

Hereward Longley, Jennifer Chapman, Alan Calder, and Skylar Lipman (Two Worlds Consulting<sup>1</sup>), "Early lessons in holistic inclusion of Indigenous Knowledge in Impact Assessment," *International Association of Impact Assessment Conference*, Vancouver, BC (May 2022).

The governments of Canada and British Columbia enacted the 2019 *Impact Assessment Act* (IAA 2019) and the 2018 British Columbia *Environmental Assessment Act* (BC EAA 2018) in part to address Indigenous Nations' concerns that the impact assessment (IA) process marginalized Indigenous Knowledge (IK) and decision making. The new *Acts* codified the assessment of potential effects on the rights and interests of Indigenous peoples in IA.

Assessments of projects subject to federal and provincial IA review must describe and consider IK in addition to western science in assessing potential effects to Indigenous interests and to environmental, social, economic, heritage, and health values.

The federal IAA 2019 and the provincial BC EAA 2018 provide for a more robust, collaborative, and prominent use of IK. Developing IAs informed by IK alongside western science requires an approach coordinated across disciplines, and built on strong, collaborative relationships among proponents, Indigenous Nations, regulators, and consultants. It also requires an early, sustained commitment for IK to deeply inform the entirety of the IA process.

This paper examines the past treatment of IK in impact assessment and how recent statutory changes have worked to explicitly include IK. It describes Two World Consulting Ltd.'s (TWC's) approach to IAs informed by IK and concludes with lessons from TWC's early experience working in the new IA review process. TWC is a consultancy that provides impact assessment and engagement services to industry proponents, Indigenous Nations, and government organizations.

## Background

IK refers generally to the body of knowledge accumulated by Indigenous peoples over generations of living on the land. IK is a knowledge paradigm with rules and structures for understanding the world – similar to western science.

For the IA process, the BC Environmental Assessment Office (BC EAO), describes IK as "the subset of an Indigenous Nation's knowledge that the Nation decides, through representatives chosen by themselves in accordance with their own procedures, is appropriate to be used in an Environmental Assessment (BCEAO 2020, 5)."

The Impact Assessment Agency of Canada (IAAC) describes IK as "a body of knowledge built up by a group of Indigenous people through generations of living in close contact with the land... It builds upon the historic experiences of a people and adapts to social, economic, environmental, spiritual and political change (IAAC 2020)."

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IK is an English term – Indigenous Nations have their own terms for their Knowledge, which should be used in IA.

### Past Exclusion of Indigenous Knowledge from Impact Assessments

Previous IA processes have been criticized for limiting the use of IK and other input from Indigenous Peoples (e.g., Page, 2017; Partal and Dunphy, 2016; O’Faircheallaigh, 2009) partly by allowing for but not mandating the use of such information (BC First Nations Energy and Mining Council [FNEMC], 2021).

This exclusion of Indigenous Knowledge, law, title, rights, temporalities, and cosmologies is well-documented (see Paci et al., 2001; Gimenez, 2019; Awâsis, 2020). Relatedly, IAs have historically excluded consideration of non-biophysical concerns (Kwiatkowski et al., 2009; Sallenave, 1994).

### Regulatory Context for the New Acts

The federal *IAA* 2019 and provincial BC *EAA* 2018 require the regulators – IAAC and BC EAO – to consider the best available IK, western science, and local knowledge in their decisions to approve or reject projects, and to demonstrate how IK was considered (FNEMC, 2021; Darling, 2021; Doelle and Sinclair, 2019; Gibson, 2020; Wright, 2018), guided by the *Guide to Indigenous Knowledge in Environmental Assessments* (BC EAO, 2020).

IAAC and BC EAO require proponents to request that Indigenous Nations provide IK to inform all aspects of the IA, ranging from project design to spatial and temporal boundaries to follow-up and monitoring programs, especially for Nation-specific assessment of project impacts on Indigenous rights and interests. BC *EAA* 2018 also requires that proponent activities align with each Nation’s land use plans (Audino et al., 2019).

To meet requirements, proponents must engage with Indigenous Nations to request that Nations share IK to inform the assessment and determine if additional IK studies need to be completed. Proponents must regularly engage to align the assessment requirements and Indigenous Nations’ preferences, protocols, and approaches.

The new legislation has been commended for providing more authority and opportunities for Indigenous participation but criticized for leaving considerable ambiguity around UNDRIP and the duty to consult. (Eckert et al., 2020; Laidlaw, 2018; Wright, 2018, p. 1). While the BC *EAA* 2018 requires the EAO to seek consensus with Indigenous Nations during the IA process, the *Impact Assessment Act* has not defined or made consensus seeking a formalized legislative requirement.

### TWC’s Approach

Increased emphasis on the use of IK in IA review and decision-making processes requires new approaches and strategies. TWC has developed a framework for identifying, collecting, and including IK in major project IAs, starting at early engagement, and continuing through and beyond the IA application development and review. TWC’s six step process is as follows:

#### 1. Engagement

TWC’s approach centres on a strong program of engagement between the proponent and

Indigenous Nations to identify IK needed to assess the project's potential impacts and aims to support reconciliation objectives, UNDRIP implementation, and informed decision-making.

## *2. IK Submission Preferences*

In determining IK submission preferences, the proponent communicates the IA requirements to Indigenous Nations and how the IA can be informed by IK. The proponent must engage on options for Indigenous Nations to submit IK to the IA process and provide clear alternatives if Indigenous Nations are not willing to share IK directly with the proponent. For instance, Indigenous Nations may submit IK directly to regulators, review authorities or decision makers. Indigenous Nations may submit IK in many formats and levels of confidentiality including orally during close hearing sessions or with video. TWC's adaptable approach to IK inclusion accommodates the range of information sharing arrangements that may occur.

## *3. Sources of IK*

Indigenous Nations and proponents must consider what existing, relevant sources of IK are available and determine whether additional project-specific IK studies are required.

## *4. Protocols and Agreements*

Proponents must engage with Indigenous Nations to identify any specific protocols for the use of IK and coming to an agreement for the commission and use of project specific IK studies.

In addition to any protocols provided by Indigenous Nations to proponents, IK must be treated respectfully and in accordance with the First Nations Information Governance principles of OCAP: Ownership, Control, Access, and Possession.<sup>2</sup>

Proponents should also adhere to the BC EAO's (2020) principles for the application of IK in IA:

- **Respect** – for the equal validity of IK as a way of knowing
- **Relationship Based** – relationships with Indigenous Nations and knowledge holders are foundational to the inclusion of IK in the Project impact statement
- **Iterative, Interconnected and Broad Application** – IK should be used throughout the impact statement and throughout the impact assessment process
- **Acknowledgement of Context** – IK should be understood within the context it was given
- **Transparency** – the proponent must maintain procedural fairness and transparency for all knowledge keepers and Indigenous Nations who contribute IK
- **Permission of Use** – the proponent will seek the appropriate permissions to use IK according to the governance, laws, policies and practices of the Indigenous Nation.

## *5. Authorship and Review Preferences*

IK inclusion must also consider authorship and review preferences to determine whether Indigenous Nations wish to undertake an Indigenous Nation-led assessment of potential impacts on Indigenous rights and interests, collaborate with the proponent on authorship, or choose proponent-led authorship.

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<sup>2</sup> OCAP® is a registered trademark of the First Nations Information Governance Centre (FNIGC). For more information, please see <https://fnigc.ca/ocap-training/>

For Nations choosing to undertake Indigenous Nation-led or collaborative assessment processes, the proponent must work to align its IA process with the Indigenous-Nation led process. The proponent must coordinate providing information from VC assessments to the Indigenous Nation and requesting IK to inform the proponent-led assessment.

#### *6. IK to Inform VC Assessments*

Another key step is coordinating with IA subject matter experts to consider and include IK to inform the assessment of potential effects to selected VCs. This step is critical to aligning IK with western science in IA. For the best results, proponents should consider early comments from Indigenous Nation on the project and any preliminary IK submitted to the proponent in field study design. Proponents should offer Indigenous Nations opportunities to provide input on field studies and, if possible, to participate. Early alignment between IK and western science on VC assessments helps to identify key issues early in the process and supports the development of mitigation measures.

TWC's adaptable approach to IK inclusion accommodates a range of information sharing arrangements that may occur, and helps collect information to support a robust, collaborative IA informed by both IK and western science.

#### **Lessons Learned**

Considering key lessons will improve the development of IAs informed by IK. TWC's lessons are summarized below.

#### *Engagement*

Engage early and often. This minimizes difficulties of using IK throughout studies that have already been scoped and supports the building of trusting relationships. Furthermore, when proponents can view preliminary IK early in the process, there is improved use of IK to inform project and study design, especially construction and biophysical VC assessments.

#### *IK Application*

Provide sufficient capacity funding early in the assessment process. Giving/receiving IK is expensive technical work that requires time and care to complete. The earlier a proponent funds IK engagement, the higher efficacy of Indigenous Nations' ability to provide input and insight for the assessment.

Engaging and being informed by IK is a shared responsibility. For IK to meaningfully inform the assessment, all discipline leads must contribute to seeking Indigenous Nation input on their VCs and project components.

#### *Approaches for IK Inclusion*

Request Indigenous Nations' preferences and protocols for IK use before seeking formal agreements or suggesting a standard approach. Deliberately plan for collaborative sharing and active use of IK and work with all parties involved to determine appropriate protocols and information sharing agreements if applicable. Carefully consider the cultural context of IK.

There are opportunities to use IK throughout all stages of the assessment, from scoping to mitigation to follow-up. Holistic IK use retains space for the adaptive and constantly growing body of IK. Using IK broadly throughout an assessment informs sections beyond the base line

assessment, influences assessment parameters, informs cumulative effects assessment, and shapes follow-up and monitoring programs. For these reasons, it is important to use IK early and broadly.

Build in contingency plans in case IK is not available for use in the assessment. Ideally, Indigenous Nations give primary IK and permission to draw from it. Proponents should pursue this scenario but should also adopt contingency plans in case one or both of those parameters (IK and/or permission) are not given.

### *Tracking*

Proponents must clearly show their activities by keeping records of how IK informed project design and the assessment. Diligent record keeping is also critical to documenting Indigenous Nations' decision making about the use of IK and authorship of Indigenous rights and interests assessment. These records support communications between the proponent and Indigenous Nations and regulators.

### **Conclusion**

The federal IAA 2019 and the provincial BC EAA 2018 set high expectations of both proponents and Indigenous Nations for the inclusion of IK in IA. All parties are still learning how to work effectively within the IA review processes. Meeting these new standards requires a collaborative and relationship focused approach that builds trust to use and protect IK. Doing so will help develop IAs informed by IK that accurately identify potential project impacts on Indigenous rights and interests.

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