

## ENVIRONMENTAL CONTRACTING, GENDER ASSESSMENT, AND INDIGENOUS WOMEN IN CANADA: A METHODOLOGY FOR BENEFIT AGREEMENTS

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*This article introduces a gendered methodology for analyzing environmental clauses in benefit agreements between Indigenous peoples and proponents, and makes recommendations for legal practice. Although the scholarship acknowledges that resource development affects Indigenous women differently than men, there has been inadequate focus on the gendered impacts of benefit agreements to date. Drawing on feminist contract theory and Indigenous feminist impact assessment, the author advocates incorporating gender into contract practice and suggests terms that emphasize women in data collection and analysis for community-based monitoring. Additionally, to bridge the gap between agreement terms and actual outcomes, the author presents a methodology for incorporating gender into environmental clauses, addressing how women will: (1) initiate projects and establish objectives for data collection; (2) facilitate gender responsive data collection and monitoring; and (3) ensure meaningful participation in data analysis and decision-making.*

### TABLE OF CONTENTS

I.	INTRODUCTION.....	661
II.	FEMINIST METHODOLOGY AND RESOURCE CONTRACTING .....	664
III.	FEMINIST ANALYSIS OF ENVIRONMENTAL PROVISIONS .....	667
A.	THE ROLE OF BENEFIT AGREEMENTS IN ENVIRONMENTAL MANAGEMENT .....	667
B.	GENDER AND MONITORING .....	669
IV.	CONCLUSION.....	676

### I. INTRODUCTION

Over the last 20 years Indigenous women have played an indispensable role in identifying gender specific harms from environmental impacts and advocating for environmental change.<sup>1</sup> Studies into environmental effects on Indigenous women have shown that they experience physical and social impacts to health differently than men, and to a disproportionate degree. More specifically, data gathered as part of gender based impact

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<sup>1</sup> See generally Pauktuutit Inuit Women of Canada, *Ensuring the Safety and Well-Being of Inuit Women in the Resource Extraction Industry: A Literature Review* (Ottawa: Pauktuutit Inuit Women of Canada, 2020), online: [perma.cc/7APA-9U4S]; Karina Czyzewski, Frank Tester & Nadia Aaruaq, *The Impact of Resource Extraction on Inuit Women and Families in Qamani'tuaq, Nunavut Territory: A Quantitative Assessment* (Vancouver: Pauktuutit Inuit Women of Canada, 2016), online (pdf): [perma.cc/YF3D-3PRM]; Susan Manning et al, "Strengthening Impact Assessments for Indigenous Women" (2018) at 21, online (pdf): [perma.cc/E5DJ-3PQ9].



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assessment has identified distinct health impacts affecting Indigenous women.<sup>2</sup> This data can be biophysical, reflecting on changed health outcomes but can also reflect on how Indigenous women experience health impacts as a result of distinct roles within communities related to stewardship and family care.<sup>3</sup> More specifically, Indigenous women have raised concerns that benefits have not been distributed equitably within communities more generally.<sup>4</sup> In response to this distributive gap, scholars have advocated for the recognition of gendered experience in environmental governance frameworks and have raised consciousness about the data needed to identify and address gendered impacts.<sup>5</sup>

Given this awareness in the scholarship and impact assessment practice, it is somewhat surprising that there has been only limited analysis of gendered impacts arising from benefit agreements between Indigenous communities and proponents in the scholarship to date.<sup>6</sup> Benefit agreements, also sometimes identified as impact-benefit agreements, mutual benefit agreements, revenue sharing agreements, or socio-economic agreements, are contracts between Indigenous governments or communities and industry proponents that outline a host of commitments related to a resource development projects.<sup>7</sup> Buoyed by the Crown's constitutional duty to consult and industry responsibility to mitigate negative impacts, agreements have become a common regulatory tool for resource governance in Canada.<sup>8</sup> Natural Resources Canada states that “[m]ore than 586 agreements (active and expired agreements at the exploration, development and post-development stages) for 385 exploration and mining projects, have been signed since 1974.”<sup>9</sup> Of those, 524 were signed between 2000 and 2021.<sup>10</sup> Nevertheless, there has been little legal or scholarly analysis of how agreements might mitigate or propagate impacts for Indigenous women or the potential of terms to rectify gendered inequities. The academic scholarship has identified the

<sup>2</sup> See generally Native Women's Association of Canada, “Culturally Relevant Gender Based Analysis: An Issue Paper” (paper delivered at the National Aboriginal Women's Summit, 20–22 June 2007), online (pdf): [perma.cc/LVQ2-FJ7R].

<sup>3</sup> See e.g. Czyzewski, Tester & Aaruaq, *supra* note 1; CCSG Associates, *Overburdened: Understanding the Impacts of Mineral Extraction on Women's Health in Mining Communities* (Ottawa: CCSG Associates for MiningWatch Canada, 2004), online (pdf): [perma.cc/J4NN-EQW5].

<sup>4</sup> Deborah Stienstra et al., *Gendered and Intersectional Implications of Energy Resource Extraction in Resource-Based Communities in Canada's North* (Canadian Research Institute for the Advancement of Women, 2016) at 38–44, online (pdf): [perma.cc/83C9-5V6Y].

<sup>5</sup> Deborah Stienstra, “Northern Crises: Women's Relationships and Resistances to Resource Extractions” (2015) 17:4 *Intl Feminist J Politics* 630; Ginger Gibson & Deanna Kemp, “Corporate Engagement with Indigenous Women in the Minerals Industry: Making Space for Theory” in Ciaran O'Faircheallaigh & Saleem Ali, eds., *Earth Matters: Indigenous Peoples, the Extractive Industries and Corporate Social Responsibility* (New York: Routledge, 2017) 104; Linda Archibald & Mary Crnkovich, *If Gender Mattered: A Case Study of Inuit Women, Land Claims and the Voisey's Bay Nickel Project* (Ottawa: Government of Canada, 1999).

<sup>6</sup> See generally Sari Graben, Angela Cameron & Sarah Morales, “Gender Impact Analysis of Impact Benefit Agreements: Representation Clauses and UNDRIP” in Ibironke T Odumusu-Ayanu & Dwight Newman, eds., *Indigenous-Industry Agreements, Natural Resources and the Law* (New York: Routledge, 2021) 79 [Graben, Cameron & Morales, “Representation Clauses”]; Sari Graben, Angela Cameron & Sarah Morales, “Indigenous Women and Benefit Agreements: Contracting for Socio-Economic Clauses with Gender in Mind” 36:1 *CJWL* [forthcoming in 2025] [Graben, Cameron & Morales, “Socio-Economic Clauses”]; JC Keenan, DL Kemp & RB Ramsay, “Company-Community Agreements, Gender and Development” (2016) 135 *J Bus Ethics* 607; David John Cox, *Environmental Impact Assessments and Impact Benefit Agreements: The Participation of Women at Voisey's Bay Mine* (MA Thesis, McMaster University, 2013) [unpublished], online (pdf): [perma.cc/S6QB-PJHL].

<sup>7</sup> Natural Resources Canada, “Minerals and the economy,” online: [perma.cc/EVT3-KAXM].

<sup>8</sup> Courtney Fidler & Michael Hitch, “Impact and Benefit Agreements: A Contentious Issue for Environmental and Aboriginal Justice” (2007) 35:2 *Environments J* 49 at 50.

<sup>9</sup> Natural Resources Canada, *supra* note 7.

<sup>10</sup> *Ibid.*

underrepresentation of Indigenous women in the negotiation and implementation of benefit agreements.<sup>11</sup> However there has been very little research on the gendered effects of benefit agreements or the impact of agreements on efforts to integrate women's voices, concerns, and contributions into environmental outcomes.

This article, one of a series published by the author on benefit agreements and gender, addresses this gap in scholarship by analyzing the clauses used to mitigate environmental impacts.<sup>12</sup> Environmental clauses in agreements generally seek to address impacts from a resource development project by establishing committees and processes dedicated to community monitoring, outlining specific environmental performance targets, compliance measures, and remediation plans, ensuring that projects adhere to agreed-upon standards, and mitigating potential negative effects on local ecosystems and communities. The author argues that improved contract practice could come from incorporating gender in agreement drafting. In support of this argument, the author draws on feminist contract theory to justify the integration of gender into contract terms and specifically recommends the integration of gender into processes for data collection and analysis in community-based monitoring.

The author begins, in Part II, by introducing feminist contract scholarship that rationalizes the interrogation of benefit agreements in the extractive sector as gendered and rationalizes a methodology that incorporates women's experiences. While feminist methods vary, they share a reliance on empirical approaches that analyze gender impacts and measure the value of contracts against those impacts. By adopting a gendered approach, the author attends to the problem that equitable outcomes for women require some interventions in the terms themselves. Moreover, an impacts approach to contracts matches with an Indigenous feminist approach to impact assessment, which focuses on the preconditions for gathering and using data about Indigenous women in community monitoring.

In Part III, the author provides a brief introduction to environmental clauses in benefit agreements and explores key methodological outputs that can be applied to negotiations on environmental matters. These outputs support a mandate for Indigenous women to: (1) initiate projects and set objectives; (2) facilitate gender-responsive data collection and monitoring; and (3) provide mechanisms for meaningful participation in decision-making. By focusing on processes related to data, practitioners should be better situated to address gender differences as procedural considerations related to data collection and use, rather than drafting for normative outcomes. The methodology forwarded here does not attempt to pre-determine what knowledge or outcomes would be ideal for any group of Indigenous women or community. Nor does it preclude or presume the incorporation of Traditional Knowledge or western scientific knowledge systems or goals in contract terms. Rather, it aims to recognize the interconnectedness of gender and environmental issues to justify the introduction of procedurally oriented terms that consider women's knowledge and

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<sup>11</sup> Ciaran O'Faircheallaigh, "Indigenous Women and Mining Agreement Negotiations: Australia and Canada" in Kuntala Lahiri-Dutt, ed, *Gendering the Field: Towards Sustainable Livelihoods for Mining Communities* (Canberra: Australian National University Press, 2011) 87 at 89–90 [O'Faircheallaigh, "Mining Negotiations"]; Gibson & Kemp, *supra* note 5; Stephanie LaBelle, "Aboriginal Women, Mining Negotiations and Project Development" (2015) 9:2 *J Aboriginal Econ Development* 9.

<sup>12</sup> Graben, Cameron & Morales, "Representation Clauses," *supra* note 6; Graben, Cameron & Morales, "Socio-Economic Clauses," *supra* note 6.

experiences.<sup>13</sup> Ultimately, this methodology reinforces contract as one of several governance tools that could address environmental impacts on Indigenous women, and especially how those impacts have been measured and addressed to date.

## II. FEMINIST METHODOLOGY AND RESOURCE CONTRACTING

In an era where environmental degradation from resource development is experienced disproportionality by Indigenous peoples, Canadian governments have increasingly turned to resource contracting to navigate the web of constitutional rights and responsibilities owed. However, the growing role of benefit agreements in the context of environmental governance underscores the imperative for a more nuanced examination of ramifications for Indigenous women. What would a feminist analysis of environmental provisions in benefit agreements entail?

Western feminist literature on contracting offers a promising avenue for studying the intersection of gender, power, and environmental policy that is often overlooked in analyses of resource agreements. Feminist perspectives on contract law generally work to disrupt conventional drafting by exposing how gender biases and power dynamics influence contract establishment, and enforcement.<sup>14</sup> While some feminist theories challenge the underlying liberal premise of contracts,<sup>15</sup> instead advocating alternative ethics like care,<sup>16</sup> relationality,<sup>17</sup> or vulnerability,<sup>18</sup> a significant body of feminist scholarship seeks to harness contracts for beneficial outcomes.<sup>19</sup> Scholarship focused on beneficial outcomes will often scrutinize whether women accrue advantages from the application of contract terms.<sup>20</sup> In doing so, scholars employ gender based socio-economic constructs to illustrate disparate outcomes for men and women and recommend changed terms.<sup>21</sup> Consequently, this scholarship has played a pivotal role in re-imagining fundamental concepts, such as restitution and undue influence, good faith, impossibility, and the rights of debtors, as well as defences like unconscionability and duress.<sup>22</sup> Moreover, this scholarship has forwarded a critical methodology that focuses

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<sup>13</sup> Sarah Morales, “Digging for Rights: How Can International Human Rights Law Better Protect Indigenous Women from Extractive Industries?” (2019) 31:1 CJWL 58 at 59.

<sup>14</sup> See generally Linda Mulcahy & Sally Wheeler, eds, *Feminist Perspectives on Contract Law* (Great Britain: GlassHouse Press, 2005).

<sup>15</sup> See generally Carole Pateman, *The Sexual Contract* (California: Stanford University Press, 1988).

<sup>16</sup> Virginia Held, *The Ethics of Care: Personal, Political, and Global* (New York: Oxford University Press, 2006) at 80–89.

<sup>17</sup> Jennifer Nedelsky, *Law’s Relations: A Relational Theory of Self, Autonomy, and Law* (New York: Oxford University Press, 2011) at 231–65.

<sup>18</sup> Martha Albertson Fineman, “The Vulnerable Subject: Anchoring Equality in the Human Condition” (2008) 20:1 Yale JL & Feminism 1 at 10–11.

<sup>19</sup> Susan M Chesler, “Using Private Law as a Vehicle for Social Change: A Feminist Approach” (2022) 15 LJ Soc Justice 138 at 141.

<sup>20</sup> See e.g. Alice Belcher, “A Feminist Perspective on Contract Theories from Law and Economics” (2000) 8:1 Fem Leg Stud 29 at 39.

<sup>21</sup> See e.g. Orit Gan, “A Feminist Economic Perspective on Contract Law: Promissory Estoppel as an Example” (2021) 28:1 Mich J Gender & L 1.

<sup>22</sup> See e.g. Mulcahy & Wheeler, *supra* note 14; Mary Joe Frug, “Rescuing Impossibility Doctrine: A Postmodern Feminist Analysis of Contract Law” (1992) 140 U Pa L Rev 1029; Martha M Ertman, “Contract’s Influence on Feminism and Vice Versa” in Debora Brake, Martha Chamallas & Verna Williams, eds, *The Oxford Handbook of Feminism and Law in the United States* (New York: Oxford University Press, 2023) 532.

on contextualism, and deconstructing the social and power dynamics involved in contractual relationships, emphasizing that gender may impact these interactions and outcomes.<sup>23</sup>

The emergent scholarship on benefit agreements has used this same focus on context to analyze Indigenous women's experiences in communities undertaking resource development in relation to gender neutral terms. In relation to benefit agreements, contextualism has mostly been used to question Indigenous women's presumptive participation in negotiation and implementation, as well as community processes that exclude women's voices.<sup>24</sup> For example, Sari Graben, Angela Cameron, and Sarah Morales acknowledge Indigenous women's advocacy in relation to agreements but question what evidence validates claims to participation in representation and warranty clauses.<sup>25</sup> While Julia Keenan and Deanna Kemp's study of Papua New Guinea highlights women's status as land owners in a matrilineal society, it also underscores the complexity of gender dynamics where land management and negotiations are conducted by men.<sup>26</sup> In these case studies, women's traditional ownership or participation can be recognized but so too is the dominant role of men in managing land and undertaking negotiations in contemporary systems of ownership on their behalf. This theme of analyzing gendered roles for outcomes is also explored by Ciaran O'Faircheallaigh, who highlights the importance of contextual factors in assessing the gendered effects of agreement terms. In finding that Indigenous women can be empowered in negotiations, he analyzes outcomes resulting from traditional control over sites, the equal distribution of income from cultural trusts, the emphasis on traditional owners, and the allocation of a large part of revenue to creating a sustainable capital fund.<sup>27</sup> Although women's experiences in these disparate locales might not be directly comparable, the studies highlight a shared methodology that contrasts formal legal rights with the ability of Indigenous women to actualize them. This approach, rooted in Indigenous feminist scholarship, employs an intersectional analysis of race, class, gender, ethnicity, and colonial legacies to explore the complex interplay of systems, institutions, socio-economic factors, and historical practices that perpetuate disadvantage for Indigenous women based on identity and social location. In doing so, it offers a more realistic understanding of Indigenous women's participation in contemporary

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<sup>23</sup> See e.g. Hila Keren, "Feminism and Contract Law" in Robin West & Cynthia Grant Bowman, eds, *Research Handbook on Feminist Jurisprudence* (Cheltenham: Edward Elgar, 2019) 406; Anne M Choike, Usha R Rodrigues & Kelli Alces Williams, eds, *Feminist Judgments: Corporate Law Rewritten* (Cambridge: Cambridge University Press, 2023) at 11–12

<sup>24</sup> See generally Janelle Kuntz, *Tŭichŭ Women and Environmental Assessment of the NICO Project proposed by Fortune Minerals Limited* (MA Thesis, University of Victoria, 2016) at 40, online: [perma.cc/QG56-6SEF]; O'Faircheallaigh, "Mining Negotiations," *supra* note 11 at 92.

<sup>25</sup> Graben, Cameron & Morales, "Representation Clauses," *supra* note 6 at 80–81.

<sup>26</sup> JC Keenan & DL Kemp, *Mining and Local-Level Development: Examining the Gender Dimensions of Agreements Between Companies and Communities* (Brisbane: The University of Queensland, 2014) at 3–28.

<sup>27</sup> O'Faircheallaigh, "Mining Negotiations," *supra* note 11 at 104.

structures.<sup>28</sup> In addition, this method situates analysis of empowerment in the context of women's practice.

In addition to questions about context, feminist critiques of benefit agreements also analyze the role of gender neutrality in contract practice, identifying terms in benefit agreements that are prima facie gender neutral but are not experienced as such within communities. For example, Drew Meervald illustrates the differential impact of benefit agreements on Indigenous women by examining their economic implications for compensatory distribution, health, income levels, and infrastructure.<sup>29</sup> David Cox and Suzanne Mills trace the impacts of women's activism on the adoption of gender-specific terms in the Voisey Bay agreement.<sup>30</sup> Graben, Cameron, and Morales bring a similar methodological approach to analyzing gender-neutral provisions related to wage, business, and community income to highlight the role of benefit agreements in reshaping local economies to support men's employment.<sup>31</sup> Taken together, this body of work has linked neutral language to gendered outcomes.

Much like the feminist analysis of agreements already undertaken, analysis of environmental clauses in benefit agreements in the following sections will illustrate a dissonance between the experiences of Indigenous women and the types of mitigations contemplated. However, as the discussion below argues, contractual practice is best directed at creating the procedural preconditions for ensuring women's participation. More specifically, the recommendations below recognize gendered impacts but focus on crafting contract terms that allow diverse perspectives to be represented and accounted for in planning through data collection and use. A procedural approach to environmental impacts promotes using the broader social and environmental implications of contracts but leaves the normative and substantive content of those objectives to the systems created by agreement terms.

In the next section, the author provides a brief introduction to environmental clauses in benefit agreements and explores how feminist methodologies regarding data collection and analysis can be used to generate change. This illustrates the potential of benefit agreements

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<sup>28</sup> See generally Val Napoleon, "Aboriginal Discourse: Gender, Identity and Community" in Benjamin J Richardson, Shin Imai & Kent McNeil, eds, *Indigenous Peoples and the Law: Comparative and Critical Perspectives* (Oxford: Hart, 2009) 233; Emily Snyder, *Gender, Power and Representations of Cree Law* (Vancouver: UBC Press, 2018); Joyce Green, "Taking More Account of Indigenous Feminism: An Introduction" in Joyce Green, ed, *Making Space for Indigenous Feminism*, 2nd ed (Nova Scotia: Fernwood, 2017) 1; Nathalie Kermoal & Isabel Altamirano-Jiménez, eds, *Living on the Land: Indigenous Women's Understanding of Place* (Edmonton: AU Press, 2016); Minnie Grey, "From the Tundra to the Boardroom to Everywhere in Between: Politics and the Changing Roles of Inuit Women in the Arctic" in Cheryl Suzack et al, eds, *Indigenous Women and Feminism: Politics, Activism, Culture* (Vancouver: UBC Press, 2010) 21; Joyce Green, "From Colonialism to Reconciliation Through Indigenous Human Rights" in Joyce Green, ed, *Indivisible: Indigenous Human Rights* (Nova Scotia: Fernwood, 2014) 18; Leanne Betasamosake Simpson, *As We Have Always Done: Indigenous Freedom Through Radical Resistance* (Minneapolis: University of Minnesota Press, 2017); Lynn Gehl (Gii-Zhigate-Mniddo-Kwe), *Mkadengwe: Sharing Canada's Colonial Process through Black Face Methodology* (Peterborough, ON: Algonquin Anishinaabe-Kwe, 2014).

<sup>29</sup> Drew Meervald, "Assessing Value: A Comprehensive Study of Impact Benefit Agreements on Indigenous Communities in Canada" (March 2016) [unpublished, archived at the University of Ottawa] at 4.

<sup>30</sup> David Cox & Suzanne Mills, "Gendering Environmental Assessment: Women's Participation and Employment Outcomes at Voisey's Bay" (2015) 68:2 *Arctic* 246 at 250–51.

<sup>31</sup> See generally Graben, Cameron & Morales, "Socio-Economic Clauses," *supra* note 6.

to advance the well-being of Indigenous women in the context of resource development, especially as it relates to gathering and using data that supports these efforts.

### III. FEMINIST ANALYSIS OF ENVIRONMENTAL PROVISIONS

#### A. THE ROLE OF BENEFIT AGREEMENTS IN ENVIRONMENTAL MANAGEMENT

As the primary document that governs relations between Indigenous governments and proponents, benefit agreements are a mechanism by which Indigenous communities control the impacts of resource development. Agreements vary, but frequently include clauses addressing access to land tenures, a fiscal regime to generate revenue, community infrastructure, management of funds, employment, education and training, business development, environmental regulation and management, protection of local culture and heritage, as well as mitigation and compensation for adverse impacts. In many ways, benefit agreements are designed to facilitate the production of conditions that would ordinarily be mandated by a statutorily empowered decision-maker or by orders in council (if a company was obtaining a permit to extract resources from Crown lands) or resolutions (if in relation to municipal lands). Therefore, by turning to contract to define environmental obligations over vast tracts of lands and peoples, benefit agreements also reproduce the key outputs of what is normally within the purview of environmental regulation.

Within this regulatory context, environmental impacts and mitigation strategies are often central to a community's negotiation goals. According to Lewis and Brocklehurst's *Aboriginal Mining Guide*, protection of the environment is one of the top three issues that most Indigenous communities want addressed in a benefit agreement.<sup>32</sup> This is because resource development can affect water contamination, land and air pollution, have adverse effects on wildlife, impact access to medicinal herbs and plants, restrict access to traditional areas, and increase access for non-Indigenous persons.<sup>33</sup>

Environmental provisions are commonly found in the body of a benefit agreement or in the schedules. These provisions often involve a statement of the foreseen environmental impacts of a project, the significance and scope of those impacts, and the mitigation measures that will be taken to minimize those impacts.<sup>34</sup> Environmental provisions typically address the following matters:

- establishing environmental planning and monitoring committees;
- remedial and reclamation actions in the event of an environmental error; and

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<sup>32</sup> Michael Lewis & Sara-Jane Brocklehurst, *Aboriginal Mining Guide: How to Negotiate Lasting Benefits for your Community* (Port Alberni: Canadian Centre for Community Renewal, 2009) at 210.

<sup>33</sup> Brad Gilmour & Bruce Mellett, "The Role of Impact Benefit Agreements in the Resolution of Project Issues with First Nations" (2013) 51:2 *Alta L Rev* 385 at 395.

<sup>34</sup> See Irene Sosa & Karyn Keenan, *Impact Benefit Agreements Between Aboriginal Communities and Mining Companies: Their Use in Canada* (Canadian Environmental Law Association, 17 October 2001) at 14, online: [perma.cc/CK6L-TT3B].

- efforts to minimize activity in culturally relevant areas, with co-operative involvement in decision-making.<sup>35</sup>

Ginger Gibson and Ciaran O’Faircheallaigh’s IBA Community Toolkit, outlines typical environmental provisions regarding Indigenous participation in monitoring including:

- [Indigenous] access to company monitoring locations on project lands;
- Guidelines and mechanisms to ensure [Indigenous] participation in environmental review, monitoring, and assessment;
- Processes for discussing concerns arising from environmental monitoring information, through an advisory, liaison or management committee;
- [Indigenous] environmental monitors;
- Mechanisms for ongoing review of environmental management, such as independent monitoring studies;
- Independent environmental audits at regular intervals;
- Funding for [Indigenous] parties to gain access to independent technical advice; and
- Inclusion of [T]raditional [K]nowledge in monitoring and follow-up studies, perhaps with specific mechanisms or procedures to plan for integration of knowledge.<sup>36</sup>

Environmental provisions may also commit the industry to engaging with Indigenous Traditional Knowledge or Traditional Ecological Knowledge. For example, clauses will often commit the industry to make best efforts to accommodate the community’s views, concerns, and Traditional Knowledge with respect to environmental, social, cultural, and heritage matters and incorporate them into project planning and operations. Finally, agreements can also affirm the right of a community to claim damages for environmental harm or economic losses from a resource development project.

From this quick overview, it is evident that environmental clauses primarily centre around the establishment of new committees and processes dedicated to data collection essential for community monitoring. These committees, which include community members, collaboratively design monitoring strategies, gather data on key environmental indicators such as water quality or ecosystem health, and analyze findings. Tasks undertaken by these institutions, identified by Kim-Ly Thompson, Trevor Lantz, and Natalie Ban as essential to community monitoring, include: (1) initiating a project; (2) setting objectives; (3) designing data collection methods; (4) collecting data; (5) analyzing and interpreting data; and (6) making management decisions based on data.<sup>37</sup> In this framing, Indigenous community guidance is necessary for determining who initiates the project, who sets the monitoring and project objectives, and what is being monitored. Those objectives will then influence what indicators will be used, what methods are used to monitor indicators, and who designs the data collection methods. Community participation in monitoring also impacts who collects the data, who owns the data, who analyzes and interprets the data, who is the audience for the data, who can use it in decision-making, and who governs its use. Lastly, community-based monitoring impacts what knowledge systems are used, the institutional context in which

<sup>35</sup> Lewis & Brocklehurst, *supra* note 32 at 33.

<sup>36</sup> Ginger Gibson & Ciaran O’Faircheallaigh, *IBA Community Toolkit: Negotiation and Implementation of Impact and Benefit Agreements* (Toronto: Gordon Foundation, 2015) at 169–70, online: [perma.cc/LLP6-LRYV].

<sup>37</sup> Kim-Ly Thompson, Trevor C Lantz & Natalie C Ban, “A Review of Indigenous Knowledge and Participation in Environmental Monitoring” (2020) 25:2 *Ecology & Society* at 3.



knowledge is collected and used, the explicit and implicit contributions of Indigenous knowledge to monitoring, and how Indigenous knowledge and experience is valued.

## B. GENDER AND MONITORING

A feminist analysis of environmental provisions that establish new committees and responsibilities should generate questions about the need for gender responsive data collection and monitoring in a community context. Based on the tasks of community monitoring established by Thompson, Lantz, and Ban, this analysis would impact: (1) initiating a project and setting objectives for data collection; (2) designing and carrying out data collection, including impacts on women's health, livelihoods, and traditional roles, and the metrics and parameters that might be used in monitoring progress; and (3) participation in data analysis and use. The following subsections explain how these components arise from environmental clauses and how a gendered analysis can alter outputs.

### 1. INITIATING A PROJECT AND SETTING OBJECTIVES

When seeking to address processes that include women in initiating projects and setting objectives, terms that establish community monitoring committees should be a key target for reform, as they are the primary entity tasked with responding to women's concerns about environmental change once an agreement is finalized. Collaborative environmental monitoring committees can be distinguished by the authority they exercise over initiating projects of importance to the community itself.<sup>38</sup> This authority can be contrasted with external scientific studies, where community members may be invited to participate, but are most commonly involved by virtue of their role in gathering information in a cost-effective way.<sup>39</sup> Because ideation does not originate from local participants in external led studies, community power to shape the purpose and format of the project and use of data can appear overlooked.<sup>40</sup> In contrast, monitoring committees oversee environmental change by virtue of their mandate and power to determine what will be monitored and for what reasons.

A feminist lens on objective setting could focus on the role of women's participation in determining what impacts are important for a given community and the alignment of those objectives with the imperative of gender aggregated data. For example, on roadway impacts, a proponent might have a roadway approved through the impact assessment process, but the benefit agreement could contemplate that a committee will review and recommend additional safety measures. Normally, a project might monitor ongoing environmental impacts from road building, such as destruction of habitat, fragmentation of plant and animal populations, animal collisions, habitat quality, impacts on plant species, introduction of pollutants (such as hydrocarbons, salts, nitrates, and dust), erosion, and sedimentation of streambeds.<sup>41</sup>

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<sup>38</sup> Finn Danielsen et al, "Local Participation in Natural Resource Monitoring: A Characterization of Approaches" (2009) 23:1 Conservation Biology 31 at 33–35.

<sup>39</sup> *Ibid*; Nerea Turreira-García et al, "What's in a Name? Unpacking 'Participatory' Environmental Monitoring" (2018) 23:2 Ecology & Society at 2.

<sup>40</sup> Andrea Cornwall, "Unpacking 'Participation': Models, Meanings and Practices" (2008) 43:3 Community Development J 269 at 279.

<sup>41</sup> Alisa W Coffin et al, *The Ecology of Rural Roads: Effects, Management & Research* (Washington: Ecological Society of America, 2021) at 2, online: [perma.cc/J5QC-3R8P].

Women's participation in monitoring committees could add to these objectives, by initiating a socio-economic study of the ongoing impacts to different community members from new road construction. Where roads run near to residential areas and pedestrians during the days, children and women are at risk of vehicular injury. Women might contribute different objectives to plans for roadways that are not solely used for transport. Studies could aim to address sidewalk construction, crosswalks, and traffic lights that significantly slow traffic. Instead of single lanes, which are dangerous for passing vehicles or pedestrians, the objective could be to design for a widened highway, or the creation of secondary routes. Alternatively, the committee could use the data to advocate for redirecting truck traffic around a town and could include requirements to install highway cameras and bus routes, as a means of mitigating impacts to women from these users.

By creating space for women to set the objectives for studies, communities are in a better position to determine who is impacted and in what ways. However, it is not merely women's representation on committees that impacts objective setting.<sup>42</sup> Rather, O'Faircheallaigh argues that the effectiveness of Indigenous women on environmental implementation is dependent upon the specific structures used to conduct the ongoing negotiation that continues after benefit agreements are signed.<sup>43</sup> He highlights the impact of Indigenous women on a steering committee organized in relation to negotiations with Comalco in Australia, where women set the agenda, undertook assessment of matters of importance to them, and advocated for the establishment of community trusts.<sup>44</sup> He also highlights the effectiveness of Innu women in Voisey Bay on the Tongamiut Inuit Annait, the organization representing Inuit women in northern Labrador, in setting the agenda.<sup>45</sup> O'Faircheallaigh points to women's success convening workshops, altering the environmental review process, ensuring processes focus on matters of interest to Inuit women, and including gender equality provisions for women's participation.<sup>46</sup> This insight into participation indicates that, in addition to including gender equality provisions that ensure representation, objective setting derives from more extensive engagement with women in deliberative spaces within communities — both before and after benefit agreements are signed.

## 2. DESIGNING AND UNDERTAKING DATA COLLECTION

In addition to setting objectives, monitoring committees also control what components of environmental impacts will be studied over the life of a project and control the methods for obtaining necessary data. Data collection in community-based monitoring will often assess whether the expected environmental impacts occur as predicted, whether the measures to manage impacts are sufficient, if any unanticipated impacts are arising, and what additional actions may be necessary to address them.<sup>47</sup>

Monitoring committees are likely to collect data on biophysical impacts to the environment resulting from changed resource use. However, they may also study the social

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<sup>42</sup> See generally Kiri Staples & David C Natcher, "Gender, Decision Making and Natural Resource Co-Management in Yukon" (2015) 68:3 Arctic 356; Graben, Cameron & Morales, "Representation Clauses," *supra* note 6.

<sup>43</sup> O'Faircheallaigh, "Mining Negotiations," *supra* note 11 at 88.

<sup>44</sup> *Ibid* at 93.

<sup>45</sup> *Ibid* at 94.

<sup>46</sup> *Ibid* at 95.

<sup>47</sup> Turreira-García et al, *supra* note 39.

impacts of a project, such as the distribution of Indigenous project benefits among different groups or the feelings of loss of control due to external cultural and political influences.<sup>48</sup> Therefore, committees might collect data on impacts on Indigenous culture, the well-being of project employees, and the effects on people who migrate to the area seeking employment. Monitoring also provides an opportunity to incorporate Indigenous Traditional Knowledge and methods that help to overcome deficiencies in data derived from impact assessment frameworks.

Indigenous feminism offers a critical lens on the intersecting impacts of gender within environmental data collection. Notably, gender assessment has already recognized that Indigenous women and men face unequal social and economic power dynamics in relation to resource extraction, leading to disproportionate impacts on women's health and well-being.<sup>49</sup> Recognizing differential impacts on women highlights the need to obtain relevant data that speaks to the ways gendered differences can take form within Indigenous communities living near resource extraction sites.<sup>50</sup>

For example, studies indicate that women in Indigenous communities experience heightened health risks due to exposure to environmental contaminants associated with resource development, with particular concerns surrounding pregnancy, breastfeeding, and traditional food practices.<sup>51</sup> In regions like Rigolet, Labrador, concerns over methylmercury contamination of seals from hydroelectric projects led to dietary shifts and disrupted social bonds and community traditions tied to food preparation and consumption.<sup>52</sup> Changes in food sources and dietary patterns related to whitefish in the Winnipeg river among Anishinabek women, due to hydroelectric flooding, had wide-ranging socio-cultural implications, affecting identity, social relations, and health outcomes.<sup>53</sup> These shifts in food use may undermine Traditional Knowledge systems and food practices related to harvesting, preparation, and consumption but also may contribute to the prevalence of chronic diseases in women such as obesity, diabetes, and cancer, underscoring the interconnectedness of environmental and social determinants of health within Indigenous communities.<sup>54</sup>

Advocacy for the inclusion of a gendered methodology in data monitoring has been raised in several fora. The imperative for gender based data in monitoring has been developing in policy frameworks forwarded in the United Nations Sustainable Development Goals and the Convention on the Elimination of All Forms of Discrimination Against Women.<sup>55</sup> These global commitments to gender have significantly shaped national policies and practices,

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<sup>48</sup> Richard Howitt, *Rethinking Resource Management: Justice, Sustainability and Indigenous Peoples* (London, UK: Taylor & Francis, 2001) at 243–44.

<sup>49</sup> Adam Bond & Leah Quinlan, *Indigenous Gender-based Analysis for Informing the Canadian Minerals and Metals Plan* (Akwasasne: Native Women's Association of Canada, 2018) at 16, online: [perma.cc/3NEK-5A5A].

<sup>50</sup> *Ibid.*

<sup>51</sup> See generally CCSG Associates, *supra* note 3.

<sup>52</sup> Manning et al, *supra* note 1 at 21, 54.

<sup>53</sup> Brittany Luby, "From Milk-Medicine to Public (Re)Education Programs: An Examination of Anishinabek Mothers' Responses to Hydroelectric Flooding in The Treaty #3 District, 1900–1975" (2015) 32:2 *Can Bull Medical History* 363.

<sup>54</sup> Harriet V Kuhnlein & Olivier Receveur, "Dietary Change and Traditional Food Systems of Indigenous Peoples" (1996) 16:1 *Annual Rev Nutrition* 417 at 432–33.

<sup>55</sup> Melisa N Handl, Sara L Seck & Penelope Simons, "Gender and Intersectionality in Business and Human Rights Scholarship" (2022) 7:2 *Bus & Human Rights J* 201.

prompting a shift toward greater gender sensitivity in data collected for environmental assessment.<sup>56</sup>

In Canada, calls to adopt gender disaggregated data for Indigenous women originated in initiatives pioneered by Canadian Inuit/Inuk women during the Voisey's Bay<sup>57</sup> and Meadowbank Assessments.<sup>58</sup> Their community-based research provided data on the unique impact of projects on how Indigenous women lived and experienced resource extraction. This foundational work not only offered an examination of life in communities engaged in resource extraction, but also instigated a new wave of scholarly endeavours.<sup>59</sup> More specifically, their studies spawned scholarship by geographers, sociologists, and anthropologists, who provided a picture of change experienced by Indigenous women, a generation of expert submissions by Indigenous women at environmental assessment tribunals, and a broader political movement to reclaim women's authority over data collection.<sup>60</sup>

The necessity for gender disaggregated data is also recognized in the adoption of gender assessments (GBA+) in tribunal and panel decision-making and through successive legislative change, recently culminating in the *Impact Assessment Act*.<sup>61</sup> Through statutory and policy requirements, the Government of Canada has encouraged analysis based on identity factors like race, ethnicity, religion, age, and disability, and introduced the need to obtain evidence on the negative impacts of development on Indigenous women's lives and lands.<sup>62</sup> Methodologies that attempt to identify and mitigate impacts specific to Indigenous women are also found in approaches to GBA+ by Indigenous women's organizations, such as the Native Women's Association of Canada, Women of the Métis Nation, and Pauktuutit. Each has developed unique GBA+ approaches that recommend types of data to be collected.<sup>63</sup>

Despite increased adoption, impact assessment methodology has come under scrutiny where it fails to capture details of the ability of Indigenous members to live well in social relations with others because of the resolution of data, the themes, and scale of focus.<sup>64</sup> Stephanie Irlbacher Fox notes that impact assessment is especially troublesome where it

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<sup>56</sup> *Ibid.*

<sup>57</sup> Government of Canada, *Environmental Assessment Panel: Report on the Proposed Voisey's Bay Mine and Mill Project* (Ottawa: Canadian Environmental Assessment Agency, 1999), online: [perma.cc/93F3-ZERA].

<sup>58</sup> Sheena K Dalseg et al, "Gendered Environmental Assessments in the Canadian North: Marginalization of Indigenous Women and Traditional Economies" (2018) 47 *Northern Rev* 135; Cox & Mills, *supra* note 30.

<sup>59</sup> See e.g. Bond & Quinlan, *supra* note 49; Dalseg, *ibid*; Kuntz, *supra* note 24 at 32; Manning et al, *supra* note 1.

<sup>60</sup> Pauktuutit Inuit Women of Canada, *supra* note 1; Czyzewski, Tester & Aaruaq, *supra* note 1; CCSG Associates, *supra* note 3.

<sup>61</sup> SC 2019, c 28, ss 1, 22(1)(s).

<sup>62</sup> Government of Canada, "Policy on Gender-Based Analysis Plus: Applying an Intersectional Approach to Foster Inclusion and Address Inequities," online: [perma.cc/ZHP7-CNHU].

<sup>63</sup> Native Women's Association of Canada, *supra* note 2 at 6–8; Women of the Métis Nation, *Métis-Specific Gender Based Analysis Plus (GBA+) Tool* (Ottawa: Women of the Métis Nation, 2019) at 12, online: [perma.cc/4PBE-RC8G]; Carlos E Sanchez-Pimienta et al, "Implementing Indigenous Gender-Based Analysis in Research: Principles, Practices and Lessons Learned" (2021) 18:21 *Intl J Evtl Research & Pub Health*.

<sup>64</sup> Deborah McGregor, "Mino-Mnaamodzawin: Achieving Indigenous Environmental Justice in Canada" (2018) 9:1 *Envl & Society: Advances in Research* 7 at 20.

attempts to reduce communities to the aggregate sum of discrete socio-cultural variables that are evaluated in relation to one dependent factor of change: resource extraction.<sup>65</sup> Moreover, the chosen variables for wellness focus on dystopic aspects of community life: children in care, violence, addictions, suicide, injury, years of life lost, and diseases. She argues that because the focus remains squarely on community dysfunction rather than accentuating community strengths, assessment is not able to bring resilient change.

While scholarship and practice indicate a variety of approaches to data that may be triggered by a gender lens, impact agreement clauses need not address those details to bring change. Clauses that seek to instantiate gender can expressly require gender as a factor to be considered in committee work, but also may incorporate gender through requirements to study Indigenous conceptions of resilience and change. Gibson and Kemp draw on the example of resilience, as described by Dene elders, as an ability to live well through the maintenance of healthy relationships.<sup>66</sup> As a practical application, an alternative community-based model that accounts for gender can draw methodological lessons from those used in a diamond impacted community, Áutsel K'e, which was adopted and tested by the Yellowknives Dene First Nation.<sup>67</sup> The model emerged through community meetings, interviews and focus groups with the Tâîchô. There are several distinguishing features of these community models and the way they were used to direct funding toward community defined expressions of wellness, including the following:

- the use of quantitative and qualitative data that addresses the limited availability and quality of gender disaggregated data;
- reliance on locally defined expressions of wellness to counter inadequate awareness of gender specific impacts among practitioners;
- using a model of living well that is relational to ensure meaningful engagement with Indigenous women and men in the assessment process; and
- using a scale of analysis appropriate to the community level — with consideration for categories of wellness, weight of significance, prioritization of issues, and community cultural norms.

Agreement clauses focused on data collection may vary with community needs and interest, but this brief survey of monitoring and assessment practice indicates that the incorporation of gender should alter what data will be collected and studied over the life of a project and diversify methods for obtaining necessary data. Given variations in data methodologies, details of how gender will guide data collection can be left to committees to address. However, the increased collection of gender disaggregated data in environmental management in Canada predicts its relevance for Indigenous communities. More to the point,

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<sup>65</sup> Stephanie Irlbacher Fox, *Indigenous Self Government Negotiations in the Northwest Territories (NWT), Canada: Time, Reality, and Social Suffering* (PhD Dissertation, University of Cambridge, 2004) [unpublished] at 205–09.

<sup>66</sup> Gibson & Kemp, *supra* note 5 at 236–40.

<sup>67</sup> *Ibid.*

the increased relevance of gender disaggregated data rationalizes legal practice that attends to data collection in the clauses that establish and direct that committee work.

### 3. PARTICIPATION IN ANALYSIS, EVALUATION, AND USE OF DATA

The discussion so far illustrates that the inclusion of women can alter research objectives, ensure the collection of gender disaggregated data, and include women in the design of studies. However, fundamental questions, about the role of women in interpreting data and making participatory decisions, remain. What role do benefit agreements play in ensuring that legal frameworks are prepared to include women in undertaking data analysis, as well as making recommendations and decision-making?

Inclusion of Indigenous communities in analyzing and decision-making is generally understood as a hallmark of participatory environmental monitoring.<sup>68</sup> Through active participation in data use, Indigenous community members deepen their understanding of environmental dynamics and strengthen their capacity to steward their lands sustainably. As stewards, participants are able to choose to incorporate Indigenous knowledge systems and perspectives into environmental initiatives, leading to more holistic understandings of ecological dynamics and fostering greater community authority.<sup>69</sup> Moreover, by having a direct role in data analysis and interpretation, Indigenous committee members are better equipped to advocate for policies and interventions that align with their cultural values.<sup>70</sup> This approach fosters community empowerment, reinforces Indigenous sovereignty over their lands, and promotes resilience in the face of environmental challenges.<sup>71</sup>

Including Indigenous women in data analysis and decision-making is one method for improving the possibility that gender will be raised as a consideration. The underrepresentation of women in committee decision-making has led to the perception that the concerns of Indigenous women may not be incorporated in governance and self-government.<sup>72</sup> However, gender based research that seeks to understand the impact of gender representation on the analysis and use of data pivots away from merely quantifying the number of women involved in committees and toward supporting women in committee work, the conditions that make their involvement possible, and the impact of their participation on outcomes.<sup>73</sup>

For example, in one of the few studies on gender and decision-making in northern resource management, Kiri Staples and David Natcher found that once appointed, men and women have equal opportunities to be represented in board decision-making, but women still may experience institutional barriers to effective participation.<sup>74</sup> Barriers include logistical challenges to participation (given competing obligations), male beliefs that women lack essential hunting experience and skills, and attitudes of board members. Staples and Natcher

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<sup>68</sup> Turreira-García, *supra* note 39.

<sup>69</sup> Fikret Berkes, “Evolution of Co-management: Role of Knowledge Generation, Bridging Organizations and Social Learning” (2009) 90:5 *J Envtl Management* 1692.

<sup>70</sup> Ciaran O’Faircheallaigh, “Impact and Benefit Agreements as Monitoring Instruments in the Minerals and Energy Industries” (2020) 7:4 *Extractive Industries & Society* 1338 at 1343–44.

<sup>71</sup> Thompson, Lantz & Ban, *supra* note 37.

<sup>72</sup> Status of Women Canada, *First Nations Women, Governance and the Indian Act: A Collection of Policy Research Reports* (Ottawa: SWC, 2001) at 18.

<sup>73</sup> *Ibid.*

<sup>74</sup> Staples & Natcher, *supra* note 42 at 362.

conclude that improving women's participation will be challenging if their lack of hunting experience is viewed as a deficiency.<sup>75</sup> They suggest broader mandates to enhance women's involvement.

In her study of Indigenous women's participation in mining, Stephanie LaBelle suggests that successful participation is more likely when standardization is avoided, deadlines are managed, capacity building is prioritized, and there is an emphasis on equality, accountability, and corporate community relations, while also preparing for negative impacts.<sup>76</sup> As discussed above, gender assessment mirrors this advice, emphasizing the importance of involving Indigenous women and women's organizations in designing and conducting gendered assessments, as well as analyzing the effects of resource development on Indigenous women separately from Indigenous men.<sup>77</sup> In practice, this requires paying closer attention to community responsibilities, to ensure women are included in the monitoring of resource impacts once projects begin. Benefit agreements therefore have a distinct role in ensuring gendered participation in committees and subcommittees that collect, analyze, and use data for decision-making.

For drafters, recognizing the participation of women in gendered analysis involves addressing how committees operate. The following is a list of potentially pertinent questions:

- how gender will be addressed in committee formation, including targets and quotas;
- the purposes committees serve for women;
- how data from Indigenous women and women's organizations will be collected and utilized to identify harms;
- whether committees will analyze the experience of Indigenous women in the project zone;
- how committees will enhance positive impacts for women; and
- how a gendered approach to Indigenous laws, practices, and knowledge will be integrated into the analysis.

It is worth noting that advocacy for gendered terms like these is not new. The national Inuit women's organization, Pauktuutit, has recommended benefit agreements as an effective tool to address many of the issues identified related to Indigenous women's experiences in mining contexts. Pauktuutit recommends clauses that ensure "mechanism[s] for public monitoring to ensure parties are fulfilling their legal obligations ... [and] the assessment of community needs and planning to mitigate the impacts of mining ... while the impact and

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<sup>75</sup> *Ibid* at 364.

<sup>76</sup> LaBelle, *supra* note 11.

<sup>77</sup> Chelsea Major, Sheri Longboat & Silvia Sarapura-Escobar, "Gender, Indigeneity and Mining" in Nicolas D Brunet & Sheri Longboat, eds, *Local Communities and the Mining Industry: Economic Potential and Social and Environmental Responsibilities* (London, UK: Routledge, 2023) 75 at 93–94.

benefit agreement is being negotiated.”<sup>78</sup> This approach links the use of data to address societal impacts with the inclusion of gender in issues pertaining to self-government, employment, business development, and income.<sup>79</sup>

This approach also links environmental management with the complexity of reinvigorating gender roles in Indigenous legal systems, especially when scientific and Indigenous ontologies must be reconciled.<sup>80</sup> Calls in the scholarship to rethink the organizing principles of Indigenous governance generally promote the decolonization of state regimes through the recognition of Indigenous knowledge. That knowledge can be derived from gendered approaches to storytelling, ceremonies, traditions, ideologies, medicines, dance, arts and crafts, as well as empirical observations, and personal revelations.<sup>81</sup> Should parties advocate for the recognition of distinct gendered, but equally respected, roles and responsibilities within legal orders, it raises questions about how authority will be exercised in relation to gendered domains.<sup>82</sup> Specifically, it challenges traditional notions of leadership and decision-making, asking how these roles will interact and whether gendered authority will be recognized in a way that ensures equality and fairness. The question for those negotiating these terms therefore becomes not just how to recognize gender roles but also how to balance power and authority between these roles without reinforcing historical imbalances or creating new forms of inequality. In these circumstances, parties must consider how to deepen community commitments to revitalization without valorizing myths about gender equity in traditional regimes.<sup>83</sup>

Taken together, the discussion in this section on data analysis and use has made clear that benefit agreements play a central role in ensuring that legal frameworks include women in undertaking data analysis, as well as decision-making. A methodology that includes Indigenous women in data analysis and decision-making does not attempt to pre-determine what knowledge or outcomes would be ideal for any group of Indigenous women or community. It neither precludes nor presumes the incorporation of Traditional Knowledge or western scientific knowledge in contract terms. Rather, it recognizes the interconnectedness of gender and environmental issues to justify the introduction of procedurally oriented terms. Nevertheless, in ensuring women’s representation, practitioners should be aware of issues that may arise from gendered claims and address those concerns in framing committee mandates in benefit agreements and community planning.

#### IV. CONCLUSION

Environmental provisions in benefit agreements often prioritize the mitigation of environmental impacts and the distribution of economic benefits without explicitly

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<sup>78</sup> Manning et al, *supra* note 1 at 58, citing Elana Nightingale et al, “The Effects of Resource Extraction on Inuit Women and Their Families: Evidence from Canada” (2017) 25:3 Gender & Development 367.

<sup>79</sup> *Ibid* at 38.

<sup>80</sup> Patricia Hania & Sari Graben, “Stories and the Participation of Indigenous Women in Natural Resource Governance” (2020) 32:2 CJWL 310 at 331.

<sup>81</sup> Chelsea Crowshoe, *Sacred ways of Life: Traditional knowledge* (Ottawa: First Nations Centre National Aboriginal Health Organization, 2005) at 2, online: [perma.cc/P9NW-6TTM].

<sup>82</sup> Deborah McGregor, “Traditional Knowledge and Water Governance: The Ethic of Responsibility” (2014) 10:5 AlterNative 493; Deborah McGregor, “Traditional Knowledge: Considerations for Protecting Water in Ontario” (2012) 3:3 Intl Indigenous Pol’y J.

<sup>83</sup> Val Napoleon “Thinking about Indigenous Legal Orders” in René Provost & Colleen Sheppard, eds, *Dialogues on Human Rights and Legal Pluralism* (Dordrecht, Netherlands: Springer, 2013) 229.



considering the gender-specific impacts that may arise. This article introduced a gendered methodology for analyzing those environmental clauses, drawing on both feminist theories of contracting and Indigenous feminist approaches to impact assessment.

The methodology proposed here involves integrating feminist contract theory into: (1) initiating a project and setting objectives; (2) facilitating gender responsive data collection and monitoring; and (3) providing mechanisms for the meaningful participation of women in decision-making processes related to environmental issues. By adopting this proposed methodology, those tasked with negotiating benefit agreement terms should be better positioned to create institutional pathways that are capable of recognizing the interconnectedness of gender and environmental impacts.

While the article reflects on a large and complex literature on data and gender, the author has forwarded a relatively pragmatic recommendation for practitioners: address the engagement of Indigenous women with resource development by drafting clauses that structure the collection and use of gendered environmental data. By doing so, practitioners could position communities to improve the integration of Indigenous women's perspectives into decision-making and foster more equitable outcomes.

More specifically, the incorporation of terms that aim to gather and analyze gender responsive data in monitoring and evaluation should improve knowledge about the differential vulnerabilities and experiences of Indigenous women and men in the face of resource development projects. Moreover, it is reasonable to predict that the inclusion of Indigenous women in setting project objectives and in decision-making will help to mitigate gender-specific impacts that intersect with other dimensions of identity, including challenges arising from historical colonization, marginalization, and limited access to resources and services.