



# COMMUNITY BENEFITS AGREEMENTS

Toward a Fair, Open, and Inclusive Framework for Canada

July 2021

*A Cardus Research Report*

CARDUS



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**How to cite:** “Community Benefits Agreements: Toward a Fair, Open, and Inclusive Framework for Canada.” Cardus, 2021. <https://www.cardus.ca/research/work-economics/reports/community-benefits-agreements-toward-a-fair-open-and-inclusive-framework-for-canada>.

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Head Office: 185 Young Street, Hamilton, ON L8N 1V9 | [info@cardus.ca](mailto:info@cardus.ca) |

## EXECUTIVE SUMMARY

As Canada emerges from the COVID-19 crisis and accompanying recession, governments, the construction sector, and communities alike look to massive infrastructure spending to reignite the economy and promote lasting community benefits across the country. This report addresses, from the perspective of the builders' community, the concept of community benefits agreements (CBAs)—an often poorly understood and ill-defined concept that is gaining prominence in Canada and other Western democracies. It seeks to do this by:

- Addressing the public policy context, locating CBAs within the realm of already existing social procurement alternatives;
- Attempting a definition based upon a broad survey of the literature;
- Assessing critical success factors and challenges and costs;
- Surveying Canadian variants of the concept; and
- Posing questions about the claims it makes about social benefits, social justice, community cohesion, and effectiveness as a public policy instrument.

While this report finds the concept of CBAs promising for Canada, it asserts that there are critical challenges that need to be addressed if these agreements are to receive the buy-in of all stakeholders in the process and truly achieve the broader social and economic benefits that CBA proponents claim. These challenges are numerous, substantial, and potentially destructive if not addressed meaningfully and in

good faith. They concern issues of transparency, measurability, and inclusiveness.

Further, this report questions whether CBAs, as currently evolving, are truly instruments that promote fairness, equality of opportunity, and broad stakeholder understanding and cooperation, or whether they in fact privilege a selected part of the community and labour spectrum while excluding the rest.

The report supports the goal of increasing Indigenous people's, women's, and other marginalized groups' training and employment in major construction projects. There is very little evidence, however, that British Columbia's and Ontario's CBA models are the best means of promoting these goals.

The report concludes with a series of proposals for establishing a truly fair, open, and inclusive CBA regime in Canada. If these principles are adopted by governments, industry, and communities, the concept of community benefits agreements can continue to develop and even flourish in Canada and abroad.

Cardus consulted with a spectrum of stakeholders in preparing this report.

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## INTRODUCTION

“In past weeks, Canada’s economy has begun to reopen. This restart is tentative and faces great uncertainty. Nonetheless, Canada’s governments must now turn to planning for our economic recovery. The recovery plans should focus on laying foundations for Canadian prosperity in decades to come. Well-targeted infrastructure investments should be the centrepiece.”<sup>1</sup>

Community benefits agreements (CBAs) have become an even more important topic and pressing issue given the economic impact of

the COVID-19 pandemic and the interest of governments, industries, workers, and Indigenous and other local communities for quick action to expedite large and small infrastructure projects across Canada as part of major economic efforts.

The purpose of this report is to critically examine the expanding phenomenon of CBAs, primarily in Canada. We seek to assess whether projects following true CBA models, methods, and processes achieve the end of maximizing and balancing supplementary economic and social benefits or outcomes of public infrastructure projects, and whether its costs and benefits are relatively better than other models for doing so.

There is much confusion regarding what CBAs are, their uses, and the benefits they can be expected to yield. There are a variety of CBA-related names given to projects that demonstrate all, some, or few aspects of the concept, each of which is intended to achieve some degree of economic, moral, political, or social legitimacy.

There is a myriad of other methods for delivering social and economic benefits, which are often confused, or at least intermingled, with CBA terminology. Therefore, two initial tasks of this report will be to define CBAs through a broad survey of the literature and distinguish them from their alternatives. From there, this report will move on to an assessment of whether CBAs as currently practiced in Canada lead to the benefits claimed, whether they are effective instruments of public economic and social policy, and ultimately whether Canadians can be confident that their interests are adequately represented in the widespread use of CBAs.

1 C.D. Howe Institute, “Canada’s Recovery Plans Should Focus on Building the Infrastructure of the Future,” *Globe and Mail*, June 23, 2020, <https://www.cdhowe.org/print/8647>.



## PUBLIC-POLICY CONTEXT

“Governments are seeking to maximize infrastructure spending and achieve multiple policy objectives by generating greater social and economic value with the same investment. One way to accomplish this is through community benefits: supplementary social and economic benefits for local communities leveraged by dollars already being spent, usually on major infrastructure and land development projects.”<sup>2</sup>

When governments of all levels seek to expand their economies in what everyone hopes will be a post-pandemic environment, infrastructure and the construction industry that builds it will play a leading role. This has always been the case, whether in the building of Canada’s intercontinental railroad; its postwar proliferation of highways, public sanitation, health care, and educational facilities; and even addressing the 2008 global financial crisis. This time is no different, and the government of Canada has committed to investing over \$180 billion in public infrastructure through its Investing in Canada Infrastructure Program, including a current \$33.5 billion allocation

from the mostly unspent fund.<sup>3</sup> Governments, industry, unions, and local communities are all calling for urgent expenditures on large and small projects as part of the federal government’s economic stimulation and recovery plan. Now more than ever, an expedited and flexible, fair, and transparent procurement process for such projects is a critical, relevant topic.

Infrastructure investments and construction, with the high level of economic activity they generate, always involve the interests of multiple stakeholders. Over the past decade, stakeholders’ interests have become more diverse, resulting in an increased debate about the value of infrastructure in achieving multiple economic and social policy ends, which governments have to juggle:

- Industries desire more consistent, transparent, and streamlined regulatory process for project assessments and approvals.
- Project owners, developers, contractors, and others require clear, fair, and transparent protocol frameworks for maximal productivity.
- Taxpayers want to see value for their dollars spent on public infrastructure projects.
- Local communities want to maximize the community and social benefits that flow from major infrastructure investments.

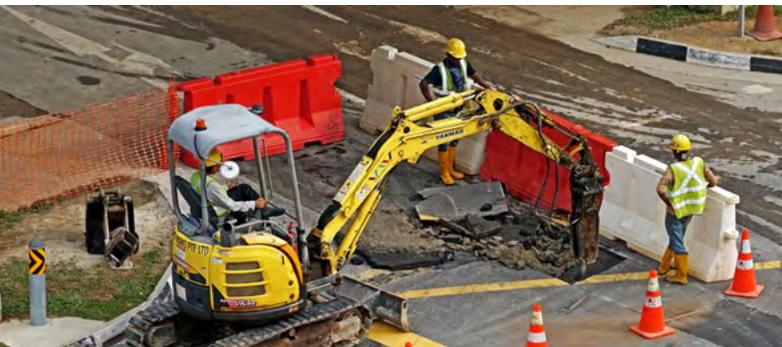
These demands often conflict, generating much political tension and occasionally open disputes. In recent decades, proponents have

2 D. Graser and N. Leanage, “Realizing Social and Economic Objectives through Infrastructure Planning and Investment,” *Evergreen*, May 19, 2017, 6, <https://www.evergreen.ca/downloads/pdfs/2017/CommunityBenefitsReport.pdf>.

3 B. Curry, “Ottawa Seeks ‘Shovel-Ready’ Projects for Post Shutdown Stimulus Plan,” *Globe and Mail*, April 15, 2020, <https://www.theglobeandmail.com/politics/article-mckenna-seeking-shovel-ready-projects-for-post-shutdown-stimulus/>.

promoted community benefits agreements as a means of reconciling the four interests stated above. Increasingly, government at all levels are listening. From its origins in California, the concept has spread to other parts of the United States, and similar social procurement policies have grown in Australia and the United Kingdom. Canada, too, is no stranger to the concept, with several major applications in Ontario and British Columbia. The federal government has announced its commitment to related—though still largely undefined—social procurement principles as well.

All the more reason to define this elusive concept.



## PRECURSORS AND RELATED CONCEPTS

The idea of providing benefits to communities is not new to builders. Construction companies, project owners, and governments provide benefits every day to the communities where they live and work. These extend beyond simply wages and economic spin-offs. Over the years, various models have been used for

providing an array of supplementary benefits, many of which CBAs also wish to deliver. A brief discussion of already in-use models for achieving supplementary social and economic benefits that share some features with CBAs illustrates the issues involved in such variety and places CBAs in their context.<sup>4</sup> In reviewing these related concepts, one can reasonably argue that some of them achieve training and employment benefits for under-represented workforce groups such as Indigenous peoples, women, and others more readily than Canadian CBAs do.

## SOCIAL PROCUREMENT PROGRAMS

Local governments and other public agencies often seek supplier diversity and purchase from suppliers that deliver a social benefit through social procurement programs (SPPs). They often reach out to social enterprises and local or small businesses. These programs are intended to make government procurement more accessible to businesses and populations that would not otherwise be able to compete with larger, established suppliers and vendors in the procurement process.

Prominent examples can be found in Scotland, which introduced its Procurement Reform Act of 2014. It included training and recruitment and made subcontracting opportunities available. It tied training and subcontracting opportunities to its national and local outcomes connected “to employability, skills and tackling inequalities by focusing on under-represented

<sup>4</sup> Some of the classifications included here have been adapted from UCLA Labor Center, “Exploring Targeted Hire: An Assessment of Best Practices in the Construction Industry,” March 2014, <https://www.labor.ucla.edu/wp-content/uploads/2018/06/Exploring-Targeted-Hire.pdf>; and J. Van Ymeren and S. Ditta, “Delivering Benefit: Achieving Community Benefits in Ontario,” Mowat Centre, July 2017, [https://ccednet-rcdec.ca/sites/ccednet-rcdec.ca/files/delivering\\_benefit\\_-\\_achieving\\_community\\_benefits\\_in\\_ontario.pdf](https://ccednet-rcdec.ca/sites/ccednet-rcdec.ca/files/delivering_benefit_-_achieving_community_benefits_in_ontario.pdf).

groups.”<sup>5</sup> Australia has also pursued SPP goals, seeking to leverage public organizations’ buying power. These programs seek to deliver social value beyond that of goods and services being procured, build diversity into the supply chain, and create employment opportunities for under-represented groups and marginalized communities.<sup>6</sup>

In Canada, cities such as Toronto and Vancouver have developed robust social procurement programs and often work closely with networks such as Buy Social Canada. This enterprise “advances and promotes social procurement by bringing socially driven purchasers and social enterprise suppliers together, building business relationships that generate social benefits to communities across the country.”<sup>7</sup> Buy Social Canada cites other examples, such as social procurement through Manitoba Housing and a social-enterprise strategy leading to \$2.23 of social economic value created for \$1.00 invested.

## PROJECT LABOUR AGREEMENTS

Some projects use project labour agreements (PLAs). A PLA is a contract between the owner or project manager of a construction

project and one or more Building Trades Unions, non-Building Trades unions, or non-union employer. The agreements define worksite conditions and protocol for resolving labour disputes, and in doing so prevent strikes or lockouts. Increasingly, PLAs include workforce goals such as employment, training, apprenticeships, and hiring of members of equity-seeking groups. PLA use is widespread throughout Canada.<sup>8</sup>

## IMPACT AND BENEFITS AGREEMENTS

Impact and benefits agreements (IBAs) are most common in industries’ dealings with First Nations. These agreements identify community concerns regarding a project (usually resource or construction project) and seek to address foreseen effects of the project. As Hayes indicates, “IBAs are now a common vehicle for community consultation and approval of projects.”<sup>9</sup> IBAs address such unique realities as Indigenous rights, environment, land title, consultations, constitutional elements, and history, and most recently include the United Nations Declaration on the Recognition of Indigenous Peoples and British Columbia’s related legislation, and the

5 Scottish Parliament, Procurement Reform (Scotland) Act 2014, <http://www.legislation.gov.uk/asp/2014/12/contents>.

6 *Australia Post*, “Unlocking the Value of Social Procurement and Supplier Diversity Leading Practice Insights,” August 2018, [https://auspost.com.au/content/dam/auspost\\_corp/media/documents/social-procurement-white-paper-lr-remediation.pdf](https://auspost.com.au/content/dam/auspost_corp/media/documents/social-procurement-white-paper-lr-remediation.pdf).

7 Buy Social Canada, “A Guide to Social Procurement,” 2018, [https://buy-social-canada.cdn.prismic.io/buy-social-canada%2F47fa7b64-c5f0-4661-9a00-93a936f38dd0\\_bsc\\_socialprocurement\\_screen-opt.pdf](https://buy-social-canada.cdn.prismic.io/buy-social-canada%2F47fa7b64-c5f0-4661-9a00-93a936f38dd0_bsc_socialprocurement_screen-opt.pdf).

8 Examples of major private-sector industrial projects and public-sector infrastructure projects in Canada involving PLAs include Hudson Bay Mining Improvement Project in Flin Flon; Tembec Paper Mill Expansion in Pine Falls; Cop Oil Refinery in Regina; Highway 407 Construction in Ontario; Confederation Bridge project in Prince Edward Island; and multiple other projects undertaken by various provincial hydroelectric authorities and the Vancouver Island Highway.

9 L. Hayes, “The 5 W’s of Impact Benefit Agreements,” Nelligan Law, February 26, 2015, <https://nelliganlaw.ca/article/indigenous-law/the-five-ws-of-impact-benefit-agreements/>.

Truth and Reconciliation Commission Report and Actions.<sup>10</sup> In the case of adverse project effects, these agreements make provisions for compensating the community through cash, employment, business, land, or in other ways. They bridge the competing interests of the community and those of the project.

IBAs are also known by a few other names, such as participation agreements, benefits agreements, and benefits sharing agreements, to name a few. These agreements frame the terms under which resources are extracted and associated construction occurs on Indigenous lands.<sup>11</sup> Resource and construction companies use IBAs extensively in their dealings with First Nations in Canada. Current examples of projects involving IBAs include the Coastal GasLink Pipeline, Pacific Trails Pipelines, and Trans Mountain Pipeline. Many Indigenous communities across Canada are now looking beyond IBAs to take more of an ownership and equity stake in major projects in or near their traditional territories.

## TARGETED TRAINING MEASURES

In the absence of formal mechanisms for maximizing community benefits, other public-policy measures can achieve specific types of benefits. For example, many jurisdictions, including British Columbia and Manitoba, have requirements or guidelines for hiring and training apprentices on public projects. The

BC government has had formal guidelines regarding apprenticeship provisions since July 2015 on all new major infrastructure projects that are valued at over \$15 million. The rules require contractors and subcontractors to engage in apprenticeship training and to use apprentices on the work site.<sup>12</sup> Each prime contractor must use, and ensure its subcontractors use, registered apprentices for contracts valued at more than \$500,000. This is applicable to work in any of the fifty-seven BC Red Seal trades. The guidelines apply to all provincial ministries, health authorities, school boards, public post-secondary educational institutions, and BC Hydro. In Manitoba, the Apprenticeship Employment Opportunities Act (Public Works Contracts) requires that contractors (and subcontractors) employ apprentices on all public-works contracts valued at \$100,000 or more. However, to its credit, the Manitoba government repealed this legislation shortly before (May 20, 2021) this report was finalized. Now, in response to concerns about restrictive procurement, the Apprenticeship Manitoba website states: “In order to bid on a public works contract, contractors no longer need to demonstrate involvement with the apprenticeship system. This legislative change will significantly reduce red tape for contractors who bid on government contracts.”<sup>13</sup>

While each of the above-described models and measures can achieve supplementary economic and social benefits through completion (and

10 SHK Law, “First Nations Consultation and Impact Benefit Agreements,” April 2017, <https://www.shk.ca/first-nations-consultation-impact-benefit-agreements/>.

11 G. Gibson and C. O’Faircheallaigh, “IBA Community Toolkit: Negotiation and Implementation of Impact and Benefit Agreements,” Gordon Foundation, 2015, <https://gordonfoundation.ca/resource/iba-community-toolkit/>.

12 Government of British Columbia, “Apprentices on Public Projects in British Columbia: Policy and Procedure Guidelines,” <https://www2.gov.bc.ca/gov/content/industry/construction-industry/apprentices>.

13 Government of Manitoba, “The Apprenticeship Employment Opportunities Act (Public Works Contracts),” <https://www.gov.mb.ca/wd/apprenticeship/>.

after) of major projects in Canada, it would be a mistake to conclude that each one is equally beneficial. This conclusion would require a systematic consideration of stated objectives and an examination of the practical implementations in relation to their results.



## DEFINING COMMUNITY BENEFITS AGREEMENTS

While the term “community benefits agreement” has been applied to the broadest range of infrastructure and urban-development projects, there is actually no one comprehensive definition of the concept. Instead, the term is now applied almost universally to any project that its owners and developers desire to endow with redeeming social virtue.

Any definition of CBAs will include references to community activism and social justice.

Indeed, the rapid expansion of CBA-type projects in the United States was championed by local community-driven, bottom-up coalitions in each case, some supported by national groups such as the National Community Reinvestment Coalition, the Partnership for Working Families, and the Los Angeles Alliance for a New Economy, among others.

At their most basic, CBAs are legal agreements. Andrew Galley describes CBAs as binding contracts composed of the following elements:

- A description of the parties involved;
- A description of the project affected by the agreement;
- A list of the agreed-on commitments on the part of the developer; and
- In the US, a clause pledging the coalition to not oppose (and generally to actively support) the completion of the project.<sup>14</sup>

Edward (Ted) De Barbieri points to the broader social context, seeing CBAs as tied to broader social movements such as living-wage campaigns, affordable-housing campaigns, local hiring, and social-justice organizing. Also, successful CBAs can solve difficult land-use issues—averting going to court—and provide developers a means for obtaining community support.<sup>15</sup>

Like Galley, De Barbieri emphasizes the legal aspects of CBAs, viewing the agreement as a legal contract between a developer (with involvement sometimes from a local

14 A. Galley, “Community Benefits Agreements,” Mowat Centre and Atkinson Foundation, The Prosperous Province, Strategies for Building Community Wealth Research Series, 2015, <http://communitybenefitsagreements.ca>.

15 E. De Barbieri, “The Benefits of Community Benefits Agreements: Interview with Ted De Barbieri,” Scholastica, September 14, 2016, <https://blog.scholasticahq.com/post/benefits-of-community-benefits-agreements/>.

government) and a coalition of community organizations that can be legally enforced and that usually involves a disadvantaged or impoverished neighbourhood. Typically, the developer agrees to certain community benefits in return for the broader community's support of the project, often in situations in which such community support would not otherwise occur. Often, CBAs have involved organized labour as part of the broad community coalition, but this is not a requirement for all CBAs.<sup>16</sup>

Such agreements usually focus on workforce benefits (i.e., training, apprenticeship, and employment particularly for members of equity-seeking groups and other disadvantaged populations); supplier diversity particularly focused on local, small businesses and social enterprises; and community improvements or legacies.

Galley also emphasizes the social-justice and community-prosperity elements, with CBAs as a strategic tool used in the process of building community wealth. He defines CBAs as “formal agreements between a real estate or infrastructure developer and a coalition that reflects and represents people who are affected by a large development project. The agreement outlines the benefits the community will enjoy from the project. These benefits usually include some combination of jobs, training or apprenticeships, business opportunities as well

as neighbourhood improvements. Where the development includes residential construction, affordable housing can be a benefit negotiated through this process. Most agreements reflect the interests of people who are not already benefiting from economic growth, such as young workers, newcomers, foreign-trained professionals and low-income communities, and send opportunities their way.”<sup>17</sup>

This process does not occur spontaneously, Galley asserts, and would be unachievable without careful pre-agreement planning. The key phases of the CBA cycle are negotiation and coalition formation, development of a platform for negotiation, implementation planning, and focusing on outcomes and enforcement.<sup>18</sup>

Perhaps Canada's most prolific author and CBA proponent is Toronto urban planning consultant Dina Graser, who has done much useful work in defining and promoting CBAs. In Graser's words, “Community benefits' means additional physical, social and economic benefits for the local community that are leveraged by dollars already being spent on major infrastructure and land development projects. A CBA is a legally binding and enforceable contract that sets forth specific community benefits for an infrastructure or development project, which benefits have been defined through an inclusive community engagement process.”<sup>19</sup>

16 E. De Barbieri, “Do Community Benefits Agreements Benefit Communities?,” Brooklyn Law School, Brooklyn Works, 2016, <https://brooklynworks.brooklaw.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1524&context=faculty>; J. Gross, “Community Benefits Agreements: Definitions, Values and Legal Enforceability,” 2007, [https://www.juliangross.net/docs/CBA\\_Definitions\\_Values\\_Enforceability.pdf](https://www.juliangross.net/docs/CBA_Definitions_Values_Enforceability.pdf); D. Graser, “Community Benefits in Practice and in Policy: Lessons from the United States and the United Kingdom,” Atkinson Foundation, 2016, [https://atkinsonfoundation.ca/site/uploads/2018/02/atkinson\\_cbreport\\_fa.pdf](https://atkinsonfoundation.ca/site/uploads/2018/02/atkinson_cbreport_fa.pdf).

17 Galley, “Community Benefits Agreements.”

18 Galley, “Community Benefits Agreements.”

19 D. Graser, “Community Benefits and Tower Renewal,” Atkinson Foundation and Evergreen, 2016, [https://www.evergreen.ca/downloads/pdfs/HousingActionLab/TowerRenewal\\_Report\\_FINAL.pdf](https://www.evergreen.ca/downloads/pdfs/HousingActionLab/TowerRenewal_Report_FINAL.pdf).

CBAs maintain a heavy emphasis on the benefits these agreements confer on the communities where they originate. Graser has organized them into four categories:

- *Employment and training*, including “first-source” hiring of local members of equity-seeking groups, often with targets of 10 percent to 25 percent, and apprenticeship training and trades-worker employment targets. Jobs and training may also relate to so-called PAT (professional, administrative, technical) occupational categories.
- *Supplier diversity*, through social procurement targeted at certain business demographic groups, particularly small businesses and owners of businesses and the self-employed who are members of equity-seeking groups.
- *Economic development*, through supporting and creating social enterprises and developing other local economic development initiatives.
- *Community improvements*, such as affordable housing, recreational, and daycare, often in disadvantaged communities affected by the development project.<sup>20</sup>

Furthermore, CBAs can occur in multiple contexts. Graser differentiates three kinds of CBAs:

- *Private CBAs*: Legal agreements between developers and community groups or coalitions;

- *Public CBAs*: Contracts signed between a government or government agency and a community group, where government is acting as the developer or infrastructure builder, or between a government entity and the developer or contractor without a community group being a party to it; and
- *Hybrid CBAs*: Multi-party agreements with developers, governments, and one or more community signatories.<sup>21</sup>

Another way of categorizing CBAs is by their origin or impetus. The Atkinson Foundation points to three possible means of reflecting the CBA concept:

- *A bottom-up approach*, through community-organizing coalitions in the United States, such as:
  - The Kingsbridge National Ice Center in New York City, in which the local hiring target was 25 percent local residents who were formerly incarcerated, unemployed, or underemployed and working at living wage<sup>22</sup>;
  - The City of Oakland’s agreement with the East Bay Alliance for Sustainable Economy, for the redevelopment of an Oakland army base. Almost 50 percent of workers on the project were local, and one-quarter of the hours went to disadvantaged workers. The supporting “Good Jobs Policy” was

20 Graser, “Community Benefits and Tower Renewal.”

21 Graser, “Community Benefits and Tower Renewal.”

22 De Barbieri pointed out that the key benefit of this project is qualitative—public participation—and he concluded, “The inclusion of a community coalition in the decision-making about the allocation of economic benefits among community stakeholders is very powerful.” E. De Barbieri, “Community Benefits Agreements and New York Communities.” Albany Law School Research Paper No. 5 for 2018–2019, 2017, 8, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3028689](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3028689).

expected to lead to 3,000 living-wage jobs.<sup>23</sup> The same project's apprentice hours of 50 percent of total hours also exceeded the target of 25 percent<sup>24</sup>;

- In Canada and the United States, the Gordie Howe International Bridge Project, which is part of a comprehensive agreement between the communities and stakeholders in the Windsor-Detroit region, with an impressive amount of engagement and planning for a workforce development and participation strategy.<sup>25</sup>
- *A top-down approach*, with initial impetus coming from leaders in governments and foundations, as in the UK, such as:
  - The Scottish government's use of community benefits "clauses"; according to evaluations its contributions to short-term outcomes and national outcomes are mixed<sup>26</sup>;
  - A Welsh example cited by Community Benefits Ontario, in which the Welsh government reported that the Wales Community Benefits Guidance helped 562 disadvantaged people find employment

(with over 15,640 weeks of training) in 2014<sup>27</sup>;

- Manitoba's public procurement, social-housing procurement, and apprenticeship requirements on public projects.<sup>28</sup> One could also argue that British Columbia's CBA model is a top-down approach driven by government, which has created a crown corporation to manage the project labour agreements;
- *A hybrid approach*, in which municipal and regional or provincial governments provide policy leadership, such as what has emerged in Ontario and in the City of Toronto in particular.<sup>29</sup>

Defining community benefits agreements, therefore, can be complex. To further complicate the process, they often appropriate elements of what this report has called CBA precursors and competitors: social procurement programs, project labour agreements, impact and benefits agreements, and targeted training measures. Nevertheless, it is worth attempting a normative definition of what distinguishes CBAs from other agreements.

23 Partnership for Working Families, "Paving the Path to Opportunity: How to Revive Oakland Innovated a New Model for Inclusive Development," <https://www.forworkingfamilies.org/sites/default/files/publications/Revive%20Oakland%202015.pdf>.

24 Graser, "Community Benefits and Tower Renewal."

25 Windsor-Detroit Bridge Authority, "Gordie Howe International Bridge: Community Benefits Plan," June 2019, [https://www.gordiehoweinternationalbridge.com/u/files/Meetings/Community%20Benefits%20Announcement%20-%20June%202019/Community%20Benefits%20Public%20Report%20\(2019-06-12\)%20FINAL%20Electronic.pdf](https://www.gordiehoweinternationalbridge.com/u/files/Meetings/Community%20Benefits%20Announcement%20-%20June%202019/Community%20Benefits%20Public%20Report%20(2019-06-12)%20FINAL%20Electronic.pdf).

26 Graser, "Community Benefits and Tower Renewal."

27 Community Benefits Ontario, "Boldly Progressive, Fiscally Balanced: A Community Benefits Policy Framework for Ontario," March 2017, [https://theonn.ca/wp-content/uploads/2017/04/Community-Benefits-Policy-Framework\\_03-13-17.pdf](https://theonn.ca/wp-content/uploads/2017/04/Community-Benefits-Policy-Framework_03-13-17.pdf).

28 Government of Manitoba, "The Apprenticeship Employment Opportunities Act."

29 Atkinson Foundation, "Making Community Benefits a Reality in Ontario," Atkinson Foundation, 2016, [https://atkinsonfoundation.ca/site/uploads/2018/02/Atkinson\\_CBSummary\\_FA-1-2.pdf](https://atkinsonfoundation.ca/site/uploads/2018/02/Atkinson_CBSummary_FA-1-2.pdf).

From the research done for this report, there are eight key elements that define CBAs:

- A formal, legally binding agreement between a developer and/or government entity and some type of a community coalition or collective of community groups;
- Commitment that the project provide particular community benefits in return for community support of the project;
- Emphasis on inclusion, equity, and social justice;
- Commitment to community consultation and consensus, with the key being the endorsement and participation of the local communities;
- A legacy of incremental (to the major project) community benefits, including capacity-building and community amenities;
- Commitment to training (often apprenticeship) and employment (often trades), particularly among local disadvantaged and underrepresented workers;
- Commitment to facilitating business for local small businesses, entrepreneurs, and social enterprises; and

Some arrangement for the provision of labour.

In fact, each of these elements is sometimes, but not always, present in what have come to be called CBAs in Canada. In some cases, it is reasonable to ask whether the agreement is really a CBA at all.



## STAKEHOLDERS

A core assumption of CBA advocates is that the process, if properly conducted, can bring together the multiple, divergent, and often diverse and conflicting interests and responsibilities of stakeholders to produce a result that is broadly agreeable to all. How these interests are integrated is largely dependent on the skill and commitment of the various parties to the negotiations. At best, the multiple parties can achieve mutual agreement by compromise and goodwill. At worst, some stakeholders can come to see CBA provisions as merely “the cost of doing business,” an extra cost to be passed on to the contractor supply chain and ultimately to the public.

This section surveys typical stakeholders involved in CBAs and their interests and possible motives for entering into this complex relationship.



## GOVERNMENTS

It is axiomatic that governments are key builders of infrastructure. They typically fund projects, participate in their design, oversee progress, and ultimately are judged by their constituencies on their success or failure. Done effectively and efficiently, the benefits of CBAs can be huge, including increased economic activity and a wide variety of positive social outcomes.<sup>30</sup> The benefits can enhance the lives of individuals and add to the accomplishments of those in elected office. The amounts of money are huge—for instance, the Canadian government has committed to providing more than \$187 billion in infrastructure funding over twelve years (2016–28) in its Investing in Canada plan, including through bilateral agreements with the provinces and territories. Infrastructure Canada is the government agency responsible for coordinating the Investing in Canada plan and reporting on the results. The investments made through the plan will be delivered by fourteen federal departments and agencies.<sup>31</sup>

Yet there is always a balance to be struck between the positive benefits of infrastructure investment

and the inconvenience and costs that such projects often produce. Here, too, governments are not without tools for accommodation, remediation, and consultation. That is why proponents see governments as prime players and CBAs as potent tools for achieving success. Jamie Van Ymeren and Sara Ditta state that CBAs provide governments “with a strong tool to better address the needs of constituents . . . address community concerns that emerge from the inconvenience of construction projects . . . and find balance between prescriptive requirements and flexible approaches.”<sup>32</sup> In other words, balance is a key ingredient of successful CBAs.

Provincial and federal governments are heavily involved in approving public infrastructure projects, including acting as key sources of investment and financial incentives for major projects. Cities and municipalities have also played an increased role in the approval of major development and infrastructure projects. Thus, governments at all levels are involved in CBAs or community benefits arrangements.

The government of Canada has recently entered the CBA landscape with its guidance on community employment benefits (CEB) and seeks agreements with provinces and territories adhering to its social procurement principles. The governments of British Columbia and Ontario also invest in public infrastructure involving CBAs and arrangements for community benefits. The BC government has its own type of community benefits arrangement, and Ontario is involved through consultation on a CBA framework and a series

30 Graser and Leanage, “Realizing Social and Economic Objectives through Infrastructure Planning and Investment.”

31 G. Gosselin and E. Preville, “Overview of Canada’s Long-Term Infrastructure Plan,” Library of Parliament, Publication No. 2019-38-E, 2019, [https://lop.parl.ca/sites/PublicWebsite/default/en\\_CA/ResearchPublications/201938E](https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/201938E).

32 Van Ymeren and Ditta. “Delivering Benefit.”

of pilot projects resulting from its legislation and its 2017 Long-Term Infrastructure Plan.<sup>33</sup>

In some instances, governments ally with private entrepreneurs in public-private partnerships. In these arrangements, private investors have an important role to play, and any development of social benefits objectives needs to account for private investors such as financial arms of contractors, pension funds, trusts, and banks.

## DEVELOPERS

Developers play a key role in translating the broader aims of government into actual projects. They are bound by extensive legal requirements and have a strong interest in getting projects done on time and on budget. For the sake of good relations, deadlines, and efficiency, developers are interested in negotiating CBAs with community coalitions to obtain community support for a development proposal. They seek to avert local resident opposition. As Galley indicates, developers, as businesspeople responsible for the health of investors and their workers, have a strong focus on cost control and value for money. They aim to successfully implement projects quickly and efficiently while delivering the best quality they can.<sup>34</sup>

CBA advocates contend that the CBA approach improves the development process for the community, developers, and local officials by creating an overall win-win-win scenario. It averts conflict, De Barbieri adds, as “successful CBAs can solve challenging land use issues before reaching the point where parties need to go to court. CBAs provide developers

with community support or at least non-opposition and provide community groups with economic benefits that make the economic development acceptable.”<sup>35</sup>

Many North American cities welcome development projects in their jurisdictions and have adopted policies that enable concessions and tax deferrals, to attract investment and developers who commit to delivering community benefits in their projects.

## CONTRACTORS AND OTHER INDUSTRY ORGANIZATIONS

Nothing gets built without the builders. Contractors and their subcontractors play a central role in the construction of development and infrastructure projects. Their responsibilities encompass everything from project design, financing, and timely delivery, to labour, worker safety, and community relations. Ideally, they want to make a profit as well. Thus it is strongly in their interest to have legal clarity, solid funding, and a realistic appreciation of what they call “non-technical risks” (threats to the projects that are often political and community-related) and appropriate mitigation strategies. Therefore, it can be in their interest to enter into CBAs.

Typically, contractors have some key concerns regarding CBAs’ application. Businesses are successful when they apply their unique business practices, including labour models, scheduling, and financing to the project. They worry that CBA requirements can force them to institute practices that run contrary to their

33 Government of Ontario, Infrastructure for Jobs and Prosperity Act, 2015, <https://www.ontario.ca/laws/statute/15i15>.

34 Galley, “Community Benefits Agreements.”

35 De Barbieri, “The Benefits of Community Benefits Agreements.”

efficiency models for success and impose costs that often push them outside the circles of competitiveness. Similarly, they worry about CBA practices that disrupt their supplies of qualified labour, impair supply chains, make the tendering and bidding process more rigid and complex and less open and accountable, and make their administrative processes significantly more costly.<sup>36</sup>

## COMMUNITIES AND COMMUNITY ORGANIZATIONS

The Partnership for Working Families asserts that CBAs are predicated on the principle that “economic decision-making should be inclusive and open, and that economic development strategies should create opportunities for workers and build a stronger middle class.”<sup>37</sup> Proponents of CBAs maintain that such a policy approach provides communities with a voice at the table, to influence project targets from the beginning and to ensure accountability and transparency as well as enforcement and compliance.<sup>38</sup>

Starting from CBAs’ inception in the United States, community-based organizations have pushed for a CBA process because they see it as a tool for addressing inequality and changing the



balance of power in development decisions.<sup>39</sup> The Community Benefits Coalition of British Columbia claims that CBAs “help ensure public projects are completed on time and on budget and offer benefits to the communities in which they are built; . . . CBAs ensure tax dollars are reinvested in local communities and that there is a lasting legacy.”<sup>40</sup>

In some jurisdictions, interested groups are beginning to develop semi-formal organizations to advance their agendas. For example, the Toronto Community Benefits Network has become an active player in advancing the interests of community groups and special-interest groups in the context of the City of Toronto’s CBA projects. Community organizations have a role in CBAs that include developing and maintaining liaisons with community members, developers, and government(s); negotiating binding terms of the agreement;

36 See Progressive Contractors Association, “Policy Brief: Reducing Red Tape and Maximizing the Value of Ontario’s Infrastructure Investments”; Progressive Contractors Association, “Fake CBAs,” <http://moneywellwasted.ca/fake-cba/>; BC Construction Association, “Industry Policy Statements,” <https://www.bccassn.com/about-us/policy-statements/industry-policy-statements> (see “4.19: Community Benefits Agreements”); J. Snyder, “Industry Groups Call on Ottawa to Loosen Social and Financial Requirements in \$187 Billion Infrastructure Plans,” *National Post*, May 4, 2020, <https://nationalpost.com/news/we-need-to-broaden-the-menu-industry-groups-call-on-ottawa-to-loosen-social-and-financial-requirements-in-187b-infrastructure-plans>; Ontario Sewer and Watermain Construction Association, “A Workable Social Procurement Program Model for Construction.”

37 Partnership for Working Families, “Community Benefits 101,” <https://www.forworkingfamilies.org/page/community-benefits-101>.

38 Van Ymeren and Ditta, “Delivering Benefit.”

39 Toronto Community Benefits Network, <http://www.communitybenefits.ca>.

40 Community Benefits Coalition of BC, “Community Benefits Coalition of BC,” <http://letsbuildbc.ca/>.

articulating objectives, targets, timelines, and key indicators; requesting dispute resolution processes; monitoring implementation of the agreement; and advocating for and participating in the evaluation of the agreement.<sup>41</sup>

## **WORKERS: ORGANIZED LABOUR AND OTHER UNIONS**

Trade unions in North America have also played a significant role in CBAs through involvement in community coalitions and often being parties to union-only project labour agreements, usually led by Building Trades Unions (BTUs). The BTU involvement increases union membership, provides jobs for their members, and helps promote apprenticeship and trades training. It also appeals to unions' often-stated social-justice and human-rights goals.

The then executive director of the BC Building Trades Council recently pointed to some of the key motives for CBAs from trade unions' perspectives: "CBAs prioritize jobs for local residents and ensure employment opportunities for apprentices, Indigenous workers and women, and provide union wages and benefits. CBAs can play a role in economic recovery through training new and displaced workers and providing them with the skills they need to access family-supporting jobs."<sup>42</sup>

Calling for expansion of infrastructure construction jobs through British Columbia's CBA projects, Cochrane, Canta, and Malhotra

claim that this policy will enable more "local, Indigenous, disabled and women workers to get significant job opportunities including apprenticeship and training that will last a career."<sup>43</sup>

While unions' early influence and involvement in CBAs is undeniable, it can also be problematic, for reasons addressed below.

## **FIRST NATIONS AND OTHER INDIGENOUS ORGANIZATIONS**

First Nations and other Indigenous organizations are increasingly active in economic and business development, pursuing more training and more employment for their members. This includes various agreements with companies as well as with all levels of governments.

As noted earlier, First Nations have long made use of IBAs, which are closest in many ways to the CBA concept. These agreements are key to framing the terms under which resources are extracted and associated construction occurs on Indigenous lands. IBAs also address jobs and training for their communities, often in a substantial way. First Nations governments are also increasingly interested in owning or having a share of project capital. They are pursuing greater numbers of joint-venture agreements, co-ownership, and Indigenous ownership, as well as development of Indigenous businesses and economic development corporations. The

41 A. Yalnizyan, "Community Benefits Agreements: Empowering Communities to Maximize Returns on Public Infrastructure Investments," Ottawa: IFSD-IFPD, University of Ottawa, 2017, <https://ccednet-rcdec.ca/en/toolbox/community-benefits-agreements-empowering-communities>.

42 BC Building Trades, "Support for Community Benefits Agreements Increasing as British Columbians Consider Program's Role in Economic Recovery," June 1, 2020, <https://bcbuildingtrades.org/support-for-community-benefits-agreements-increasing-as-british-columbians-consider-the-programs-role-in-helping-b-c-recover-from-covid-19/>.

43 B. Cochrane, W. Canta, and N. Malhotra. "Expanding Infrastructure Construction Jobs Can Help Restart BC Economy," *Vancouver Sun*, April 3, 2020, <https://www.iuoe115.ca/wordpress/wp-content/uploads/2020/04/IUOE-NEWS-Local-115-Spring-2020.pdf>.

employment of their members is also a priority for such communities in these arrangements and in broader society.

Since some community benefits arrangements include facilitating the employment, training, and business development of Indigenous people, First Nations have an interest in testing how these arrangements work for their members relative to other options. In British Columbia, for example, there are quite successful non-CBA models (IBAs, PLAs, etc.) in place on various major projects that are successfully advancing the training, employment, and career opportunities of Indigenous peoples.

## EQUITY-SEEKING GROUPS

Recent years have seen an increase in the involvement of equity-seeking groups, including LGBTQ2+ persons, members of ethnic-minority groups, persons with disabilities, women, and other persons considered disadvantaged, particularly those in the vicinity of projects. Negotiations typically involve a portion of the positions and/or hours worked on projects. The same applies to owners of supply businesses and members of social enterprises. Representatives of these populations are members of CBA community coalitions and have a strong interest in advocating for employment, training, supplier, and other benefits during the construction and operation of projects.

Inside and outside of CBA agreements, employers across jurisdictions are increasingly mindful of this movement that so far has come to include gender, ethnicity, race, religion, disability, age, sexual orientation, education, and national origin. Organizations are

increasingly undertaking gender-based analysis (GBA+) to assess how to recruit, employ, and support members of diverse groups in major projects.<sup>44</sup> These goals are clearly being met by various procurement and project models outside of traditional CBAs.

## GENERAL PUBLIC

Although not a direct participant, the general public also has an interest in how projects are built and in the direct and indirect benefits that result from them. They also judge whether the governments that build them are doing a good job and deserve to be re-elected. Public opinion can change, however, and sometimes it is not particularly well-informed—especially when complex infrastructure projects often take years to complete, are incremental, and involve highly complex and esoteric process-engineering and labour calculations.

This phenomenon can be observed in British Columbia, where construction stakeholders' views have sharply diverged from the BC provincial government's recent CBA framework. At issue are provisions that impose, for major infrastructure projects, a monopoly on labour for selected BTUs, organized under the BC Infrastructure Benefits, Inc.

Between 2018 and 2020, various stakeholders conducted opinion polls on the issue. The results indicate the public's support for essentially contradictory propositions, depending on how the questions are framed. In March 2018, the Progressive Contractors Association of Canada had Mainstreet Research conduct a survey of 1,511 British Columbians. It found that 77 percent of respondents do not support work restrictions on projects through

44 Women and Gender Equality Canada, "Gender-Based Analysis Plus," <https://cfc-swc.gc.ca/gba-acis/index-en.html>.

narrow labour mechanisms such as project labour agreements.<sup>45</sup> In June 2020, Merit Canada and the Independent Contractors and Businesses Association of BC conducted a survey of Canadians. Asked if “all construction companies” should be given a “fair chance to bid on this [public infrastructure projects] taxpayer-funded work, not just those with unionized employees,” 83 percent of British Columbians strongly or moderately agreed.<sup>46</sup> In August 2018, a survey of British Columbians by Research Co. on behalf of the BC Building Trades Council found that 70 percent of British Columbians surveyed strongly or moderately supported building publicly funded projects with community benefits agreements, while 16 percent opposed.<sup>47</sup>

A telling statistic points to the main reason for the divergence. In the 2018 Mainstreet Research poll, only about a quarter of the respondents (4 percent were very familiar and 22 percent were moderately familiar) knew what community benefits agreements are.<sup>48</sup>

## SUMMARY

Overall, there are varied and strong views held in favour of and against CBAs in Canada. One should not be surprised that they tend to fall along ideological lines (e.g., non-union employers versus trade unions), given that the goals and animus of CBAs can be largely political. Some governments, community

advocates, organized labour, and advocates of equity-seeking groups are favourable to CBAs, while most industry and business groups, progressive unions, and some governments—though favourable to social and economic progress for the less affluent—are opposed. Less ideologically motivated groups such as Indigenous organizations and the general public show a tendency to support community benefits, but not necessarily through CBAs per se.



45 Progressive Contractors Association of Canada, “Survey of British Columbians’ Attitudes on Infrastructure Spending, Union Affiliation and Project Labour Agreements,” April 4, 2018, <http://www.pcac.ca/wp-content/uploads/2018/04/mainstreet-bc-pca-apr4-002.pdf>.

46 J. Bateman, “Poll Shows Overwhelming Support for Fair Bidding in BC,” June 11, 2020, <https://www.icbaindependent.ca/2020/06/11/news-release-poll-shows-overwhelming-support-for-fair-bidding-in-b-c/>.

47 M. Canseco, “More British Columbians Support Community Benefits Agreements,” Research Co., August 9, 2018, <https://researchco.ca/2020/06/01/cba-btc/>.

48 Canseco, “More British Columbians Support Community Benefits Agreements.”



## CRITICAL SUCCESS FACTORS

The CBA literature is rich in discussion of what constitutes success for these innovative arrangements. Most often, success is discussed in the context of evaluating existing agreements and proposing terms for future ones. While exponents are typically enthusiastic about their potential, these success factors also foreshadow a potential weakness: they must be measured effectively in order to determine whether they have been met. Nonetheless, these success factors are tantalizing indications of what CBAs, done right, could be and do. A number of broad themes can be identified in the literature:

- Flexibility in how contractors achieve the desired benefits;
- Thoughtful and meaningfully inclusive community engagement;

- Predictability in the procurement process, including fair and transparent bidding criteria and processes;
- Adoption of best or effective practices in procurement by types of industry and business offers effective tools and means for conflict resolution;
- Commitment to firm and reasonable targets and the willingness to enforce them;
- Development of linkages to labour-market pathways and workforce capacity-building that include post-project opportunities; and
- Establishment of clear and measurable targets for monitoring and evaluation.

As part of the research for this paper, Cardus consulted with industry stakeholders. In general, these informed individuals were articulate about the success factors that CBAs require. By and large, they were positive about their potential, some in the form of the status quo and others in the hope for improvements in the model. Some focused on critical success factors relating to having good data; following a fair, open, and competitive procurement process; substantive community engagement; hard targets; and commitments that provide flexibility in how they are reached.

The key success factors and best practices for effective CBAs that practitioners and researchers have identified are examined in more detail below.

## ACCOUNTABILITY

CBAs must have reasonable and measurable targets known to all parties. It is not enough to settle for “aspirational” targets, as no one

will know whether they have been achieved. Instead, there must be “hard” targets. Results must be determined through a clear monitoring and evaluation framework and standardized reporting. Project managers must have enforcement and compliance procedures and the resources to ensure parties keep their commitments.<sup>49</sup>

## CLARITY

Agreement language and provisions must be clear and predictable to all parties.<sup>50</sup> There should be no doubt as to what will constitute success in outputs, outcomes, and impact. Further, all parties and stakeholders must have their roles and responsibilities well defined and agree to them.

## COMMUNITY INVOLVEMENT

Robust community engagement is essential. This must be undertaken early, and careful thought must be given to ensuring consultations are inclusive and accessible. Existing broad and credible community coalitions are essential for encouraging community buy-in. These need to include communities of marginalized populations and workforce groups.<sup>51</sup>



## CLEAR REQUIREMENTS ON DEVELOPERS AND CONTRACTORS

Effective CBAs must balance the often-competing demands on developers and contractors. They must provide clear expectations and requirements to developers and contractors during the procurement process and early in the CBA implementation.<sup>52</sup>

## PARTICIPATION AND ENTERPRISE CAPACITY

CBAs must support broad participation and capacity-building for a wide range of CBA suppliers, small businesses, and social enterprises.<sup>53</sup>

## IMPLEMENTATION

Projects must have realistic implementation planning and guidelines. Maximization of social benefits is a key goal, and strategies to achieve them must be flexible and adaptable as circumstances change.<sup>54</sup>

49 Van Ymeren and Ditta, “Delivering Benefit”; Graser, “Community Benefits in Practice and in Policy”; D. Graser et al., “Community Benefits in York Region Research Report,” May 2018, <https://www.york.ca/wps/wcm/connect/yorkpublic/48f94261-5428-4b3c-812c-5fbeccd2e543/CBA-Research-Report.pdf?MOD=AJPERES&CVID=mLVV2V7>.

50 Van Ymeren and Ditta, “Delivering Benefit.”

51 Graser et al., “Community Benefits in York Region Research Report”; Yalnizyan, “Community Benefits Agreements”; Galley, “Community Benefit Agreements.”

52 Galley, “Community Benefit Agreements”; Christian Labour Association of Canada, “Community Benefits in Canada, Ontario and Other Jurisdictions,” <https://www2.clac.ca/PDF/Community%20Benefits%20in%20Canada,%20Ontario,%20and%20Other%20Jurisdictions.PDF>.

53 Graser, “Community Benefits and Tower Renewal.”

54 Graser, “Community Benefits and Tower Renewal”; Christian Labour Association of Canada, “Promoting Apprenticeship through Procurement”; Hamilton Community Benefits Network, “Hamilton Community Benefits Network: Building Capacity Through Building Communities,” <https://hcbn.weebly.com>.

## SEEK LONGER-TERM RESULTS

Tangible social, professional, and training benefits take time to achieve. CBA outputs must thus account for and track them. This includes not only training and development or short-term jobs but also long-term careers and expansion of businesses. Where relevant, this monitoring should extend beyond the construction phase and into the project's longer-term operations.<sup>55</sup>

## REALISTIC PROCUREMENT PROCESS

Procurement and policy guidelines must be clear, accessible, and not unduly onerous—thus promoting involvement for all sizes of businesses. Performance requirements must be clear and predictable. The procurement process must be fair, open, and transparent. The prescribed social-benefits targets must be realistic and achievable.<sup>56</sup>

## ALIGNMENT WITH GOVERNMENTS' PUBLIC-POLICY OBJECTIVES

CBAs will not succeed unless they align with the public-policy objectives and priorities of

relevant government partners that, ideally, will include multi-level support. This means not just “institutional” support but also buy-in from political and senior-level leadership. It must promote internal champions within government and allow the staff capacity for project support. The end result must be the integration of CBA goals into high-level government strategic planning, particularly at the municipal level.<sup>57</sup>

## ALLOCATE SUFFICIENT RESOURCES FOR IMPLEMENTATION AND CAPACITY-BUILDING

Sufficient planning and resource allocation must be made for all aspects of the CBA project: training and administration, supplier development, community engagement, relationship building with CBA parties and stakeholders, and monitoring and compliance.<sup>58</sup>

## PROMOTE AND SUSTAIN TRUST

CBAs will not succeed without sustained trust, which requires intentional strategies and careful monitoring. This applies to all CBA parties but especially to the relationships between

55 Hamilton Community Benefits Network, “Hamilton Community Benefits Network”; Van Ymeren and Ditta, “Delivering Benefit.”

56 Van Ymeren and Ditta, “Delivering Benefit”; Progressive Contractors Association of Canada, “Policy Brief: Reducing Red Tape and Maximizing the Value of Ontario’s Infrastructure Investments”; Graser, “Community Benefits and Tower Renewal”; Graser and Leange, “Realizing Social and Economic Objectives”; Graser et al., “Community Benefits in York Region Research Report”; D. Graser et al., “Community Benefits in York Region Working Framework,” January 2019, <https://www.york.ca/wps/wcm/connect/yorkpublic/4053640a-dc50-4b44-9d31-30f95e34ce66/CBA-Framework-with-Presentation.pdf?MOD=AJPERES&CVID=mLVV4hL>.

57 Graser and Leange, “Realizing Social and Economic Objectives”; Graser, “Community Benefits and Tower Renewal”; Van Ymeren and Ditta, “Delivering Benefit”; Graser et al., “Community Benefits in York Region Working Framework”; Christian Labour Association of Canada, Promoting Apprenticeship through Procurement”; Graser et al., “Community Benefits in York Region Research Report.”

58 Graser et al., “Community Benefits in York Region Working Framework”; Crosslinx Transit Solutions, “Community Benefits: Presentation,” April 2018; Yalnizyan, “Community Benefits Agreements.”

the owner, developer, and contractors and the communities. Care must be taken to watch for and exploit opportunities for ongoing relationship-building and mitigating disputes and roadblocks.<sup>59</sup>

## FOCUS ON WORKFORCE DEVELOPMENT

Focus on workforce development is typically one area where CBAs fall short. Projects require a supportive infrastructure for connecting the workforce to opportunities, including the use of labour-market intermediaries and workforce or contractor pathways. There must be clear, measurable targets for workforce development and apprenticeships and other employment. These targets must mesh with current labour-market needs and priorities during the procurement process. CBAs must also focus on the full range of occupations in the project workforce and supply, not only trades and labourers but also administrative, professional, and technical positions.<sup>60</sup>



## CHALLENGES AND COSTS

“Although apprenticeships have historically been sought after, Richard Macfarlane notes that many construction contracts are not particularly useful for apprenticeships because they consist of highly specialized trades who only work for short periods of time on a particular job.”<sup>61</sup>

Critics of the CBA concept are numerous and can be found most commonly in the business community, although questions are also raised in the public-policy world and by practitioners themselves. Their concerns typically relate to clarity, implementation, measurement, and cost. CBA proponents, too, identify weaknesses to the model but see them more as refinements needing to be made as the process grows stronger.

In many cases, the stakeholders interviewed for this study were frank about the challenges and shortcomings of CBAs, while many believed these could ultimately be remedied with

59 Crosslinx Transit Solutions, “Community Benefits: Presentation”; Graser, “Community Benefits in Practice and in Policy”; Graser, “Community Benefits and Tower Renewal.”

60 Graser, “Community Benefits and Tower Renewal”; Graser et al., “Community Benefits in York Region Research Report”; Christian Labour Association of Canada, Promoting Apprenticeship through Procurement”; Hamilton Community Benefits Network, “Hamilton Community Benefits Network.”

61 Graser, “Community Benefits in Practice and in Policy,” 12.

reforms to the status quo, such as more transparency, inclusiveness in project-workforce models, evaluation, better data on costs and cost-benefit analysis, and excluding special-interest influence.

### A COMPLEX, UNCLEAR CONCEPT

As treated above, lack of clarity was a common theme in interviews conducted for this paper. Many see CBAs as an ambiguous, unclear concept, with complexities arising from various definitions and application of the term to describe different realities. Graser's reports on the United Kingdom and United States in 2016, and on Canada and elsewhere in 2018, identified a number of challenges, including lack of understanding of community benefits with little consistent and accessible information about them.<sup>62</sup>



### WEAK ACCOUNTABILITY AND MEASUREMENT

CBAs involve several accountability and measurement challenges. Aspirational targets are often not enforced, and longer-term outcomes (e.g., training, employment, and supplier outcomes) are not measured or reported.

There are challenges in meeting apprenticeship and employment targets in public infrastructure projects, particularly in smaller or shorter ones and projects that do not include the post-build operations phase. Even with shorter projects, many roles are relatively short term, making it difficult to complete training, apprenticeships, or certification.

In 2016 in the United States, the Partnership for Working Families and Community Benefits Law Center referred to “weak CBAs,” identifying them as involving vague commitments, lacking clear timelines and measurements, and lacking formal means for holding parties accountable.<sup>63</sup> It added that mandatory language and early setting of targets and accountability measures are needed to counter these shortcomings.

It must be noted, however, that CBA proponents recognize this problem and have engaged on many levels to begin developing better analytical tools. Graser et al. cite the building of a York community benefits monitoring and evaluation strategy, which includes methodology and a framework by which to monitor, measure, and evaluate community benefits. This has been done in conjunction with Blueprint ADE, a Canadian evaluation and performance-

62 Graser et al., “Community Benefits in York Region Research Report.”

63 Partnership for Working Families and Community Benefits Law Centre, “Common Challenges in Negotiating Community Benefits Agreements and How to Avoid Them,” 2016, <https://www.forworkingfamilies.org/sites/default/files/publications/Effective%20CBAs.pdf>.

monitoring expert.<sup>64</sup> In “Delivering Benefit: Achieving Community Benefits in Ontario,” Jamie Van Ymeren and Sara Ditta offer examples and recommendations for effective monitoring, tracking, and measuring community benefits on large infrastructure projects, particularly for targeted training and recruitment initiatives, including how to measure long-term impact.<sup>65</sup>

## SUSTAINING COMMUNITY CAPACITY

The Partnership for Working Families and Community Benefits Law Center identified CBAs as involving little real community engagement and secretive and exclusive processes.<sup>66</sup> In Canada in 2016, the Atkinson Foundation highlighted a number of challenges regarding CBAs, including insufficient support and capacity to create stable, well-resourced coalitions and internal government champions.<sup>67</sup> In their 2018 report, Graser et al. called for a “CBA ecosystem” and pointed to an underdeveloped capacity (lack of infrastructure) for communities to organize.<sup>68</sup>



## EXCLUSIVE AND NON-COMPETITIVE PROCUREMENT

Many experts and stakeholders involved have expressed concern about a lack of transparency and openness in the CBA procurement or tendering process. In many CBAs, non-union companies are not able to compete on major project bids when a project labour agreement or construction workforce agreement (a term sometimes used in the United States) involves only BTU workers. Restrictive, secretive, and exclusive processes (union or non-union) are not fully competitive, fair, and transparent. Many indicate that this is the case in British Columbia with recent major public projects, described more fully later in this report.

## RESTRICTIVE REGULATION

The think tank Cardus found that “restrictions on entry into the professional and trades imposed by occupational certification and more restrictive licensing led to artificially higher prices and costs to consumers”—a 12 percent to 18 percent premium in addition to a 15 percent union wage premium. Cardus adds that economic literature on bidding “clearly indicates that the greater number the bids on a tender, the lower the price results,” pointing out the pitfall of artificial limitations on bidding processes reducing competition and increasing project costs.<sup>69</sup>

64 Graser et al., “Community Benefits in York Region Working Framework”; D. Graser et al., “Community Benefits in York Region Toolkit,” January 2019, <https://www.york.ca/wps/wcm/connect/yorkpublic/c1297b58-9aee-48c5-951f-4c27aefb5f4/CBA-Toolkit.pdf?MOD=AJPERES&CVID=mLVV3ES>.

65 Van Ymeren and Ditta, “Delivering Benefit.”

66 Partnership for Working Families and Community Benefits Law Centre, “Common Challenges in Negotiating Community Benefits Agreements and How to Avoid Them.”

67 Atkinson Foundation, “Making Community Benefits a Reality in Ontario.”

68 Graser et al., “Community Benefits in York Region Research Report.”

69 B. Dijkema and M. Gunderson, “Restrictive Tendering: Protection for Whom?,” Cardus, January 2017, <https://www.cardus.ca/research/work-economics/reports/restrictive-tendering-protection-for-whom/>.



Another industry perspective on CBA shortcomings is reflected by Jesse Snyder, who points to industry groups urging the federal government to loosen requirements for promoting gender and Indigenous employment in its infrastructure program. These firms indicate that social requirements from government on infrastructure projects have already added new administrative burdens for companies through CBAs and community benefits clauses.<sup>70</sup> In addition, inflexible, restrictive quotas for trades and apprentices, along with restrictive regulation of wage rates, compulsory certification, and journeyman-apprentice ratios, make it more difficult and more costly for contractors and project owners.<sup>71</sup>

### **INADEQUATE WORKFORCE-DEVELOPMENT PATHWAYS**

The Atkinson Foundation and others have highlighted the weak, underdeveloped workforce-development pathways needed to meet hiring targets on CBA projects.<sup>72</sup> This also relates to a weak CBA employment supply chain and ecosystem. The inadequate talent pipeline and mechanisms for tapping into disadvantaged workforces on CBA projects is also exacerbated when union-only labour models are used, meaning more limited labour supply, particularly in skilled trades and technical positions. Weak workforce-development pathways also jeopardize opportunities for talent among entrepreneurs, small businesses, and social enterprises.

### **LACK OF DATA AND EMPIRICAL EVIDENCE**

There is clearly a dearth of substantive data on the costs and advantages of CBAs. Most information is anecdotal, or very high-level and related to broad outputs; much less is about concrete outcomes. The situation is exacerbated by a lack of government-wide collection and reporting on such data.

While data on CBA advantages is a bit more developed for particular projects, it is often high-level and focuses more on activities, inputs (expenditures), and outputs such as people completing training and entering employment, percentages of local hires, equity-seeking hires, and apprenticeships. These data sources tend not to provide much evidence of outcomes, particularly longer-term, ongoing positive results for workers, businesses, and communities.

While a number of reports have pointed out that the really useful, sustainable jobs for community members are the jobs associated with the post-construction operation of a project, there is very little data on this kind of result. Further, Graser et al. acknowledge that there “is little data available on the costs of community benefits to governments.”<sup>73</sup>

70 Snyder, “Industry Groups Call on Ottawa.”

71 Dijkema and Gunderson, “Restrictive Tendering”; “Five Steps to Improve Ontario’s Construction Competitiveness,” Cardus, February 26, 2019, <https://www.cardus.ca/news/news-releases/five-steps-to-improve-ontarios-construction-competitiveness/>; B. Dijkema, “The Facts on Fair and Open Contract Bidding,” Cardus, June 5, 2019, <https://www.cardus.ca/article/the-facts-on-fair-and-open-contract-bidding/>.

72 Atkinson Foundation, “Making Community Benefits a Reality in Ontario.”

73 Graser et al., “Community Benefits in York Region Research Report,” 33.

## LACK OF COHERENT PUBLIC POLICIES

In looking across Canadian jurisdictions, one sees a lack of a common framework and direction for municipalities and other governments to work within. While British Columbia's and Ontario's CBA policies have some similarities, there are also distinct differences. The Province of Manitoba and certain municipalities use social procurement models. This had led Graser to conclude that a gap in Canada is the lack of comprehensive and meaningful CBA policies at provincial and federal levels.

## INCREMENTAL COSTS

Graser identifies three types of CBA costs: for governments or institutions (i.e., procurers), for ancillary supports such as community coalitions and coordinated workforce pathways, and for contractors to meet contract obligations.

Several recent articles and reports have pointed to cost overruns and reduced project scopes (i.e., reduced value for money) on the three major public infrastructure projects in British Columbia involving CBAs that are now underway.<sup>74</sup> These reports refer to added costs from CBAs—in

the absence of cost figures from government—that arise from delays in construction that increase earlier cost estimates, the union-only project labour agreements involved, decreased competition due to lower numbers of bidders, the creation of a crown corporation (BC Infrastructure Benefits, Inc.), and the direct costs of the community benefits created. Graser et al. observe that there are additional CBA-associated costs for education, communications, monitoring and compliance, and possibly additional staff, and that since these costs may be passed on to developers and contractors, it is important to clarify to bidders how any CBA-associated costs should be treated.<sup>75</sup>

In terms of incremental CBA costs, there are a number of rough estimates of what such procurement adds to public infrastructure costs. Community Benefits Ontario—a broad network of Ontario supporters of CBAs that includes non-profits, foundations, labour groups, community organizations, social-enterprise leaders, and municipal representatives—concluded in 2017 that the “incremental costs involved in community benefit arrangements are generally modest.”<sup>76</sup> They based this on the research of Graser, who has estimated that

74 T. Fletcher, “Cost Jumps 35% for Trans-Canada Highway Widening in BC,” *Revelstoke Review*, May 21, 2019, <https://www.revelstokereview.com/business/cost-jumps-35-for-trans-canada-highway-widening-in-b-c/>; Fletcher, “BC Highway Widening Job Reduced, Costs Still Up \$61 Million,” *Lake Country Calendar*, July 6, 2020, <https://www.lakecountrycalendar.com/business/b-c-highway-widening-job-reduced-costs-still-up-61-million/>; W. Frey, “PCA Calls BC Community Benefit Agreements ‘Fake CBAs,’” *Journal of Commerce*, September 23, 2019, <http://cocabc.ca/pca-calls-b-c-community-benefit-agreements-fake-cbas/>; V. Palmer, “Project Delays Could End Up Giving BC Less Highway for More Money,” *Vancouver Sun*, June 11, 2020, <https://vancouver.sun.com/opinion/columnists/vaughn-palmer-project-delays-could-end-up-giving-b-c-less-highway-for-more-money/>; L. Leyne, “Scope-Shrink Meets Cost-Creep on Highway Jobs,” *Times Colonist*, July 4, 2020, <https://www.timescolonist.com/opinion/columnists/les-leyne-scope-shrink-meets-cost-creep-on-highway-jobs-1.24164995>; C. Gardner and P. de Jong, “All BC Construction Workers Deserve Opportunity to Work on Public Projects,” *Vancouver Sun*, July 16, 2020, <https://vancouver-sun.com.cdn.ampproject.org/c/s/vancouver-sun.com/opinion/opinion-all-b-c-construction-workers-deserve-opportunity-to-work-on-public-projects/wcm/a9469fe2-b7f3-4639-80ab-53d20899fcf8/amp/>.

75 Graser et al., “Community Benefits in York Region Research Report.”

76 Community Benefits Ontario, “Boldly Progressive, Fiscally Balanced.”

CBA add 0.5 percent to 2.5 percent of the overall project costs to the contractor.<sup>77</sup>

One American newspaper article refers to “numerous academic studies” that have found that government-mandated, union-only projects drive costs up 12 percent to 18 percent, on average, compared with projects that are competitively bid on through “fair and open competition.”<sup>78</sup> Such studies referred to a number of US projects that employed project labour agreements, an instrument similar to the BC government’s community benefits agreements for public infrastructure projects.<sup>79</sup>

The Greater Vancouver Board of Trade asserts that CBAs lead to higher costs and greater complexity on public infrastructure projects.<sup>80</sup> Based on related BC government policy in the 1990s, the Canadian Federation of Independent Business estimates that labour

costs for infrastructure projects could increase project costs by up to 37.6 percent as a result of CBA requirements. The Federation suggests that the Pattullo Bridge project, for example, could result in \$130 million to \$259 million in extra costs. Thus a 37.6 percent union-wage factor for labour costs would add \$2.4 billion to \$4.8 billion to the cost of all BC infrastructure projects, estimated at \$25.6 billion over three years. The Federation concluded:

“While including local community benefits from infrastructure projects is important, it must be balanced with ensuring projects remain fiscally responsible. It would be prudent to allow a competitive environment in the framework of the CBA in order to protect the taxpayers of British Columbia.”<sup>81</sup>

Most recently, the BC Government has publicly indicated that CBAs—union scale wages,

77 Graser, “Community Benefits and Tower Renewal.”

78 M. Henderson, “Proposed Labor Agreement Requirement Would Hurt Contractors Doing Business in Baltimore,” *Baltimore Sun*, March 4, 2020, <https://www.baltimoresun.com/opinion/op-ed/bs-ed-op-0305-baltimore-construction-union-work-requirement-20200304-ysxx4kaol5hzbpogeorcxzmsa-story.html>.

79 M. Baskin, “Government-Mandated Project Labour Agreements: The Public Record of Poor Performance,” Associated Builders and Contractors, 2011, <http://thetruthaboutplas.com/wp-content/uploads/2012/12/Baskin-Report-on-Government-Mandated-PLAs-The-Public-Record-of-Poor-Performance-2011-Edition-032311.pdf>; Associated Builders and Contractors, “The Truth About Project Labour Agreements,” <https://thetruthaboutplas.com/get-the-truth/>; Associated Builders and Contractors, “Government-Mandated Project Labour Agreements,” <https://www.abc.org/Portals/1/ABCN%20GMPLA%20One%20Pager%20032117.pdf>; W. Burke and D. Tuerck, “The Effects of Project Labour Agreements on Public School Construction in New Jersey,” Beacon Hill Institute for Public Policy Research, August 2019, <http://www.beaconhill.org/BHISTudies/PLA2019/BHI-PLA-NJ-Report-20190826FINAL.pdf>; Burke and Tuerck, “The Effects of Project Labour Agreements on Public School Construction in Connecticut,” Beacon Hill Institute for Public Policy Research, January 2020, <http://beaconhill.org/2020/02/11/the-effects-of-project-labor-agreements-on-public-school-construction-in-connecticut/>.

80 N. Bennett, “Public Infrastructure Projects to Be Union-Only,” *Business in Vancouver*, July 16, 2018, <https://biv.com/article/2018/07/public-infrastructure-projects-be-union-only>.

81 Canadian Federation of Independent Business, “The Cost of BC’s Community Benefits Agreements,” 2018, <https://content.cfib-fcei.ca/sites/default/files/2018-07/Community%20Benefit%20Agreement%20Costing%20BC%27ers%20more%201.pdf>; The report cites the 1994 BDO study “Cost Impact Analysis of the Vancouver Island Highway Collective Agreement,” commissioned by the Vancouver Board of Trade, which examined how the Highway Contractors, Ltd., agreement affected labour costs. Compared to non-affiliated union labour costs, the agreement increased labour costs by 37.6 percent. See <http://moneywellwasted.ca/wp-content/uploads/1994/06/BDO-Dunwoody-eval-of-Isl-Hwy-PLA-cleaned.pdf>.

benefits and other costs—would add 7 percent to the infrastructure construction costs. And according to a recent column, the government indicated that the additional costs were 9 percent on the Kicking Horse Canyon project.<sup>82</sup> Further, a coalition of organizations led by the Christian Labour Association of Canada estimates that the British Columbia CBA has increased public project costs by \$384 million.<sup>83</sup>

### LACK OF COST-BENEFIT ANALYSES

The least-developed metric for CBAs is a cost-benefit analysis and a comparison of costs and benefits of CBAs versus alternate models for maximizing community benefits. Not only is there a significant shortage of data on CBA costs and benefits, there has been virtually no cost-benefit analysis of CBAs in Canada.

### FINAL WORDS ON CHALLENGES AND COSTS

Taken together, the challenges and costs associated with community benefits agreements bring into question at the very least their usefulness for effective public policy. Without clarity, effective implementation, and measurement, key stakeholders are deprived of the tools to judge their effectiveness.

- Governments struggle to assess key workforce outcomes and value to the taxpayer.
- Project owners, developers, and contractors are left struggling with deliverables and budgets.

- Local communities often do not get what they believe they were promised.

Advocates believe these are challenges to be overcome on the way to greater fairness, inclusivity, increased opportunities, and better communities.



### THE CANADIAN EXPERIENCE

In North America, the leveraging of public expenditures to achieve broader policy objectives and produce community benefits has a long history that can be traced back to the late 1960s in the US and the 1970s in Canada. As Dina Graser has noted, “While CBAs per se are relatively new in Canada, the ideas behind them are not.”<sup>84</sup>

To varying degrees, the governments of Ontario (particularly the City of Toronto and Infrastructure Ontario), British Columbia

82 Palmer, “Project Delays.”

83 *Business in Vancouver*, “Editorial: Community Benefits Agreement Disagreements,” July 27, 2020, <https://biv.com/article/2020/07/editorial-community-benefits-agreement-disagreements>.

84 Christian Labour Association of Canada, “Community Benefits in Canada, Ontario and Other Jurisdictions,” 3.

(including the City of Vancouver), and Canada have implemented policies and practices involving CBAs and community benefits clauses over the last decade. Particularly in British Columbia and Ontario there has been much debate about the efficacy of CBAs.

## ONTARIO

In Ontario and particularly in the City of Toronto, CBAs were started in the mid-2010s. They tend to be hybrid CBAs in that they involve one agreement between the local government (City of Toronto) and a community coalition and a separate agreement between the owner (the City) and the contractor. In effect, these are often project labour agreements that solely involve Building Trades affiliates in the construction part of the projects.

During the Regent Park community-housing revitalization, 380 people were employed on revitalization projects and 503 on other employment initiatives, over three phases from 2007 to 2017. The data Graser points to shows that 1,474 jobs were created if one includes “broader connections,” and the project is still ongoing.<sup>85</sup>

The City of Toronto and One Toronto Gaming signed a CBA in 2018 on the development of Casino Woodbine in the Rexdale area. As of August 2019, 828 (72 percent of total

individuals were hired through local or social hiring. One hundred and thirty-four, or 11 percent, were local hires. Nine hundred and fifty persons, or 60 percent, were currently employed full-time. The project was on track for 10 percent of annual procurement to be through local or diverse suppliers, including post-construction operations.<sup>86</sup> Other examples of project agreements with community benefits in Ontario include the Parkdale Community Benefits Framework, the City of Toronto Community Benefits Framework, and work on a CBA on the Hamilton LRT project.<sup>87</sup>

In May 2018, the Ontario Ministry of Infrastructure announced approval of five new CBAs since the Eglinton Crosstown Light Rapid Transit project. These were Finch West LRT in Toronto, West Park Healthcare Centre, Halton Region courthouse, Macdonald Block in Toronto, and Thunder Bay Correctional Complex. This is part of the 2017 Building Better Lives: Ontario’s Long-Term Infrastructure Plan.<sup>88</sup> This plan focuses on supporting three types of community benefits: workforce development, social procurement, and community improvements. It created community benefits pilot projects and a Community Benefits Framework that require all major public infrastructure projects to comply with the framework. The intention is to learn from the pilots with a view to moving

85 Graser et al., “Community Benefits in York Region Research Report.”

86 City of Toronto, “Community Benefits Agreement: Rexdale—Casino Woodbine,” 2019, <https://www.toronto.ca/city-government/accountability-operations-customer-service/long-term-vision-plans-and-strategies/community-benefits-agreements/>.

87 City of Toronto, “Community Benefits Agreement: Rexdale—Casino Woodbine”; Parkdale People’s Economy, “Parkdale Community Benefits Framework,” <http://parkdalepeopleseconomy.ca/Downloads/parkdale-community-benefits-framework1.pdf>; Hamilton Community Benefits Network, “Hamilton Community Benefits Network”; City of Toronto, “Community Benefits Framework: Report for Action (EC6-15),” June 11, 2019, <https://www.toronto.ca/legdocs/mmis/2019/ec/bgrd/backgroundfile-134595.pdf>.

88 Government of Ontario, “Building Better Lives: Ontario’s Long-Term Infrastructure Plan 2017,” <https://www.ontario.ca/document/building-better-lives-ontarios-long-term-infrastructure-plan-2017>.

to full-fledged CBAs, but the specifics of this future are not yet determined.

The Eglinton Crosstown LRT is the first major project to require the developer (Crosstown Transit Solutions) to deliver on community benefits. It includes an aspirational goal of employed apprentices or journeypersons from “historically disadvantaged communities and equity-seeking groups to 10 percent of all trade or craft working hours, on a trade-by-trade basis, that are required to construct the project.”<sup>89</sup> It also includes targets for professional, administrative, and technical positions. The parties to this agreement developed a “Declaration of Apprenticeship” that includes guiding principles and an apprenticeship plan.

Eglinton will serve as a test project for the transit company. Other Metrolinx projects include Finch LRT, West Park Healthcare Centre, and Huronontario LRT.

In a 2019 report, Crosslinx indicated that 343 community members had been hired into union and non-union jobs; 199 in professional, administrative, and technical jobs; and 144 into apprentice and journeyperson positions. Other outputs were career fairs, site tours, community members “welcomed,” 4,500 paid labour hours in window-washing services, and \$6.6 million spent on local businesses.<sup>90</sup>

Most recently, the discussion of Toronto’s Community Benefits Framework has gained

new momentum with the tabling of “Advancing the Community Benefits Framework,” a memo from the executive director of Social Development, Finance, and Administration. This report is currently under discussion at city hall, and calls for funding to set up an office to design, test, and ultimately implement a CBA framework for the city’s infrastructure projects that will eventually include “hard targets” for the hiring of Indigenous, Black, and equity-seeking communities, including women, persons with low income, persons with disabilities, immigrants, refugees, LGBTQ2+ persons, racialized communities, and vulnerable youth. The proposal calls for a funding allocation of \$582,000 and the hiring of six staffers to get the initiative underway.<sup>91</sup>

An impressive amount of engagement and planning for a workforce development and participation strategy has occurred for the Gordie Howe International Bridge Project, as part of a comprehensive community benefits plan by the communities and stakeholders in the Windsor-Detroit region.<sup>92</sup> It is too early to obtain evidence about the workforce and business results and outcomes of this major project, however.

## BRITISH COLUMBIA

One of the earliest examples of community benefits on public infrastructure projects that CBA proponents point to is the Vancouver Island Highway Project Agreement, which was a project

89 Metrolinx, “Declaration re Apprentices on the Eglinton Crosstown LRT Project,” November 8, 2016, 2, [http://www.thecrosstown.ca/sites/default/files/crosstown\\_apprenticeship\\_declaration\\_signed.pdf](http://www.thecrosstown.ca/sites/default/files/crosstown_apprenticeship_declaration_signed.pdf).

90 Crosslinx Transit Solutions, “Community Benefits & Apprenticeship Annual Report: 2019,” 2019.

91 City of Toronto, “Advancing the Community Benefits Framework,” Executive Director, Social Development, Finance and Administration, City of Toronto, January 13, 2021, <https://www.toronto.ca/legdocs/mmis/2021/ex/bgrd/backgroundfile-159872.pdf>.

92 Windsor-Detroit Bridge Authority, “Gordie Howe International Bridge.”

labour agreement with Highway Constructors, Ltd. According to the Canadian Centre for Policy Alternatives, equity-seeking groups worked 22 percent of the total hours worked on the project in 1998. This percentage ranged from 8.3 percent in 1994 to 17.8 percent in 1999 and consisted mainly of Indigenous people (11.6 percent) and women (10.3 percent).<sup>93</sup>

Starting in 2005, the City of Vancouver became the first major city in Canada to introduce a municipal-level CBA policy for projects over 45,000 square metres and with three main components: first-source hiring (minimum of 10 percent of total project workforce), social procurement (10 percent), and supplier diversity.<sup>94</sup> According to a City report, it has required CBAs on several large development sites since 2005, including the Great Canadian Gaming development, an agreement with the City for Hastings Racecourse, the Olympic Athletes Village, Concord development, the Rogers Arena agreement with the Aquilini Group, and the PARQ Urban Resort and Casino project. In 2010, the Vancouver Olympic Village was built under a CBA, created by pre-existing tripartite agreements between federal, provincial, and municipal governments and the developer, Millennium Development Corporation, and involving the community-based Business Inner-City Society.

Workforce-related results have not been found for all of these projects, but in an evaluation of the Vancouver Olympic Village CBA, Karen Peachey found that the targets were exceeded—120 people (target was 100) were placed in construction jobs, and \$42 million in goods, services, and equipment (target was \$15 million) were procured from inner-city businesses.<sup>95</sup> This project involved building a 600,000 square foot, six-hundred-unit athletes' village on False Creek.

According to a City of Vancouver report, the PARQ Resort and Casino, consisting of a casino, two hotels, and eight restaurants, was signed in 2015 between the City and PARQ, and its first-source hiring program has been a success.<sup>96</sup> Graser reports that as of the end of 2017, the PARQ targets were exceeded. For example, 21 percent of employment in operations jobs was local (10 percent target), and 15 percent of procurement was local (10 percent target).<sup>97</sup>

The City of Vancouver has developed a social value procurement framework that provides “guidelines to leverage procurement resources and relationships to increase economic opportunities that are accessible for all citizens improving their independence and capacity while advancing reconciliation,

93 M. Griffin Cohen and K. Braid, “The Road to Equity: Training Women and First Nations on the Vancouver Island Highway—A Model for Large-Scale Construction Projects,” August 2000, [https://www.policyalternatives.ca/sites/default/files/uploads/publications/BC\\_Office\\_Pubs/road\\_equity.pdf](https://www.policyalternatives.ca/sites/default/files/uploads/publications/BC_Office_Pubs/road_equity.pdf).

94 City of Vancouver, “Administrative Report to Vancouver City Council: Community Benefit Agreement Policy,” August 21, 2018, <https://council.vancouver.ca/20180918/documents/rr2.pdf>.

95 K. Peachey, “Building on Success: An Evaluation of the Community Benefits Agreement for the Vancouver Olympic Village Site,” June 22, 2009, [https://ccednet-rcdec.ca/sites/ccednet-rcdec.ca/files/cba\\_evaluation\\_final\\_report\\_building\\_on\\_successjuly\\_16\\_09.pdf](https://ccednet-rcdec.ca/sites/ccednet-rcdec.ca/files/cba_evaluation_final_report_building_on_successjuly_16_09.pdf).

96 City of Vancouver, “Administrative Report to Vancouver City Council.”

97 Graser et al., “Community Benefits in York Region Research Report.”

equity, inclusion, diversity and well-being.”<sup>98</sup> The City has also published reports that show several examples of positive social procurement projects.<sup>99</sup>

As mentioned earlier, Buy Social Canada has promoted and led a lot of research and development of social procurement, including developing a “Social Value Scorecard” for CBAs, and has referenced the above PARQ example as a positive case study.<sup>100</sup>

However, other than the general PARQ data, these social procurement reports do not provide specific outcomes-based metrics for BC examples, particularly in a CBA context.

In 2018, premier John Horgan introduced his government’s “Community Benefits Agreement” for the construction of key infrastructure in the province. This will be addressed in more detail below.

## GOVERNMENT OF CANADA

With a commitment to invest \$180 billion in various infrastructure and other public projects, Infrastructure Canada introduced guidance for community employment benefits (CEB) that calls for setting and pursuing targets for training and employment of members of under-represented groups and other segments of the population (Indigenous peoples, women, persons with disabilities, veterans,

youth, apprentices, recent immigrants, and social enterprises).<sup>101</sup> This includes different requirements depending on the size of the project and involves agreements with provinces and territories that ask these governments to develop a CEB approach and establish targets in three-year infrastructure plans.

Major infrastructure-project stakeholders are awaiting details and decisions from the government of Canada on spending of the \$180 billion and if there will be more requirements than the general parameters of the guidance (i.e., these could be layered on by provincial or municipal governments).

## FINAL THOUGHTS ON THE CANADIAN EXPERIENCE

Elements of both the benefits and the challenges of CBAs can be seen in the Canadian experience. Canadians have been leading innovators in the concept, resulting in a wide range of applications. Advocates have proclaimed success in a number of innovative CBA programs and point to enhanced community engagement, benefits, training, and community benefits that have resulted. Continuing challenges can also be identified, however. First, limited quantitative reporting of results hampers an assessment of whether the same or better results could be achieved through alternative means. Second, the concept of applying “hard” employment

98 City of Vancouver, “Social Value Procurement Backgrounder, FAQ and Myths,” <https://vancouver.ca/files/cov/social-value-procurement-faq.pdf>.

99 City of Vancouver, Healthy City Scholar, and D. Lupick, “Social Procurement: State of Practice,” December 2017, [https://buy-social-canada.cdn.prismic.io/buy-social-canada%2Fb6cf7169-b7eb-4efd-b15b-45c5b6b0ad23\\_2017-41%2Bsocial%2Bprocurement%2Bstate%2Bof%2Bpractice\\_lupick.pdf](https://buy-social-canada.cdn.prismic.io/buy-social-canada%2Fb6cf7169-b7eb-4efd-b15b-45c5b6b0ad23_2017-41%2Bsocial%2Bprocurement%2Bstate%2Bof%2Bpractice_lupick.pdf).

100 Buy Social Canada, “A Guide to Social Procurement.”

101 Infrastructure Canada, “Community Employment Benefits General Guidance,” June 2018, <https://www.infrastructure.gc.ca/pub/other-autre/ceb-ace-eng.html>.

targets remain elusive, complex, and difficult to administer in Canada, even most recently.<sup>102</sup> Third, with many projects in Canada being relatively recent, such as those in Toronto, there is not yet an ongoing track record of results. They are works in progress, and while targets have been set and agreed to in some cases, public reporting of results has not caught up. It is therefore impossible to make the informed cost-benefit analyses that are essential to any effective public-policy initiatives.



## CAN CBAS BE USED TO EXCLUDE?

At the core of any definition of CBAs are three central concepts: formal, multi-stakeholder agreements; an emphasis on inclusion, equity, and social justice; and a commitment to community consultation and consensus, with the key being the endorsement and participation of the communities. Yet often CBAs exclude and divide communities, workforces, and business communities. This is most apparent in the common use of labour provisions that mandate compulsory membership of select unions and exclude those who choose not to affiliate with them. This exclusion also applies to companies and builders who have built their models upon non-union or alternative-union models. Given that

the percentage of Building Trades membership in the construction sector is 12.6 percent in the United States<sup>103</sup> and 30 percent in Canada,<sup>104</sup> it is a reasonable question whether CBAs can achieve the lofty goals their proponents claim.

It is true that the growth of the CBA model has often involved organized labour, with Building Trades claiming virtual PLAs on projects. Various US projects were essentially locked-in union monopolies. This can be seen in such flagship projects as LA Live and LA Staples Center,<sup>105</sup> the Kingsbridge National Ice Center in New York,<sup>106</sup> the DC Nationals Stadium,<sup>107</sup> the Metro (LA Transit Agency) Project, and the City of Oakland, California, in its development of a former military base.<sup>108</sup> Community benefits agreements in Canada

102 For an interesting and frank discussion of the challenges, see City of Toronto, “Advancing the Community Benefits Framework.”

103 United States Bureau of Labor Statistics, “Economic News Release: Union Members Summary,” January 22, 2021, <https://www.bls.gov/news.release/union2.nr0.htm>.

104 Statistics Canada, “Union Status by Industry,” Table 14-10-0132-01, <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1410013201>.

105 Good Jobs First, “Key Reforms: Community Benefits Agreements,” <https://www.goodjobsfirst.org/accountable-development/key-reforms-community-benefits-agreements>.

106 De Barbieri, “Community Benefits Agreements and New York Communities,” 8.

107 Graser et al., “Community Benefits in York Region Research Report.”

108 Partnership for Working Families, “Paving the Path to Opportunity.”

differ in some ways from these, but the effect is largely the same.

In Ontario, CBA frameworks have not overtly declared a Building Trades monopoly but nevertheless produce similar results in fact. Almost without exception, companies not using a Building Trades labour model are disadvantaged in quota-based CBA requirements that specify the diversity of a workforce. Union hiring halls are basically labour pools, and recruitment can be targeted to adding whatever workers are prescribed by the agreement. Non- or alternative-union employers use “direct hire” to obtain employees—that is, when they need new workers, they go out and recruit them, which takes time and effort. Compliance (red tape) costs are proportionally greater for smaller companies—often the majority of local builders—as specialized recruitment places a heavier burden on their operations, productivity, and profitability. Local companies have succeeded by choosing processes and labour models that work best for them. In Ontario, non-union and independent-union employers represent at least 70 percent of construction employers. Their interests in infrastructure-improvement projects are every bit as relevant as those of their BTU competitors and deserve to be taken into account.<sup>109</sup>

In British Columbia, the CBA story has been richer and more diverse, but a pattern of exclusion is clearly present. There is a history of exclusionary labour agreements, with or without elements of social procurement involved. Recent announcements by the government have taken these to a troubling new level.

The earliest is the agreement in the 1960s between the Columbia Hydro Constructors and the Allied Hydro Council, which was a PLA wherein a group of unions agreed to provide (union) labour for the construction of Hydro-related sites. Anyone working on those jobs had to be a member of select BTUs, and every contractor or subcontractor had to use BTU workers. One might see the rationale when Building Trades workers composed virtually the entire skilled labour force in the industrial sector and projects called for delivery of critical timelines. However, the organized-labour landscape has changed dramatically since then. For instance, the BTU proportion of the BC skilled-labour force today is roughly 15 percent, with the remaining 85 percent being either open shop or alternative union.



Another example of community benefits on public infrastructure projects that CBA proponents point to is the Vancouver Island Highway Project Agreement, which was a project labour agreement with Highway Constructors, Ltd., a government-created entity, to oversee procurement and labour. It used exclusively Building Trades companies and workers. As mentioned earlier, the Canadian Centre for Policy Alternatives documented evidence of positive employment outputs for

109 Progressive Contractors Association of Canada, “Policy Brief: Reducing Red Tape”; Progressive Contractors Association of Canada, “Community Benefits Agreements: A PCAC Response,” 2019.

equity-seeking groups in this project during 1994 through 1999.<sup>110</sup>

Nobody has made the establishment of Building Trades monopoly over labour more explicit or wide-ranging, however, than the BC government, which introduced its “Community Benefits Agreement” in July 2018, currently applied to selected major infrastructure projects going forward.<sup>111</sup>

To be sure, the BC agreement employs the language of community benefits, promising benefits including apprenticeship targets to be aligned with government policy; enhanced training (leveraged through existing government training programs); priority access to employment and training for Indigenous peoples, women, and other under-represented groups; and wages aligned with “prevailing construction rates.” Concrete targets have been published only at a very highly aggregated level. At the time of completion of this report, the Community Savings Credit Union released a review of the British Columbia CBAs.<sup>112</sup> The credit union report adds to knowledge on BC construction and the province’s CBA approach and provides some useful information, high-level metrics, and recommendations for monitoring costs and benefits. However, it does not address or change the fact that other procurement and

project models may achieve or even exceed the benefits the report outlines; and it does not change the exclusionary, trade union-focused and non-transparent approach in BC. The credit union report also does not compare the BC CBA cost-benefit analysis with other models, does not challenge what the BC government estimates will be a 4 percent to 7 percent cost of CBAs (net of \$50 to \$80 million annually), and does not mention additional costs to contractors and lost opportunity costs of contractors and workers excluded from these CBAs.

A review of publicly available information<sup>113</sup> on the BC model suggests that other key aspects of traditional community benefits agreements are notably absent:

- The model does not involve agreements between the builder or contractor and formal, truly transparent and external (to government), community coalition network.
- While there is a Community Benefits Coalition of BC, it is not clear how it is involved in the CBA process. In fact, the BC government designed the framework “behind closed doors,” with organized-labour partners and potential contractors bound by non-disclosure agreements.

110 Griffin Cohen and Braid, “The Road to Equity.”

111 BC Infrastructure Benefits, Inc., and Allied Infrastructure and Related Construction Council of BC, “A Community Benefits Agreement,” July 2018, <https://www.bcib.ca/wp-content/uploads/2018/11/Community-Benefits-Agreement.pdf>. Three errata, or updates, have been signed since the original agreement. They update wage rates, including trades sections wages and scales, board and lodging schedules, and articles involving Indigenous people, transportation, and travel allowance. BC Infrastructure Benefits, Inc., and Allied Infrastructure and Related Construction Council of BC, “A Community Benefits Agreement,” July 2018. The CBA Framework includes the Broadway Subway Project, Pattullo Bridge Replacement Project, and the Trans-Canada Highway Widening Project. Overall infrastructure estimates are \$22.9 billion over the next three years.

112 “Building a Better BC: Social and Economic Impact of the Community Benefits Agreement,” Community Savings Credit Union, March 2021, <https://www.buildingabetterbc.ca/>.

113 BC Infrastructure Benefits, Inc., documents and website content at <https://www.bcib.ca>.

- The focus on community benefits relates mainly to workforce outputs—training, apprenticeships, employment, and prevailing wage rates. It is not apparent that the benefits include other types, such as supplier diversity, community improvements, or affordable housing, which are all hallmarks of the traditional CBA definition in the United States.

The most contentious of all its provisions is its effects on the labour market and companies wanting to participate in this crucial and huge sector of the BC economy. The government created an arms' length corporation, called BC Infrastructure Benefits, Inc., to manage and provide the workforce for future projects. The corporation then entered into an exclusive agreement with twenty Building Trades Unions to provide benefits to the workers. In exchange, all workers on the corporation's sites must become members of these unions within thirty days.<sup>114</sup> Further, companies wishing to work on BC infrastructure projects must accept a Building Trades workforce that the corporation assigns. These measures have had a significant effect on labour supply. An estimated 85 percent

of the skilled-construction labour force is non-union or alternative union, and 82 percent of all apprentices in BC are sponsored by open-shop contractors. Thus, British Columbia's CBA model is also having a major impact on contractors, many of whom have chosen not to bid on projects rather than have a new workforce imposed on them.<sup>115</sup>

It can be argued that the BC Community Benefits Framework has done the opposite of building stakeholder cooperation and collaboration by emphasizing inclusion, equity, and social justice and a commitment to community consultation and consensus-building among the many communities affected by infrastructure projects. According to surveys, the BC framework has divided the province's workers,<sup>116</sup> and according to industry groups, it has alienated the broader business community and suppressed contractor participation and bidding.<sup>117</sup>

One can argue, perhaps, about whether the BC model is a CBA in the true sense of internationally accepted definitions.<sup>118</sup>

114 BC Infrastructure Benefits, Inc., "Who Is BCIB," <https://www.bcib.ca/home-2/about/>.

115 Gardner and de Jong, "All BC Construction Workers."

116 See for example Progressive Contractors Association of Canada, "Survey of British Columbians' Attitudes on Infrastructure Spending, Union Affiliation and Project Labour Agreements."

117 A group of business associations have filed a legal injunction against the CBA. The group includes the Independent Contractors and Businesses Association, the British Columbia Construction Association, the Vancouver Regional Construction Association, the Progressive Contractors Association of Canada, the Canada West Union, and the Christian Labour Association of Canada. They have joined with the BC Chamber of Commerce, the Canadian Federation of Independent Business, and several construction companies, professionals, and workers. See W. Frey, "Anti-CBA Forces Take Concerns and Lawsuit to B.C. Supreme Court," *Journal of Commerce*, March 4, 2019, <https://canada.constructconnect.com/joc/news/government/2019/03/anti-cba-forces-take-concerns-lawsuit-b-c-supreme-court>.

118 For example, BC Infrastructure Benefits, Inc., "Who Is BCIB," and Christian Labour Association of Canada. "The [BC Government] rejects the fundamentals of the market. Instead, it suggests the complex challenges faced by the BC construction industry are best dealt with by the creation of a labour monopoly enjoyed by—wait for it—the unions that donated the most money to the NDP party. It's a shocking strategy for both its blatant favouritism as well as its bold rejection of the basic truths of real economics." W. Prins, "Horganomics: Why Labour Monopolies Won't Work in BC," *Vancouver Sun*, July 30, 2018, <https://vancouversun.com/opinion/op-ed/horganomics-why-labour-monopolies-wont-work>.

Some CBA proponents assert that the BC model is an outlier and not indicative of the CBA movement as a whole. Indeed, a strong case can be made that it is actually a massive project labour agreement, imposed by the government, which gives preference to some parties to the exclusion of others and distorts the BC construction workforce and industry. There is certainly no shortage of argument in BC construction and public-policy circles at present.<sup>119</sup> Many in the construction industry argue that this model applies partial CBA principles for broader political motives to give preference to the organized-labour movement in the province. If this is a harbinger of things to come for the CBA movement, it could negate any goodwill, inclusion, consultation, and community betterment that currently exists.

## TOWARD A FAIR, OPEN, AND INCLUSIVE CBA FRAMEWORK FOR CANADA

This survey of CBAs points to the tantalizing potential of a good idea: that stakeholders can align in ways that can achieve notable social and community benefits while providing legal certainty and community support to project owners, builders, and workers. Ample indications exist, however, that there is much work to be done if CBAs are to truly achieve their promise. Several key questions remain. Can the potential and promises of community benefits agreements be fulfilled in a way that



truly builds and unites communities rather than dividing them? Can governments, communities, owner/developers, builders, and workers see enough of their interests in them to support the concept and spread their use across Canada?

Overall, CBAs in their current form have three key potential shortcomings that must be meaningfully and substantially addressed before CBAs will be accepted as workable tools for effective public policy:

- *Transparency:* Stakeholders must be confident that process and procedures are conducted in such a way that no one group's interests predominate. That is not always the case now; in many instances, profound questions still exist as to whose agenda is being

119 A CBA policy resolution of the BC Chamber of Commerce, for example, reads, "The Chamber recommends: That the Provincial Government should maintain or reinstate a fair and open tendering process for all Public Infrastructure projects including BC Hydro Project." See BC Chamber of Commerce, "Maximizing Taxpayer Dollars on Public Infrastructure Projects and Defending the Rights of BC Companies and Workers (2018)," <https://bcchamber.org/policy/maximizing-taxpayer-dollars-on-public-infrastructure-projects-and-defending-the-rights-of-bc-companies-and-workers-2018/>.

implemented. Project scope, consultations, negotiations, bidding, and procurement must be conducted in such a way that motives are transparent to all.

- *Measurability:* No public-policy instrument can be deemed successful if it cannot be measured. Likewise, no business or development strategy can be judged a success if its economics cannot be assessed. The literature on CBA theory and practice regularly identifies challenges in measuring costs, business and labour capacity-building efforts, and community enhancement (i.e., whether the promised outcomes have been met), and therefore what constitutes success. Policy-makers and project leaders worldwide understand this process as cost-benefit analysis. To be sure, many CBA projects are long-term affairs, and their results are not yet clear. But this represents a critical challenge to the concept. Stakeholders deserve the tools to judge whether the outcomes that CBAs promise do in fact come true.
- *Inclusiveness:* Community consultation, involvement, and buy-in are essential CBA elements. To this point, advocates have employed a truncated definition of “community.” CBAs will succeed as public policy only when all parts of the community are involved. Local businesses, local workers, and social institutions such as churches are part of the local scene. And their perspectives, regardless of their ideology or philosophy of labour, add to the richness of the “social environment” from which CBAs spring.

Resolving these challenges is crucial to the future success of community benefits agreements as a useful public-policy tool. If they are resolved—and this is a big if—the initial prospects for successful CBAs in Canada might yet be

realized. It remains now to propose what CBAs embodying these principles and success factors would look like.

## ESSENTIAL ELEMENTS

Based on the research for this report, we propose the following elements as essential to ensuring that CBAs work for the broadest possible spectrum of Canada’s stakeholder community:

- A legally binding contractual agreement between government and developers or contractors;
- Broad-based, non-prejudicial consultations involving interested stakeholders (including interested contractors);
- Formation of a community advisory group representing directly affected communities—supported and engaged by the project owner or funder or both—to provide advice on engaging the local communities, workforce, and businesses before and during the project period;
- A “reasonableness test” for supplementary community benefits that addresses cost, timelines, degree of community engagement, and other relevant factors for the project;
- Up-front publication within tendering documents of requirements and targets for supplementary economic and social benefit;
- Standardized fair, open, and transparent tendering and procurement practices and processes;
- Non-prejudicial as to labour/workforce model proposed by bidders;

- Maximal flexibility for contractors and subcontractors to find creative and fair solutions to staffing and hiring within terms of the CBA;
- Clear, reasonable, and enforceable targets for training, employment, and apprenticeship for members of equity-seeking groups;
- Clear, reasonable, and enforceable targets for supplier diversity, including local social enterprises and local small businesses;
- An accountability framework for tracking, monitoring, and reporting on costs, outputs, and outcomes related to core and supplementary community benefits, with publication of (non-proprietary) results;
- Building into procurement and contracts provisions for flexibility and alternative ways that contractors could meet requirements and performance benchmarks; and
- Promotion of proven best practices and innovative practices in tendering, procurement, project management, and meeting benefits targets on which government and industry would work together.

## CONCLUSION

If steps are taken to address the critical weaknesses evident in current examples, there might yet be a bright future for community benefits agreements in Canada. Canada's builders have long been accustomed to providing social benefits through socially responsible procurement and community agreements. They remain committed to doing so in the future, whether through the long-established practices of social procurement programs, project labour agreements, impact and benefits agreements, targeted training measures, or any combination of the above. In the years to come, Canada will require world-class innovative measures to rebuild the country's physical and social infrastructure. Community benefits agreements that are truly fair, open, and inclusive could be an effective tool for building a better future for all Canadians.



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