

AN EXPLORATION OF JOINT VENTURES AS A SUSTAINABLE DEVELOPMENT TOOL FOR FIRST NATIONS

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Introduction and Setting

Joint ventures can be an important part of a sustainable development plan for a First Nation. By choosing joint ventures, a First Nation is able to influence the direction of its growth and may choose to work with partners who look forward to the future and respect past practices.

Joint ventures are one of a number of development options, ranging from community economic development to impact and benefit agreements, that are not mutually exclusive and in many cases work best in combination as part of a balanced economic development strategy.

The focus of this discussion is the joint venture that can allow First Nations to enter the resource development and service industries. It can provide incomes, as well as revenue that can be used to support social spending. Potential benefits of joint ventures include access to the capital, technology, expertise, market access, and other benefits offered by a corporate partner (Findlay, 1996, Moran, 1978). The First Nation can expand into the general market, while the corporation may benefit from set-aside federal government contracts, from distinctive markets like Aboriginal communities, and may attract the interest of socially responsible investors and consumers.

The World Commission on Environment and Development (WCED) (1987) includes four key

ideas in their definition of sustainable development: a balance of present with future needs, initiating change in the way resources are exploited to reflect concern for the future, increasing society's potential for production in an equitable way, and recognition of limits to economic and natural growth. These themes are useful in an evaluation of joint ventures.

Before we examine joint ventures in detail, we can take a look at some of the other options available to First Nations instead of or in combination with joint ventures. It is worth emphasizing that joint ventures need not be isolated from other development activities: they may contribute more to a community's development when used in concert with other economic tools, such as community economic development, royalty agreements, impact and benefit agreements, partnership with government, and microfinance.

Economic Development Options for First Nation Communities

Community control of each stage of the process is fundamental to community economic development (CED). From the analysis of a community's strengths and weaknesses to the development of a long-term social and economic plan and its implementation, strategies are chosen to emphasize the use of local resources and technology, focussing on both social and economic objectives

(Bryant, 1994; Broadhead, 1993). The responsibility for these ventures lies entirely with the community. Community-controlled development in Canada exists in tourism, forestry, agriculture, real estate development, and other sectors.

Communities are more likely to suffer negative, long-term environmental and social effects of economic development than are non-resident participants like government agencies or company shareholders. As a result, we can expect communities to choose projects that recognize the interconnectedness between culture, economy, environment, and society. Community economic development fits in well with the WCED's definition of sustainable development, with its focus on the long term, choosing appropriate methods of exploitation, equity, and limits to growth.

Although provincial governments in Canada usually collect royalties on operations taking place on Crown land, First Nations without control over traditional territories and resources can negotiate for royalties based on their own political power and the goodwill of the company involved (Whyte, 1982). However, royalties reflect Western culture's low consideration for future gains, and these agreements reduce the likelihood that an Aboriginal community will affect future development, either through protest or negotiation. With resource royalties, First Nations shift their financial dependence from the federal government to corporations, but that do little to reduce their overall dependence. However, royalties are a good transition tool if the revenue is used to increase community capacity and thereby decrease total dependence on external sources of funding.

If we assess a royalty agreement using our four sustainability standards of future values, current methods, equity, and limits to growth, we can see that although a royalty flowing to a First Nation does establish a redistribution of income and is therefore more equitable, it does not necessarily change the nature of the project to make it more future-sensitive, improve current methods of resource extraction, or recognize the limits to growth.

Impact and benefit agreements (IBAs) are arrangements between Aboriginal communities and non-Native corporations, often including provisions for employment of local people and for environmental rehabilitation. With an IBA, a First Nation does not participate as an operational decision-maker, but may be employed by the company. Good IBAs specify the provision of

employment and methods for minimizing the social and environmental conflict caused by development, and they outline a method of ensuring that these conditions are met. Some land rights agreements require the negotiation of an IBA for resource development, but there is an uncertain relationship between IBAs and the legal and regulatory system, resulting in a serious lack of enforcement of IBA provisions. As in the case of royalty agreements, the good will of the company involved is the best predictor of a satisfactory IBA settlement (Northern Perspectives, 2000).

If the community sees some benefits, like employment, then a project could be considered more equitable. IBAs that include stipulations about environmental rehabilitation are more sensitive to future conditions (and have made some observations about the damage caused by current methods of extraction). But an IBA cannot prevent the development of a project, nor change the methods of extraction, even if a community considers the risks of development too high, which ignores the WCED's final condition of limits to growth.

First Nation businesses and community development corporations currently benefit from federal government provision of loans, grants, and non-financial business assistance. These arrangements come with conditions on the purpose and delivery of programming, and frequently, full decision-making authority rests with government agencies. Using the WCED's four themes, government collaboration is not likely to be regarded as sustainable, because although the distribution of funds to First Nation communities would be a move towards greater equity, the government's dedication to GDP growth does not acknowledge limits to growth, tends to disregard future conditions and needs, and subsequently, we find lax enforcement of guidelines on improving current extractive practices.

Microfinance activities include credit, banking services, and non-financial business assistance. Typically, microfinance organizations try to reach people who are underserved by traditional financial institutions like banks. In Canada, microfinance institutions, credit unions, government programs, and banks offer microcredit loans that typically range from a few thousand dollars to \$25,000 or more. These organizations offer business start-up advice and business plan development as part of their services. Microfinance is an excellent way to promote individual entrepreneurship and smart risk-taking.

Drawbacks to microfinance are similar to the barriers to success common to all small businesses, including high failure rates. Similar to community economic development, microcredit programs depend on the choices of individuals and groups in the community, leaving the sustainability of projects to the community. We can expect more equitable development with microcredit, and more thoughtful approaches to future needs, current practices and limits to growth so long as the community is dedicated to sustainability.

Joint Ventures

Using the WCED's four themes of sustainability, we will see that joint ventures are not inherently more sustainable than royalty agreements, government partnerships or Impact and Benefit Agreements. However, a First Nation entering into a joint venture can choose which company they partner with, and if they negotiate for some operational control, they can affect the methods used in the business and potentially harness the growth of the venture. If an Aboriginal community uses its influence to change the nature of joint ventures, then a more sustainable result can be achieved.

Joint ventures are unlike royalty agreements or Impact and Benefit Agreements in that joint ventures are collaborative; the partners in a joint venture may form an independent business or informally agree to cooperate using contributions from each party. Control, revenues, and other benefits are divided between the partners based on a negotiated agreement and the proportion of shares held by each partner.

In comparison to community economic development, joint ventures are driven by corporate interests as much or more than they are by the community. Rather than starting many small businesses, as is accomplished with microcredit lending, joint ventures tend to involve large corporations who set up sizeable operations. To maximize the benefits from joint ventures, a First Nation must concentrate on the strengths of joint ventures and seek to minimize its drawbacks. Because the relative bargaining power between partners affects the distribution of profits and other benefits, First Nations must use their bargaining skills and power to maximum advantage in negotiations of joint ventures. In this section, we will look at the advantages and disadvantages of joint ventures, issues surround-

ing the negotiation of joint venture agreements, and we will address the concerns of sustainability.

For maximum advantages of joint ventures, Aboriginal communities should choose partners who offer shared control of projects, access to capital, technology, management capacity, and market access (Gillis, Perkins, Roemer and Snodgrass, 1996). Shared control is the result of the collective nature of contributions and resources (Darrough and Stoughton, 1989). If both parties have operational control of the joint venture, decisions affecting the joint venture require the collaboration of all parties and none can force its position on another. This element of joint ventures provides First Nations with a level of input into operations unlike royalty agreements or IBAs. Because the control is shared with a corporation, however, communities have less influence in a joint venture than in community economic development or microcredit projects.

First Nations can benefit from participating in joint ventures with large corporations through a company's access to capital, experts in management and operations, established market access, and often through information and technology that would not otherwise be available to them. In a community with low current capacity, a joint venture can bring many needed resources to the table. The big projects that typically result from joint ventures with large corporations require funding on a scale that is not possible for First Nations acting on their own. A corporation can draw on its own capital and is also better able to get approval on big bank loans. Corporate experts in the operation and management of a business can propel a joint venture beyond the early learning stages of a new business. Establishing markets and brand recognition are long-term projects, and First Nations can benefit from the work already done by corporations. Patented technology, trade secrets, and other protected information can also be included in joint venture agreements.

Aboriginal communities should be aware of potential drawbacks to using joint ventures, including the risk of management conflicts, transfer pricing, downstream competition, and technological imitation. These hazards, and disputes in management in particular, should be addressed in the negotiated agreement.

Management conflicts between venture partners stem from the relationship between the

First Nation and the company. In cases where the First Nation is involved in the management or operation of the business, cultural conflicts, hiring practices, and differences in priorities might cause disagreements. Aboriginal communities directing joint ventures towards more sustainable practices must outline their priorities early on in the negotiations. If the community chooses to be less involved in operations, management conflicts will be avoided, at the cost of allowing the corporate partner to assume responsibility for these decisions and losing the opportunity to place community members in positions of learning and accountability.

Transfer pricing is the overpricing of goods or services traded between venture partners or branch and parent operations for one party to avoid taxes or increase earnings. For example, a branch plant could, under contract, be required to sell goods to the parent company for a low price—goods later sold by the parent company at higher rates to consumers. Inflated prices of goods or management services from the parent company to the branch plant can also capture more net revenue than was negotiated in a joint venture agreement.

Conflicts arise from the imitation of partner technology and competition among partners in the downstream market. Technological imitation includes the use of technology by one partner that was developed by the other partner and the use of traditional knowledge without permission. Joint venture agreements often contain clauses about the future use of skills or knowledge gained by First Nation employees of joint ventures to prevent loss of future income from the corporate partner.

We have briefly discussed the advantages and disadvantages inherent in joint ventures. To increase the chances of success for the joint venture, and reduce a community's exposure to negative effects, First Nations must use experienced bargainers in negotiations with corporations. Power in negotiations is derived both externally and internally from the bargaining context and from the partners' critical contributions to the venture. An experienced negotiating team is able to shift the allocation of benefits (Bottom, Holloway, McClurg and Miller, 2000), and is less likely to be ensnared in agreements that contain restrictive conditions or dangerous manipulations such as transfer pricing (Moran, 1978).

A transparent and accessible system of governance is a pre-condition for the development of a good negotiating team and will ensure that the whole community has the opportunity to contribute to and benefit from joint ventures. The dominance of a local controlling elite may make the initial stages of a development plan seem smooth, but the inclusion of all community members will promote long-term stability in the community and in the joint venture.

Joint venture contributions from First Nations can add significant value for corporate shareholders by bringing very exclusive contributions to the table, including access to government programs and funding, access to resources, and access to special markets.

Joint Venture Contributions from First Nations

Government programs that Aboriginal communities can use when bargaining with corporations include business assistance programs and the federal procurement strategy. Federal funding options include property tax exemptions, business loans and money used for the development of community infrastructure. Eligibility rules for these programs require First Nation control.

The Procurement Strategy for Aboriginal Business and the Set Aside Program for Aboriginal Business identify opportunities and reserve contracts for First Nation businesses to supply goods and services to the federal government. In particular, the federal government is interested in using Aboriginal businesses to provide goods and services to Aboriginal populations (PWGSC, 1999; DINA, 1999). These protected contracts are very attractive to corporations who also provide these types of goods and services and provide companies with compelling reasons to take part in joint ventures and teaming agreements with First Nations (Fraser, 2001).

Corporations are attracted to the resources available to First Nations through the Marshall decision and other court cases and treaties. Often these natural resources are in short supply, protected by conservation guidelines, or unique in the marketplace. Without a First Nation partner, a company would have no access to these resources.

Special markets like socially responsible investors, conscious consumers, and the Aboriginal community itself are growing and assuming a larger share of the marketplace. Using imag-

ery, cultural symbols, and knowledge from First Nations, a company can change its own image and access these specialty groups. In places like northwestern Ontario and Saskatchewan, the Aboriginal population will soon be larger than the non-native population, and decisions regarding purchasing by governments and businesses will change as a result.

Conclusion

First Nations will see the greatest benefits from joint ventures if they can identify their own contributions and recognize the inherent hazards. Educated and motivated communities can use joint ventures to promote sustainable practices in the resource and services sector by using real operational control and by selecting venture partners who are open to change. The collaborative aspect of joint ventures must continue beyond signing the contract, with all operational decisions made cooperatively.

We know that the unemployment rate for Aboriginal people in Canada is significantly higher than for non-Native communities (Mi'kmaq Health Research Group, 1999). Employment in joint ventures could provide income and contribute to individual, family, and community health. However, focused development efforts on negotiating joint venture agreements with large corporations may require a shift in attitude of the community towards mainstream business principles. Conversely, it may also demand a comparable shift in the practices of corporations who wish to operate on traditional lands. First Nations can support sustainability in joint ventures by contributing to the selection of sustainable methods of extraction and resource use, promoting the inclusion of future values into decision making, putting forward considerations of equity, and encouraging the recognitions of limits to growth and natural systems. In doing so, Aboriginal communities will be protecting traditional territories and critical cultural values.

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