to annual budgetary appropriations. Its budget could be generated by a very small levy from every infrastructure contract that is signed. The broader this practice becomes, the smaller the levy need be. All public funders should include some such fee in each contract for the purposes of improving supports, scrutiny, and evaluation but the federal government could provide leadership in its implementation.

Assigning a levy of, for example, 0.1% on all future public infrastructure contracts (currently estimated at \$156 billion until 2026-27)³⁴ to a fund that services all communities across Ontario engaged with implementing an infrastructure project would amount to a budget of:

- \$156 million over the next decade, averaging \$15.6 million a year to serve communities, with that amount rising as the number of agreements rise.

These funds would support the agency's own work as outlined above and also provide funding for:

- a) supporting community organizations to do the actual work of organizing/capacity building;

- b) purchasing/retaining technical expertise in legal drafting and project management/technical oversight; and
- c) providing pathways to dispute resolution.

X SUMMARY AND CONCLUSIONS

Almost half a trillion dollars are already scheduled to be invested in refurbishing and extending community infrastructure over the next decade in Canada. The government of Ontario alone has budgeted for \$190 billion in infrastructure spending planned over 13 years starting in 2014-15, of which \$156 billion flows between fiscal years 2017-18 and 2026-27.

This is the first such scale of investment for almost half a century. It is possible to lever more benefit from these investments, and advance progress on poverty reduction across Canada; but that won't happen by accident. That money needs a plan. Ontario can provide leadership on developing that plan. Communities equipped with the right skills and supports could see profound, transformative change flow from community benefits agreements associated with public infrastructure investments. So many dimensions of these deals can be marshalled to engage with marginalized groups and reduce both income poverty and the lived experience of poverty. But, to optimize benefits, communities need to have a resource to support the negotiation, monitoring, and evaluation of these agreements.

The problem is that community support for these functions is rare. Where it exists, it is mostly funded by foundations and other civil-society sources. A third-party entity, available to any community in Ontario, could greatly improve impact and efficacy of what communities will try to do on their own, with varying degrees of success. Such an arm's-length agency can also develop systematic feedback and evaluation loops that provide taxpayers with greater accountability and value for money, while helping build social capital in a more broad-based and less random fashion. The opportunity exists to build community capacity and resilience as we revitalize and expand community infrastructure. How should we proceed down that path?

This report has three key findings:

1. The pursuit and successful implementation of supplementary benefits are determined less by the scale of the project and more by the barriers that communities have to overcome.
2. While no consistent threshold for introducing supplementary benefits can be defined, it is generally agreed that the greatest success is achieved when the community is engaged as early as possible in the project.
3. Most communities need support in this process, which could yield large returns to particular neighbourhoods and to taxpayers in general. Third parties can provide assistance in negotiating, implementing and monitoring supplementary benefits but are not always available. A single third-party entity, systematically devoted to these tasks, would develop community capacity, reduce errors, optimize both delivery and outcomes, and improve accountability of all parties involved.

The proposed processes and mechanisms will not necessarily "get it right" but will increase predictability and decrease error in optimizing the utilization of public funds.

We can use this opportunity to identify and use community strengths (and awareness of gaps) to align multiple public missions: addressing deficits in public infrastructure, reducing poverty, creating opportunities for systemically marginalized groups, and making routine practices that are environmentally and socially sustainable for businesses and communities alike.

The opportunity exists to use already announced funding to do double and even triple duty, generating economic, social, and human capital while improving environmental outcomes. We hope we won't let that opportunity pass us by. If we do it will be not for want of money but for want of a plan.

Notes

¹ To date, public infrastructure investments announced in 4 provincial budgets and the federal budget are:

- [Federal government](#) - \$180B over 10 years
- [Ontario](#) - \$190B over 13 years (starting in 2014-15)
- [Quebec](#) - \$91B over 10 years starting in 2017
- [Alberta](#) - \$29.5B over 4 years
- [BC](#) - \$24.5B over 3 years

In addition to these amounts, Alberta and BC will undoubtedly spend more after the 3- or 4-year timelines noted here, and Ontario has already made additional announcements, such as the [\[\\$21B\] Windsor Toronto high speed rail](#).

² The Government of Ontario's [Infrastructure for Jobs and Prosperity Act](#) specifies these examples. Passed in 2015, the Act came into force on May 1, 2016.

³ [Hansard, Volume 148, Number 85; 42nd Parliament, First Session; September 30, 2016, Debate over C-277](#). See especially the concerns of John Brassard, Conservative MP for Barrie-Innisfil, and Steven Blaney, Conservative MP for Bellechasse—Les Etchemins—Lévis (Québec).

⁴ [Vibrant Communities](#)
[St. John's success story](#)

⁵ [Toronto's Priority Neighbourhoods](#)

⁶ [Detroit Neighbourhood Bridge Community Benefits](#)
[Del Ray's Community Benefits Coalition](#)

⁷ [Royal Institute of British Architects Competitions](#)

⁸ [Regent Park transformation](#)

⁹ [Eglinton Crosstown LRT Project](#): Including youth facing multiple barriers, women, Aboriginal persons, newcomers, veterans and Eglinton Avenue-area residents.

¹⁰ See Annex 1: Roles and Responsibilities

¹¹ See Annex 2: What Could Go Wrong?

¹² [Terms and Conditions of the Homelessness Partnering Strategy](#)

¹³ [Liberals to restore and expand Court Challenges Program](#)

¹⁴ BIAs are local self-funded organizations, but can access a wide range of supports from municipal and provincial governments. [This Ontario-sponsored guide](#) provides details.

¹⁵ [About LAANE](#)

¹⁶ [Community Benefits Info Centre](#)

¹⁷ [Impact and Benefit Agreements Research Network](#)

¹⁸ The Walter and Duncan Gordon Foundation commissioned the development of an IBA Toolkit which covers many of the issues [touched upon in negotiating community benefits agreements in general](#).

¹⁹ [Ontario's Ring of Fire development plan has major flaws](#)

²⁰ Gross, J., Gross, J., LeRoy, G., & Janis-Aparicio, M. (2002). *Community benefits agreements: Making development projects accountable*. Los Angeles, CA: Good Jobs First. Retrieved from: <http://community-wealth.org/sites/clone.community-wealth.org/files/downloads/report-gross.pdf>

²¹ Example of legislated requirement for community input: [Detroit's Community Benefits Ordinance](#), passed in December 2016.

²² Example of broken trust: [A Community Benefits Agreement Grows in Brooklyn](#), from August 10, 2015.

The [Wikipedia entry](#) for this project lays out the controversial history clearly (the project was renamed/rebranded Pacific Park in 2014).

²³ Marantz, N. J. (2015). What do community benefits agreements deliver? Evidence from Los Angeles. *Journal of the American Planning Association*, 81(4), 251-267. doi: 10.1080/01944363.2015.1092093

²⁴ [Key Reforms in Community Benefits Agreements](#)

²⁵ For a good set of examples on these various types of agreements, see p. 19 of Dina Graser (May 2016), [Community Benefits and Tower Renewal](#), Atkinson Foundation and Evergreen.

²⁶ Interview with YWCA

²⁷ [Resolve, An Examination of Agreements between International Mining and Petroleum Companies and Indigenous Communities in Latin America](#), September 2015

²⁸ The Raglan Agreement can be found [here](#). See section 9 for dispute resolution mechanisms, and section 8 for definition of the Raglan committee.

²⁹ This and several other systems of evaluation are surveyed and compared in the excellent review by Tessa Hebb and Heather Hachigian, Carleton Centre for Community Innovation: [A Global Review and Assessment of Social Value Procurement Evaluation Toolkits and Frameworks](#), April 13, 2017.

³¹ [Social Research and Demonstration Corporation](#)

³² Interview with Andrew Parkin, Mowat Centre (ex Director of Research and Program Development at the Canada Millennium Scholarship Foundation).

³³ See chart 3.2 on page 73 of [Ontario Budget 2017](#).

³⁴ Ibid.

Annex 1: Roles and Responsibilities

Governments, developers, and communities have different but often overlapping roles. Responsibilities shift as a result of experience, and definition of roles. Developers have the most experience but are incentivized by for-profit interests, which raise the stakes for everyone getting their role right to avoid actual or perceived conflict of interest.

Community Roles and Responsibilities

- **Identify priorities** and, ideally, identify relevant best practices in similar circumstances;
- **Develop/maintain liaisons** within a community, and between members of the community, developers, government(s);
- **Negotiate binding terms of agreement** including **targets, timeframes and indicators**; and **dispute resolution mechanisms**;
- Actively **monitor** implementation of agreement; and
- Advocate for and participate in **evaluation** of agreement.

Developer Roles and Responsibilities

- **Proactively provide proposals for community benefits** as part of a competitive tender, based on assessment of best practice in similar circumstances;
- **Develop and refine proposals in consultation** with community after successful bid;
- **Negotiate binding terms of agreement, including targets, timeframes and indicators** and **dispute resolution mechanisms**; and
- **Provide timely information** for monitoring agreement implementation and impact evaluation.

Government Roles and Responsibilities

- Provide **funding with “strings”**, i.e. clear terms of reference including legislative requirements for community benefits or requirements for identification and negotiation of community benefits as a condition of successful tendering for infrastructure projects (i.e. no expenditure of funds on public infrastructure without a community benefit component);
- **Systematize pursuit of community benefits by aligning** infrastructure development with other **government priorities** such as poverty reduction strategies, green/environmental initiatives, sustainable resource development, Aboriginal social/economic policies (CBA as an “all of government” initiative, to guarantee optimization of \$500B in public spending over 10 years);
- **Support communities** in identifying/prioritizing needs; negotiating benefits; monitoring implementation; accessing dispute resolution mechanisms; enforcing penalties if required;
- **Create a public, searchable database** of information related to infrastructure development; and
- Provide more opportunities for communities to **leverage government loan guarantees** for infrastructure-driven, community-led ancillary capital project.

Annex 2: What Could Go Wrong?

An historic opportunity to get things right... Or not

Federal, provincial, regional, and local governments are undertaking a historically unprecedented scale of investments in infrastructure. Many neighbourhoods and communities are in bad need of revitalization. Neighbourhood repair and densification cannot occur successfully without the input of people living there.

Community engagement, or lack thereof, will make or break the success of this era and Canada's ability to be a people magnet in the coming years.

Most communities are unprepared to make the most of the infrastructure money that will flow through their neighbourhoods.

Problems at the governmental level

Frequently multiple departments and levels of government are involved in infrastructure projects. This can lead to either non-aligned or actually conflicting objectives between missions and/or levels of government, as well as lack of clear lead on a project, resulting in less accountability.

It is not uncommon to see grand projects like infrastructure funds be announced without clear plans. Money before process can lead to inadequate preparation for success if, for example, governments choose to delay or avoid creating mechanisms for engaging with community.

Changing demands and political contexts over time can disrupt process and outcomes. Inappropriate or no data collection can deliberately or unintentionally reduce accountability which makes "success" difficult to identify. Inadequate or inaccessible dispute resolution mechanisms can waste time and money, and produce inferior outcomes both in product and relationships.

It is not common for governments to imbed evaluation at the beginning of a process, but with no built-in strategy for a feedback loop, it is difficult to illuminate/share best practices and reduce errors.

The impact of trade deals on procurement in the early 21st Century

In the category of "further research required":

Recent trade deals (CETA, TPP, TiSA) are evolving to include a large number of non-trade issues and issues that go beyond nation-to-nation regulations. Procurement is one such item.

While the TPP is temporarily on hold, and NAFTA may be rewritten, CETA is "90%" operational. For the first time in any trade deal, CETA's text reaches below the national level to the provincial and municipal levels with regard to public procurement.

How does that affect the feasibility of community benefits agreements, or constrain them? Can a jurisdiction be both anti-protectionist and pro-community benefit?

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