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A framework for estimating the economic effects
of Indigenous engagement in British Columbia

MAKING IT COUNT

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Executive summary | *sommaire*

Resource projects in Canada – including mines, pipelines, and energy infrastructure – often require engagement with affected First Nations before they can proceed.

When consultation is mishandled or ignored, the consequences extend well beyond regulatory delays: projects can face costly litigation, years of uncertainty, lost investment, or even cancellation. Billions of dollars of economic activity and thousands of jobs can hinge on these outcomes. Failures in consultation can also damage relationships with Indigenous communities for years, affecting not only individual projects but future development opportunities as well.

Better measurement of these risks is crucial for policymakers, investors, and project proponents alike. To address this, the report describes a framework to quantify how Indigenous consultation shapes project timelines, costs, legal exposure, and overall project economics.

Policy debates usually describe these effects qualitatively. This framework organizes them into economic variables that can be incorporated into an investment analysis. Analysts and policymakers can use the framework to estimate the effects of First Nations engagement on the value of projects and compare investment conditions across jurisdictions.

The framework focuses on British Columbia, currently the epicentre of national debate over Indigenous consultation following the adoption of the controversial *Declaration on the Rights of Indigenous Peoples Act* (DRIPA), which aligns provincial law with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). The BC government is currently trying to navigate a rapidly evolving legal landscape shaped by recent court decisions on Aboriginal title, and the expanding duty to consult relating to major natural resources development. These pressures are unfolding alongside renewed US trade tensions with Canada and coordinated First Nations opposition to any unilateral weakening or repeal of DRIPA.

Governments need a process that respects Indigenous rights while giving investors predictable timelines, costs, and decision rules. The framework helps policymakers and

project proponents identify which parts of the process have the largest economic effects and where reform would have the most impact.

This framework:

- Uses a simplified baseline comparator that excludes Indigenous-specific consultation, delay, risk, and related obligations. The framework then measures those effects as incremental costs and risks across five channels: legal and constitutional risk, multi-party negotiation complexity, consultation and related costs, benefit-sharing obligations, and incremental Indigenous-related approval time.
- Incorporates legal and political uncertainty (Aboriginal title, court decisions, DRIPA) as a risk premium to the project discount rate and captures added negotiation time from engaging multiple First Nations, especially where territorial claims overlap.
- Includes pre-approval costs and obligations, including consultation administration, community meetings, traditional land-use studies, technical reviews, legal work, accommodation measures, redesign, and mitigation before approval.
- Allows for benefit-sharing commitments, approval delays, and post-approval risks. These may include revenue sharing, employment programs, procurement commitments, environmental monitoring, equity participation, and the possibility that formal government authorization does not guarantee project completion.
- Produces a risk-adjusted NPV and expected NPV framework that combines legal risk premiums, delays, consultation costs, benefit-sharing obligations, and approval probability. There is also a “Consultation effect” metric showing the reduction in project value relative to the baseline from approval delays and direct spending on consultation and benefit-sharing.

The framework gives policymakers, investors, and Indigenous governments a common way to assess the economic effects of consultation design. It can make consultation-related costs, risks, delays, and agreement requirements more transparent, helping users identify earlier which projects face the greatest economic or approval risk.

By making these effects more measurable, the framework can support better project screening, policy analysis, and process design. It does not eliminate uncertainty, but it helps show where legal risk, overlapping claims, consultation capacity, benefit-sharing, or agreement durability may have the greatest effect on project value. [MLI](#)

Au Canada, la mise en œuvre de projets de ressources (mines, pipelines et infrastructures énergétiques) exige communément de consulter les Premières Nations touchées.

Les consultations mal conduites ou inexistantes peuvent engendrer des litiges coûteux, des années d'incertitude, des pertes d'investissements, voire des annulations et, donc, des dommages économiques de plusieurs milliards de dollars et la suppression de milliers d'emplois. Les échecs peuvent également nuire durablement aux relations avec les collectivités autochtones, menaçant non seulement les projets en cours, mais aussi ceux à venir.

Mieux évaluer ces risques est indispensable, tant pour les décideurs que pour les investisseurs et promoteurs. Ce rapport se penche sur cet enjeu en décrivant un cadre visant à mesurer l'impact des consultations autochtones sur les échéanciers, les coûts, les risques juridiques et la rentabilité globale des projets.

Dans les débats politiques, ces éléments sont habituellement abordés de manière qualitative. Le présent cadre les structure en variables économiques exploitables dans un rapport d'analyse pour estimer les effets de la participation des Premières Nations sur la valeur des projets et comparer les conditions d'investissement entre les administrations.

Ce cadre se focalise sur la Colombie-Britannique, qui est actuellement au centre des discussions nationales sur la consultation des peuples autochtones, suite à l'adoption de la controversée « Loi relative à la Déclaration des Nations Unies sur les droits des peuples autochtones », qui harmonise sa législation avec la Déclaration des Nations Unies. Le gouvernement britanno-colombien s'efforce de s'ajuster rapidement à un paysage juridique transformé par les récentes décisions judiciaires sur les droits ancestraux et l'obligation élargie de consultation pour les grands projets de ressources. Ces pressions s'ajoutent à la recrudescence des tensions commerciales entre les États-Unis et le Canada, et à l'opposition coordonnée des Premières Nations à tout affaiblissement de cette loi.

Les gouvernements ont besoin d'un processus qui respecte les droits autochtones tout en offrant aux investisseurs des échéanciers, coûts et règles de décision prévisibles. Ce cadre aide les décideurs et promoteurs à identifier les étapes du processus comportant les conséquences économiques les plus importantes et les secteurs où une réforme aurait un impact maximal.

Voici ce cadre :

- Il utilise un comparateur de base simplifié qui fait abstraction des consultations, retards et risques spécifiquement autochtones, et des obligations connexes. Puis, il mesure ces effets en termes de coûts et de risques additionnels sur cinq axes : risque juridique et constitutionnel, complexité des négociations multipartites, coûts liés aux consultations, obligations de partage des bénéfices et temps supplémentaire pour obtenir l'approbation des peuples autochtones.*
- Il intègre l'incertitude juridique et politique (droits ancestraux, décisions judiciaires, loi) dans le taux d'actualisation d'un projet (au moyen d'une prime*

de risque) et le temps de négociation supplémentaire lié à la participation de multiples Premières Nations, surtout lorsque les revendications territoriales se chevauchent.

- *Il tient compte des coûts et obligations préalables à l'approbation : administration des consultations, rencontres publiques, études sur l'usage traditionnel des terres, examens techniques, travaux juridiques, mesures d'accommodement et d'atténuation, réaménagement.*
- *Il prévoit les partages de bénéfices, délais d'approbation et risques post-approbation, y compris les partages de revenus, programmes d'emploi, marchés publics, contrôles environnementaux, participations au capital et possibilités qu'une approbation gouvernementale formelle ne garantisse pas la réalisation d'un projet.*
- *Il génère une valeur actualisée nette ajustée en fonction du risque et une valeur actualisée nette escomptée qui tient compte des primes de risque juridique, retards, coûts des consultations, obligations de partage des bénéfices et probabilité d'approbation. Un indicateur appelé « effet de consultation » illustre aussi la valeur réduite d'un projet par rapport au scénario de référence pouvant résulter des retards d'approbation et des coûts directs associés aux consultations et au partage des bénéfices.*

Ce cadre offre aux décideurs, investisseurs et gouvernements autochtones un outil commun pour évaluer les effets économiques des modes de consultation. Il permet une plus grande transparence en ce qui a trait aux coûts, risques et retards, ainsi qu'aux exigences contractuelles liées aux consultations, afin de repérer rapidement les projets susceptibles d'encourir des risques économiques ou des obstacles d'approbation élevés.

En rendant ces effets plus quantifiables, ce cadre peut améliorer le choix des projets, l'analyse des politiques et la conception des processus. Il n'élimine pas l'incertitude, mais aide à relever les domaines où les risques juridiques, le chevauchement des revendications, la capacité de consultation, le partage des bénéfices et la pérennité des accords peuvent avoir l'impact le plus grand sur la valeur d'un projet. **MLI**

Introduction:

What this framework is designed to do

Companies considering resource projects in British Columbia, including mines, energy projects, and transmission lines, face Indigenous engagement costs and risks that can be greater than in some other provinces. These stem from BC's legal and regulatory environment, including uncertainty from the recently created DRIPA legislation, unresolved Aboriginal title, overlapping territorial claims, and approval processes that may involve complex provincial and federal assessments.

These costs and risks will affect whether projects proceed, how much capital companies will invest, and whether companies will simply choose other jurisdictions in which to invest. If BC cannot combine strong Indigenous engagement with predictable timelines, costs, and decision rules, the opportunity costs for BC and Canada will be large and will include fewer jobs, less economic growth, weaker supply chains, and fewer Indigenous economic partnerships.

Without a way to measure these effects, policymakers and investors cannot easily tell whether the main costs they are facing come from legal uncertainty, limited consultation capacity, overlapping claims, benefit-sharing, approval delays, or agreement risk.

This paper develops a conceptual framework for estimating the incremental cost of Indigenous engagement in BC. It serves three purposes.

- First, it estimates the added time and financial cost that Indigenous engagement imposes beyond the baseline approval timeline and cost structure. This produces a key metric – the share of project value that the engagement process absorbs.

- Second, the framework estimates the probability that a project secures the Indigenous agreements needed to proceed, recognizing that multiple parties can delay or block it. This probability also includes the likelihood that those agreements remain durable over the life of the project. It does not imply that each affected nation holds statutory approval authority. The model incorporates this probability when estimating the project's expected NPV.
- Third, it identifies the main drivers of these costs. The dollar estimates show direction and scale and are not intended to be precise forecasts.

The framework measures the incremental effects against a baseline comparator project. The baseline is a similar project in the same sector subject to normal environmental assessment, permitting, and local community consultation requirements. It excludes Indigenous-specific consultation, delays, benefit-sharing, and legal and agreement risks. Differences between this baseline and a project of similar size in BC show the incremental effects that the framework estimates.

If a project requires both federal and provincial assessments, the framework treats the normal coordinated, substituted, or harmonized process as part of the baseline timeline. Any remaining delay, cost, or legal exposure from it being in a dual jurisdiction is treated as an incremental effect.

Investors can use the framework to screen projects early. Policymakers and governments – both Indigenous and non-Indigenous – can also use it to help compare reforms to determine which might be most beneficial. The framework helps explain how process changes may affect timelines, costs, uncertainty, and project value.

The conceptual structure:

Five sources of incremental cost and risk

The framework groups incremental Indigenous engagement costs and risks into five channels. Each represents a distinct way that engagement affects a project's value.

The following sections explain each component – what it measures, how it is calculated, what its variables represent, and its limits.

Channel	What it captures
1. Legal and constitutional risk	The higher discount rate that investors require to invest in BC's environment of unresolved land titles.
2. Multi-party bargaining complexity	The direct costs and approval risk created when project proponents need to engage with multiple nations, including in situations where overlapping territorial disputes between nations or internal governance divisions complicate negotiations.
3. Incremental Indigenous-related time costs	Additional time beyond the baseline project approval schedule due to the requirement for Indigenous consultation and coordination as well as capacity constraints. This channel also captures the incremental effects where both federal and provincial jurisdictions apply, along with the related disputes or legal processes.
4. Benefit-sharing obligations	Ongoing financial commitments to affected nations that reduce a project's effective value over its operating life.
5. Post-agreement durability risk	The likelihood that agreements, once reached, will still be challenged by dissenting factions or through legal review.

Component 1: The risk-adjusted discount rate

What it measures

The discount rate is the annual return investors require to compensate them for the time they must spend on a project and the risk they are taking to pursue it. The discount rate converts future cash flows into a present value. A dollar received in the future is worth less than a dollar today because today's dollar can earn a return. Riskier projects carry higher discount rates because investors demand greater compensation to take them on. As the discount rate rises, the present value of future cash flows falls. Delays to a project reduce its value, and the effect is larger when the discount rate is higher.

In this framework, the baseline discount rate applies to a project for which cash flows already reflect the normal approval timeline for that type of project.¹

Investors in BC face legal risks that are less pronounced in provinces with more settled Indigenous land status. These risks justify an additional risk premium above the baseline discount rate. The premium reflects the

possibility that a project will be disrupted or canceled due to legal and consultation uncertainty.

How legal conditions affect project economics

Legal conditions affect project economics in several ways. The framework models these effects separately, with some effects reflected in the discount rate, some in added approval time, and some in the probability that the project proceeds.

- **Systemic legal uncertainty.** Some legal uncertainty increases the return that investors will require before they are willing to commit capital to a project. In the model, the risk premium represents this effect.
- **Legal process delay.** Litigation, judicial review, or regulatory challenges can extend the approval timeline.
- **Agreement formation risk.** A number of legal conditions can affect whether a project's proponents can reach workable arrangements with affected First Nations.
- **Agreement durability risk.** Some legal challenges or governance disputes can affect whether agreements remain stable after they are signed.

Three features of British Columbia's legal environment contribute to systemic legal uncertainty and support a higher required return than in provinces such as Alberta.

Unresolved Aboriginal title. The Supreme Court's decision in *Tsilhqot'in* (*Tsilhqot'in Nation v. British Columbia*, 2014) confirmed that First Nations can hold title to land and control its use (Mandell Pinder LLP 2014). Most of BC's territory has not had title formally determined. A project may therefore face a title claim during or after construction, which can lead to injunctions against it, or even its cancellation.

In the *Cowichan* decision, the BC Supreme Court recognized Aboriginal title to land in Richmond and held that Crown grants of fee simple interests there unjustifiably infringed that title (*Cowichan Tribes v. Canada (Attorney General)*, 2025). The case is under appeal, but it signals that unresolved land title questions can affect land interests long after they were thought to be settled.

DRIPA and the uncertainty around free, prior, and informed consent.

BC's *Declaration on the Rights of Indigenous Peoples Act* (2019) commits the province to align its laws with the UN Declaration on the Rights of Indigenous Peoples, including free, prior, and informed consent (FPIC). A recent federal court decision held that FPIC is not a veto (Fasken 2025). However, how consent operates in complex projects remains unsettled, increasing investment uncertainty (Melnitzer 2019).

In the *Gitxaala* decision (2025), the BC Court of Appeal found that BC's mineral tenure system was inconsistent with UNDRIP as implemented through DRIPA (*Gitxaala Nation v. British Columbia (Chief Gold Commissioner)*). The decision confirmed that DRIPA can affect the interpretation of provincial resource laws. In January 2026, the government announced proposed amendments to DRIPA (Kurjata 2026). As of spring 2026, those amendments remain pending, leaving the legal environment in flux.

FPIC reflects Indigenous rights recognized in UNDRIP and referenced in BC's DRIPA. This paper's framework treats uncertainty about how FPIC is applied in project approvals as an investment risk factor for analytical purposes and makes no judgment about the legitimacy of those rights.

Transferred legal exposure. The duty to consult rests with the Crown, not the project proponent (Langlois and Gustafson 2017). However, if courts find that the consultation was inadequate, they can halt or overturn a project even though the proponent does not control the process.

The BC–Alberta comparative baseline

While this paper uses Alberta as a practical comparator, the model applies the same conceptual baseline to both provinces. The baseline represents a similar project under standard environmental assessment, permitting, and local community consultation requirements. It excludes Indigenous-specific consultation, delay, risk, and obligations, which are treated as incremental. This baseline is a conceptual benchmark and is not a literal description of all legal obligations that may apply to actual projects.

The framework focuses on differences in legal uncertainty, territorial certainty, and coordination risk, all of which affect investor perceptions of the risk their projects face.

In BC, most land is not covered by historical treaties. Unresolved title questions, DRIPA implementation, and overlapping territorial claims (Dossois

2025) can increase legal and coordination risk. In Alberta, historic treaties provide greater clarity about land status (ARPDG Undated), though the province still faces consultation obligations (Alberta Undated a).

Alberta also has eight Métis settlements and, in some cases, “Credibly Asserted Métis Communities” that may need to be consulted where a project affects their lands, rights, or interests (Alberta Undated b). The framework treats them as Indigenous-specific requirements that can increase the number of parties involved and add consultation costs. That said, Alberta has a different risk profile than BC, with generally lower expected costs and delays because of its treaty structure, greater land-status certainty, and more standardized consultation process.

Some projects in BC require both federal and provincial assessments. These often proceed through coordinated or substituted processes rather than separate reviews. The framework treats the coordinated process as part of the baseline. Separate federal and provincial authorities can still create additional consultation, timing, or litigation risk. The model captures this through the term related to incremental Indigenous-related time and, where relevant, the legal risk premium.

The risk-adjusted discount rate

The model adds a legal risk premium to a project’s baseline discount rate.

Each project j has a base discount rate, r_j , reflecting normal project risk and market conditions. An illustrative base rate for resource extraction is about 9 per cent (Mitchell 2025). Regulated pipeline and electricity transmission projects often may face lower commercial risk and use a lower base rate, before any BC-specific premium is added.

For projects in BC, the model adds an incremental legal risk premium in the range of 1 to 2 percentage points. This range is a working assumption intended to represent additional legal and consultation uncertainty and should be evaluated through the sensitivity analysis:

$$r_{BC,j} = r_j + \pi_{BC}$$

Where: π_{BC} is the incremental BC-specific legal risk premium applied to the base discount rate.

For comparable projects in Alberta, the model does not add a BC-specific legal-risk premium for unresolved title or DRIPA. Alberta

may still face Indigenous-related consultation, treaty-rights, hearing, or accommodation risks, but the model captures those effects through consultation costs, delay, and legal or hearing-risk variables, rather than through a separate Alberta discount-rate premium. Alberta's discount rate can be measured as:

$$r_{AB,j} = r_j$$

In typical cases, the risk premiums result in a BC discount rate of 10 to 11 per cent and a rate of about 9 per cent in Alberta.

Component 2: Mapping the parties and their relationships

The model's second component addresses the complexity of the bargaining environment. It does this in two steps. First, it counts how many First Nations must be engaged. Second, it maps where their territories overlap. Both numbers are used in the cost and approval-probability calculations.

Step 1: Determine the number of affected nations, k_j

The variable k_j is the number of First Nations that have a credible territorial interest in project j and must therefore be consulted. The legal threshold for consultation is broad. If a nation has a credible claim that a project could affect its Aboriginal rights or title, it is entitled to meaningful engagement, regardless of whether those rights have been formally recognized by a court.

The numbers vary by location. A project in a settled treaty area in northeastern BC might involve 1 or 2 nations, while a project in unceded territory in the southern Interior might involve 10 to 15 nations or more. For major linear projects such as pipelines or transmission lines that cross multiple regions, the number of affected nations can be substantially higher.

The model requires that affected nations be identified as follows. First, review provincial consultation tools, environmental assessment records, and project referral lists to identify nations formally notified for consultation. Second, confirm territorial interests using publicly available maps or prior consultation records for the project area. The variable k_j equals the number of nations identified through this process.

Each affected nation is counted once in k_j , even if both federal and provincial processes require consultation with that nation. The involvement of

both federal and provincial governments can affect timing, process complexity, and legal risk, but it does not change the number of Indigenous parties.

Step 2: Map the overlapping territories

Territorial disputes T_j occur when two or more affected nations assert overlapping claims or when coordination between nations is required. Analysts should count disputes only when consultation records or territorial statements for the project area document overlapping claims or coordination issues.

Territorial overlap increases negotiation complexity. These situations may require joint meetings, mediation, or coordinated negotiations and can slow progress toward agreements between the project proponent and individual nations.

Component 3: Consultation and related costs

This component converts the bargaining environment into an estimate of Indigenous-related pre-approval cost. These are expenditures required to engage affected First Nations and, in some cases, to respond to disputes or develop project-specific accommodations before approval.

Direct consultation cost formula

$$C_j = c_0 + c_1 k_j + c_2 T_j + A_j^{pre}$$

Where: C_j is the total Indigenous-related pre-approval cost for project j . It includes both capacity funding provided to First Nations and the proponent's own costs, such as legal, administrative, and technical work. For projects subject to both federal and provincial processes, C_j also includes any incremental costs beyond the normal coordinated baseline.

c_0 is the fixed cost of establishing the consultation process, including legal setup, administrative systems, initial outreach, and required technical reporting.

c_1 is the average cost of engagement per nation. It combines participation capacity funding provided to First Nations and the

proponent's own costs for activities such as meetings, traditional land use studies, site visits, and technical documentation.

c_2 is the additional cost created by territorial disputes or multi-party coordination problems in the project area.

A_j^{pre} is the additional Indigenous-related cost not captured in c_0 , c_1 , or c_2 . It may arise from a consultation-related legal response or from accommodation, redesign, or mitigation work undertaken to secure a workable Indigenous arrangement.

k_j is the number of affected nations.

T_j is the number of affected nations involved in active territorial disputes in the project area.

Public sources for c_0 are not readily available. Therefore, c_0 should be treated as project-specific and be tested through sensitivity analysis.

For c_1 , an illustrative range is \$40,000 to \$180,000 per nation. The lower end reflects documented initial capacity funding in a public regulatory record (Stantec Consulting 2014). The upper end roughly aligns with reported per-nation study costs in formal environmental assessments (FNMPC 2023). Costs rise when engagement requires detailed traditional land use studies, site visits, extensive documentation, or multiple rounds of technical review. The parameter combines two types of proponent-funded costs: participation capacity funding and technical consultation work.

c_2 covers costs from joint meetings, facilitation, mediation, repeated consultation rounds, and additional technical coordination. Project records rarely report these separately, so they do not support a general per-nation estimate. c_2 should therefore be treated as project-specific and tested through sensitivity analysis.

Some projects may also incur A_j^{pre} , which is included in C_j .

These costs occur before approval and may be spent even if the project is later rejected.

For Alberta, the same structure applies, but the parameter values are typically lower. Alberta has fewer nations, less territorial overlap, and more standardized consultation frameworks that reduce per-nation costs.

Component 4: Benefit-sharing obligations

When First Nations agree to support a project, they do so through Impact and Benefit Agreements (IBAs). These agreements typically include financial commitments to the First Nation from the proponent for the life of the project. Examples include revenue sharing, employment and procurement commitments, participation in environmental monitoring, and sometimes an equity stake.

These obligations reduce the project's value to the proponent. Rather than modelling the specific structure of each IBA, the framework treats the total present value of all benefit-sharing commitments as a single deduction from the baseline project present value.

Effective project value

$$\text{Effective project value} = V_j - B_j$$

Where: V_j is the present value of project cash flows under the baseline expected approval schedule, before Indigenous-specific incremental time costs and before benefit-sharing obligations.

B_j is the present value of all benefit-sharing commitments. The size of this obligation depends on the number of participating nations and the terms of the agreements.

Component 5: Incremental Indigenous-related approval time

From the moment a company commits capital to a project until it begins operating, it earns no revenue. In capital-intensive industries such as mining and energy infrastructure, delays reduce project value.

The framework distinguishes between the baseline approval timeline and additional time related to Indigenous engagement.

T_j^{base} represents the baseline approval timeline expected for a project of this type under normal regulatory conditions.² This includes standard environmental assessment, permitting, and consultation processes for local communities generally. When both federal and provincial assessment apply, T_j^{base} reflects the normal coordinated, substituted, or harmonized

process expected under current law and practice, rather than two separate full-length reviews.

D_j^{Ind} represents the additional time beyond that baseline arising from Indigenous-specific engagement. This includes delays related to consultation capacity limits, coordination among multiple nations, Indigenous-related disputes or legal challenges, and any remaining federal–provincial process overlap after coordination or substitution.

Source 1: Consultation queue delays

Many First Nations governments receive more consultation requests than their staff can process. This creates a backlog. Projects must wait before meaningful engagement can begin, even when all parties are willing to proceed.

The model considers the delays that occur when demand exceeds available capacity. The key measure is the utilization rate (ρ , the Greek letter rho), which shows how busy a nation’s consultation team is relative to its capacity:

$$\rho_i = \frac{\lambda_i}{\mu_i}$$

Where: ρ_i is the utilization rate for nation i , the ratio of incoming consultation demand to processing capacity. As values approach 1.0 queues grow longer.

λ_i (lambda) is the average number of new consultation requests that nation i receives per year.

μ_i (mu) is the number of consultations nation i can complete per year.

Detailed data on consultation demand and processing capacity are often not publicly available. Where direct estimates of λ_i and μ_i are unavailable, the framework allows analysts to treat utilization, ρ_i , as a scenario input. Illustrative values might include low utilization ($\rho = 0.60$), moderate utilization ($\rho = 0.75$), and high utilization ($\rho = 0.90$), with higher values representing more severe consultation backlogs.

The framework then approximates consultation waiting time using a simple linear function³:

$$W_i = \alpha \rho_i$$

Where: W_i is the expected waiting time before consultation begins for nation i .

α represents the expected waiting time before consultation begins when consultation capacity is fully used.

Estimating α for individual nations is rarely practical because detailed data on consultation workloads and staffing are not publicly available. The framework therefore treats α as a scenario parameter representing typical consultation backlog conditions. Analysts can use illustrative values such as the following:

Consultation backlog	α (months)
Low backlog	6
Moderate backlog	12
Severe backlog	18

As utilization rises, waiting times increase. Where data is available, referral volumes can approximate λ_i , while staffing levels and average processing times can estimate μ_i .

The consultation-capacity delay for the project is then:

$$D_j^{cap} = W_i$$

Where: D_j^{cap} is the consultation-capacity delay for project j , defined as the longest expected consultation waiting time across affected nations.

The nation with the longest expected waiting time determines the consultation-capacity delay for the project.

Source 2: Coordination across multiple nations

Projects often require engagement with several First Nations. Each additional nation increases the time and amount of coordination required to move consultations forward. Territorial disputes may require joint meetings, mediation, or other multi-party processes. These steps can extend negotiations and delay agreements.

Source 3: Legal challenge delay

Even well-run consultation processes can face court challenges. A party may seek a judicial review of whether consultation met legal standards or request an injunction while a title or rights claim proceeds. For complex projects in BC, the risk of at least one such challenge is significant. The model accounts for this possibility by including an allowance for court-related delay.

Source 4: Federal-provincial overlay delay

Some projects take longer because federal and provincial authorities may have different sequences for the various steps they require, request different information, or issue separate decisions, even when they rely on the same assessment record. The model includes any delay beyond the normal coordinated baseline. Analysts may estimate the parameters associated with delays by using observed approval timelines from comparable projects. Where detailed data are unavailable, the delay parameters may be entered directly as expected additional approval time.

The incremental Indigenous-related time formula

$$D_j^{Ind} = D_j^{cap} + D_j^{coord} + D_j^{legal} + D_j^{fed-prov}$$

Where: D_j^{Ind} is the incremental Indigenous-related approval time beyond the baseline regulatory timeline.

D_j^{cap} is the consultation capacity delay, the additional time needed when consultation demand exceeds the review capacity of participating nations. It is based on the longest waiting time across affected nations.

D_j^{coord} is the coordination delay, the time required to engage multiple nations and manage territorial disputes or multi-party coordination

D_j^{legal} is the Indigenous-related legal delay, the time associated with consultation-related judicial review, injunctions, or dispute resolution.

$D_j^{fed-prov}$ is the federal-provincial overlay delay, the additional time necessary when projects subject to both jurisdictions face coordination, sequencing, consultation, or decision delays beyond the normal coordinated or substituted baseline process.

Each component represents a distinct source of delay. Analysts should assign time to only one component to avoid double counting. For example, coordination among nations should be recorded in D_j^{coord} , while delays arising from interaction between federal and provincial processes should be recorded in $D_j^{fed-prov}$.

Component 6: Probability of Indigenous agreements

This component estimates the probability that the project secures the Indigenous agreements or accommodations needed for the project to proceed through the approval process and into construction. The model treats each directly affected nation as a relationship that must reach a workable outcome for the project to advance.

The probability does not imply that each nation holds a formal veto under Canadian law. In practice, however, projects often depend on reaching workable agreements with affected nations to maintain legal durability and avoid delays from litigation or regulatory reconsideration. The model therefore treats agreement outcomes as a practical proxy for whether the project can proceed on schedule.

Per-nation approval probability (p_i)

This element estimates the probability of reaching a workable outcome with nation i that allows the project to proceed without major litigation, injunctions, or regulatory reconsideration. The outcome may involve a formal agreement, accommodation measures, or another arrangement that allows the project to move forward on schedule.

Agreement durability (q)

In BC, a signed agreement is not always final. Internal governance structures can affect whether a community views an agreement as legitimate. In some cases, tension exists between elected band councils under the Indian Act and hereditary leadership under Indigenous law. When these bodies hold different views, the durability of an agreement may be less certain.

In some cases, benefit-sharing arrangements include equity participation or other long-term partnership structures. These arrangements can strengthen long-term alignment between project proponents and participating nations and may increase agreement durability, q , even though the benefit-sharing obligations themselves are captured through B_j .

The model estimates the probability of securing agreements with all affected nations that remain stable through the approval, construction, and early operating period. It does not model provincial and federal approval probabilities separately.

The combined approval probability formula

The probability of reaching a durable agreement with a single nation equals:

$$p_i \times q$$

Where: p_i is the probability of reaching an agreement with nation i .

q is the probability that a signed agreement remains stable through the approval, construction, and early operating period of the project.

The probability that the project obtains a durable set of Indigenous relationships to proceed, P_r , is therefore:

$$P_r = \prod_{i=1}^{k_j} (p_i \times q)$$

This formulation allows for the agreement probability to differ across nations.

The model does not assume that every nation must formally agree. Instead, p_i represents the probability that the project proponent reaches a workable outcome with nation i . The combined probability therefore estimates the likelihood that all required relationships reach outcomes that allow the project to proceed without major disruption.

When project-specific information is unavailable, analysts may assume a common agreement probability. In that simplified case:

$$P_r = (p \times q)^{k_j}$$

Adjusting the variables

When project-specific information is available, p_i and q can vary by nation. Relevant factors may include whether a nation operates under a modern treaty with defined decision rules (which may raise p_i), whether there is active title litigation or whether Crown disputes exist in the project area (which may lower p_i and q), and whether governance tensions exist between elected and hereditary leadership.

Adjustments should rely on observable project conditions. For example, Indigenous equity participation in a project may increase the likelihood of agreement, p_i , and the durability of that agreement, q .

The effectiveness and outcome of consultation also varies across BC. Projects may involve modern treaty nations, such as Nisga'a, Tsawwassen, or Maa-nulth (BC Treaty Commission Undated), or nations covered by historic treaties in northeastern BC, Treaty 8 (Canada 2013), or nations in unceded

territory where Aboriginal title claims remain unresolved. These differences affect consultation processes, timelines, and legal uncertainty. Analysts using this model should adjust variables such as c_1 , c_2 , p_i , and q to reflect the legal setting.

Effect of multiple nations

The formula shows that the probability of proceeding declines as the number of nations increases because the agreement probability is multiplied across nations. For example, if the combined probability of both reaching an agreement with each nation and having that agreement remain durable is 90 per cent, and all nations are assumed identical, the probability of securing durable agreements with all nations becomes $(0.9)^{k_j}$. With 10 nations the probability is about 35 per cent. With 15 nations it falls to about 21 per cent.

Limitation of the independence assumption

The model assumes that each nation's decision is independent of the others. In the calculation, the probability of reaching an agreement with one nation does not change the probability of reaching agreements with other nations.

In practice, negotiations may influence one another. A successful agreement with one nation may build trust and make agreements with other nations more likely. In that case, the formula understates the probability that the project proceeds. Conversely, a dispute with one nation may create concern among others and make later agreements less likely. In that case, the formula overstates the probability.

For this reason, the result should be interpreted as an approximate estimate rather than a precise forecast.

Component 7: net present value

Net Present Value (NPV) is the primary tool that capital budgeting uses to determine whether an investment creates or destroys value. It discounts expected future net cash flows into its present value using the discount rate r , then subtracts the initial investment cost. If the NPV is positive, the project is expected to create value. If the NPV is negative, it is expected to reduce value.

The revised NPV formula

The framework's NPV formula uses the legal risk premium (through r), benefit-sharing obligations (through B_j), approval delay (through D_j^{Ind}), and Indigenous-related pre-approval costs (through C_j).

This framework's revised NPV formula discounts project value, post-approval investment costs, and benefit-sharing obligations by the Indigenous-related approval delay. Costs in C_j occur before approval and are not discounted by the delay term. The formula is:

$$NPV_j = \frac{(V_j - K_j - B_j)}{(1 + r_{BC,j})^{D_j^{Ind}}} - C_j$$

Where: NPV_j is the net present value of project j : the value created by the project after costs and delay are accounted for.

V_j is the present value of the project under the baseline expected approval schedule, before Indigenous-related delays and before benefit-sharing obligations.

B_j is the present value of benefit-sharing obligations.

$(1 + r_{BC,j})^{D_j^{Ind}}$ is the discounting factor. $r_{BC,j}$ is the BC risk-adjusted discount rate, and D_j^{Ind} is the incremental Indigenous-related delay.

K_j represents the main post-approval investment required to develop the project, such as capital expenditures, environmental compliance costs, and operating setup.

C_j is the total Indigenous-related pre-approval cost.

Expected NPV

The standard NPV calculation assumes the project will receive approval. As Component 6 shows, approval is not certain. The framework therefore estimates the expected NPV, which accounts for both the probability of approval and the fact that some project costs occur before approval is known.

Pre-approval costs include the Indigenous-related pre-approval expenditures captured in C_j . Because these costs are incurred regardless of outcome, they are not multiplied by the approval probability.

To reflect this timing, the model separates costs into two categories:

- Pre-approval costs – spending required before approval is known
- Post-approval costs – spending incurred only if the project proceeds

$$E[NPV] = -C_j^{pre} + P_r \left[\frac{V_j - B_j - K_j^{post}}{(1 + r_{BC,j})^{D_j^{Ind}}} \right]$$

Where: C_j^{pre} is Indigenous-related pre-approval costs incurred before approval. This is the same consultation-cost term as C_j . The notation changes only to show that these costs are incurred before approval is known.

K_j^{post} are capital expenditures incurred only after approval.

Component 8: The consultation effect

The Consultation Effect is a single measure that summarizes the impact of Indigenous engagement on project value. It shows how much Indigenous engagement changes the baseline project present value, expressed as a percentage. The metric enables analysts to make comparisons across projects, jurisdictions, and time. Investors can use it to screen projects and assess the impact of policy changes.

The Consultation Effect is calculated conditional on project approval. Approval probability is incorporated separately through the expected-NPV calculation.

The measure combines two sources of value loss: the cost of incremental Indigenous-related delay and the direct cost of Indigenous-related pre-approval expenditures and benefit-sharing:

$$Consultation\ Effect = \left[1 - \frac{1}{(1 + r_{BC,j})^{D_j^{Ind}}} \right] + \frac{(C_j + B_j)}{V_j}$$

Where: *Consultation Effect* is the share of the baseline project present value that is reduced by Indigenous-related delay and engagement costs, expressed as a percentage. A higher percentage means the project is less economically competitive.

$1 - \frac{1}{(1+r_{BC,j})^{D_j^{Ind}}}$ is the share of baseline project value lost because of incremental Indigenous-related delay beyond the baseline approval schedule.

$\frac{(C_j+B_j)}{V_j}$ is the direct cost component – the combined Indigenous-related pre-approval costs and benefit-sharing obligations as a fraction of the baseline project present value.

The Consultation Effect does not assess the fairness or legitimacy of those requirements or determine which benefits should be shared. Policy-makers should focus on improving process design and resourcing to manage incremental Indigenous-related time and cost while respecting the underlying rights of the First Nations involved.

Policy reform levers in the framework

Each part of the model reflects a specific source of incremental Indigenous-related time, cost, or risk. To estimate the effect of reform, analysts should adjust the relevant parameters and recalculate the model outputs.

Lever 1: Negotiations across First Nations

Negotiating regional framework agreements rather than separate agreements with each nation would reduce k_j , lower the number of territorial disputes and coordination requirements, reduce consultation costs C_j , and shorten the coordination-related portion of incremental Indigenous-related time D_j^{Ind} .

Negotiating such agreements would require provincial support and agreement among First Nations and may not be feasible in all regions.

Lever 2: First Nations technical capacity

Limited technical capacity among the First Nations is a common cause of consultation delays. Funding that supports shared technical, legal, and environmental expertise allows nations to review proposals more quickly. This reduces queue pressure ρ_i , lowers the waiting time proxy, and shortens consultation-capacity delay D_j^{cap} . It may also increase q , as a stronger internal review can produce more stable agreements that are less likely to face post-signing challenges. The cost of shared services is small relative to the project value affected.

Lever 3: Benefit-sharing templates

Pre-agreed templates for revenue sharing, employment, and environmental monitoring would provide a baseline. Parties can adopt, modify, or replace terms as needed. Clear baselines reduce uncertainty, raising the likelihood of agreement, p_i . They can also strengthen durability q by producing agreements that communities understand and are less likely to challenge. Templates also make benefit-sharing obligations B_j more predictable and reduce the risk that one nation seeks terms far above those accepted by neighbouring nations.

Example of a mining project

This section applies the framework to a hypothetical mid-sized mining project. The example shows how the model's variables combine to estimate delay, approval probability, and financial outcomes. The values below are illustrative. They show how Indigenous engagement requirements affect project economics relative to the report's simplified baseline and, illustratively, relative to a comparable project in Alberta.

Component	Inputs	Scenario values
Risk-adjusted discount rate	(r_j) Base discount rate	9.0%
	(π_{BC}) BC risk premium	1.5%
Affected nations and overlap	(k_j) Affected nations	6
	(T_j) Nations involved in overlap/dispute	3
Direct consultation cost	(c_o) Fixed setup cost	\$0.20M
	(c_i) Cost per nation	\$0.13M
	(c_2) Extra overlap/coordination cost	\$0.06M
	(A_j^{pre}) Other Indigenous-related pre-approval costs	\$1.0M
Project value and benefit-sharing	(V_j) Project cash-flow value	\$680M
	(B_j) Benefit-sharing obligations	\$12M
Baseline timeline	(T_j^{base}) Normal approval timeline	3.0 years
Consultation-capacity delay	(α) Consultation backlog parameter	12 months
	(ρ_i) Utilization rate of consultation capacity	0.75
Other delay inputs	(D_j^{coord}) Coordination delay	0.50 years
	(D_j^{legal}) Legal delay	0.25 years
	$(D_j^{fed-prov})$ Federal-provincial overlay delay	0.10 years
Approval probability	(p_i) Agreement probability per nation	0.90
	(q) Agreement durability	0.95

Capital costs	(K_j) Construction capital cost	\$610M
Alberta comparator ⁴	(r_{AB}) Discount rate	9.0%
	(D_{AB}^{ind}) Indigenous-related delay ⁵	0.50 years
	(B_{AB}) Benefit-sharing	\$5M
	(C_{AB}) Direct consultation cost	\$0.50M
	(k_j) Affected nations	2
	(p_i) Agreement probability per nation	0.95
	(q) Agreement durability	0.98

See Appendix A for the sensitivity ranges used in the tornado diagrams that follow.

Model outputs

Below are the outputs for the hypothetical mining project.

Output	BC	Alberta comparator
Direct consultation cost	\$2.16M	\$0.50M
Indigenous-related delay	1.60 years	0.50 years
Approval probability	39.1%	86.7%
NPV	\$47.3M	\$61.8M
Expected NPV	\$17.2M	\$53.5M
Consultation Effect	16.8%	5.0%

Three factors reduce the project's competitiveness in British Columbia.

- 1. Lower probability of proceeding.** With six affected nations, the probability of securing durable agreements with all parties is about 39 per cent. In Alberta, with two affected nations and a higher probability of per-nation agreement, the approval probability rises to about 87 per cent. That gap has the greatest impact on the difference in expected NPVs between the two provinces.
- 2. Longer approval delay.** The model estimates 1.60 years of additional Indigenous-related delay in BC compared with 0.50 years in Alberta.
- 3. Higher engagement costs.** Indigenous-related pre-approval costs are about \$2.16 million in BC compared with \$0.50 million in Alberta. The difference reflects engagement with more nations and coordination where territorial claims overlap.

In this example, Indigenous-related delay has the largest effect on NPV. Discounting the project's net value of \$58 million (that is, the project value

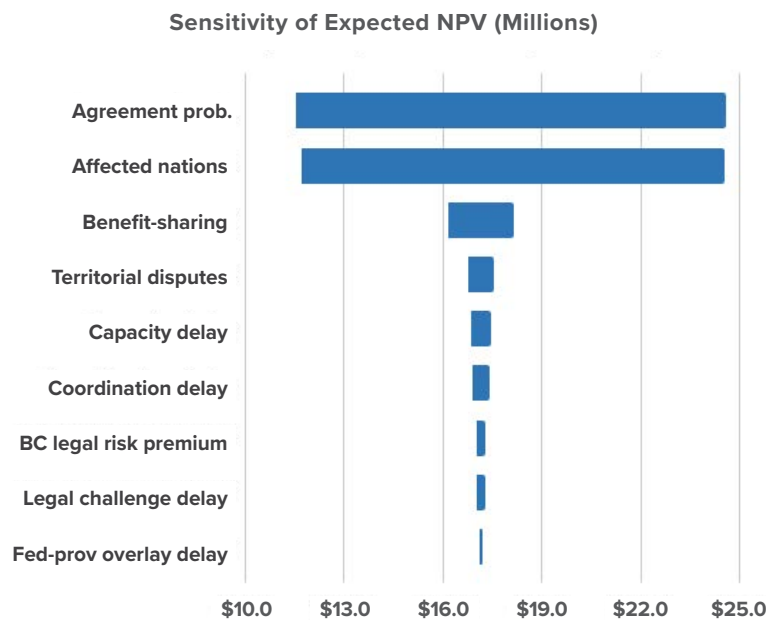
minus benefit sharing and capital costs) for 1.60 years at 10.5 per cent reduces value by over \$8 million. That is far more than the \$2.16 million consultation cost. By contrast, Alberta's project net value of \$65 million loses less than \$3 million to delay.

Approval probability has the largest effect on expected NPV. The BC project captures only about 39 per cent of its post-approval value in expected terms. As a result, expected NPV falls from about \$47.3 million to about \$17.2 million once approval risk and pre-approval spending are included.

In Alberta, the higher approval probability preserves much more of the project's post-approval value. Expected NPV falls from \$61.8 million to \$53.5 million, a difference of \$8.3 million compared with \$30.1 million in BC.

Sensitivity analysis

The two tornado graphs show which variables have the largest effect on expected NPV and on the Consultation Effect.

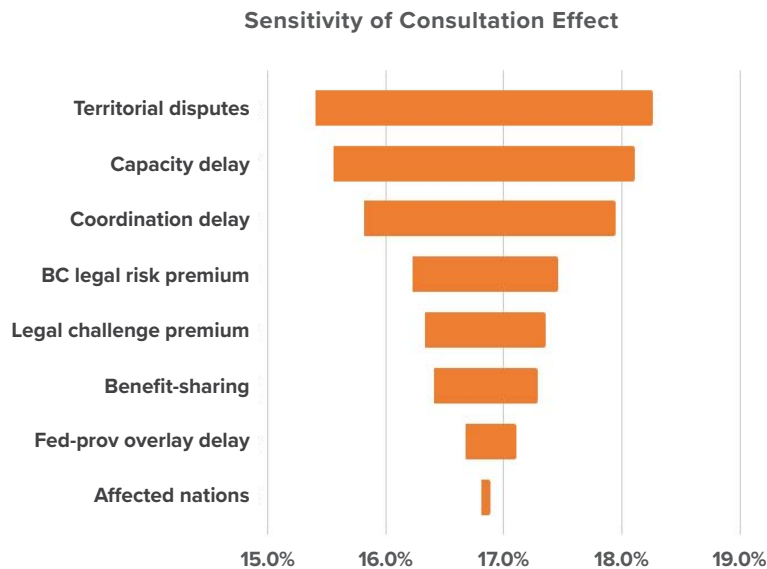


The expected NPV graph shows that p_i and k_j are the dominant variables. By a wide margin the probability of reaching an agreement with each nation and the number of affected nations have the largest effects. The graph indicates that agreement formation risk is the main driver of expected project value in the model.

Benefit sharing B_j has a noticeable but much smaller effect than p_i and k_j . All delay-related variables have relatively modest standalone effects on expected net present value. Among them, territorial disputes matter most, followed by capacity delay, coordination delay, the BC risk premium, the Indigenous-related legal challenge delay, and the federal-provincial overlay delay.

The standalone sensitivity of the BC risk premium, π_{BC} , should be interpreted with caution. In the framework, π_{BC} captures only the discount-rate channel. Legal reforms that reduce title uncertainty or clarify DRIPA's application could also reduce litigation risk, approval delay, and agreement stability. The one-way sensitivity analysis holds those other channels constant, so it likely understates the full economic value of legal reform.

A project that faces both long delay and low approval probability faces a compounding penalty. Delay reduces the NPV that is conditional on approval, while the low approval probability reduces the expected value of that already-discounted NPV. Because the tornado graph varies one variable at a time, it does not capture that interaction.



The Consultation Effect graph tells a different story. Territorial disputes have the largest effect, followed closely by capacity delay and coordination delay. This suggests that variables having the most impact on the Consultation Effect are mainly overlap-related complexity, consultation-capacity limits, and coordination across multiple nations.

The BC risk premium, Indigenous legal challenge delay, and benefit sharing have moderate effects on the Consultation Effect. Federal-provincial coordination delays and the number of affected nations have the smallest effects. Although the number of affected nations is a major driver of expected NPV, it has little direct effect on the Consultation Effect as defined here. Its main impact comes through agreement-probability rather than through delay or direct cost.

Taken together, the graphs show two distinct channels in the model. Expected NPV depends mainly on whether durable agreements are reached, while the Consultation Effect is driven mainly by delay and overlap-related coordination costs.

What the model does not capture

All models simplify reality. The framework's equations do not fully reflect the factors listed below. Some risks may be understated, while others may affect outcomes in either direction. The estimates of the Consultation Effect and approval probability should therefore be treated as approximations rather than precise predictions.

Public and political risk

The approval probability model focuses on directly affected First Nations. In practice, broader Indigenous and public opinion can also influence project outcomes. Media coverage, the views of environmental groups, and other political pressures can lead to project cancellation, even after formal approvals. This may be more prominent in BC than in other provinces, as Indigenous and environmental issues in that province receive greater public attention.

Correlated decision-making across nations

The approval formula assumes each nation's decision is independent of the others. In practice, negotiations can influence one another. A dispute with one nation may affect others, while a successful agreement can make later negotiations with other nations easier.

The model also uses a simplified measure of overlap-related complexity and does not fully capture all forms of inter-nation dispute or multi-party negotiation that can affect project timelines.

Crown consultation adequacy

The model does not separately estimate the quality or capacity of Crown consultation. Government consultation capacity can affect Indigenous-related delay, litigation risk, and approval probability. These effects are captured indirectly through the model's delay and approval-probability components. A more detailed framework could model Crown consultation explicitly.

Federal-provincial process detail

The model treats the normal coordinated or substituted federal-provincial assessment process as part of the baseline. It captures additional Indigenous-specific effects through incremental Indigenous-related delay, direct consultation cost, and, where relevant, the legal risk premium. The framework does not separately model the full federal-provincial process or the possibility that the two jurisdictions reach different decisions.

Conclusion

Resource development in British Columbia now routinely requires Indigenous engagement that can affect approval timelines, consultation costs, legal risk, benefit-sharing obligations, and even the likelihood that projects proceed. These issues are often discussed in legal or political terms. Less attention has been given to developing an economic framework that estimates these costs and shows how they affect project economics.

This report helps fill that gap. It estimates the economic effects of Indigenous engagement using variables that can be tested, compared, and applied to investment decisions. It gives investors, policymakers, and Indigenous governments a framework for identifying where costs and risks arise and which parts of the process have the greatest effect on project value.

For a hypothetical \$680 million mining project, Indigenous engagement, including consultation costs, benefit-sharing, and approval delay, reduces project value by 16.8 per cent in BC compared with 5.0 per cent in Alberta as measured by the consultation effect. Approval risk and pre-approval spending reduce expected net present value from \$47 million to \$17 million in BC, compared to a reduction from \$62 million to \$54 million in Alberta.

These gaps reflect the total effect of longer delays, greater legal uncertainty, more affected nations, and lower approval probability, all of which weaken BC's ability to attract investment and develop the province's natural resources.

Beyond reducing the value of projects that do proceed, low approval probability can cause companies to forgo investments entirely, even when a project's underlying economics are sound, if the probability-weighted return falls below the minimum a company requires to commit capital to the project.

A workable process must account for Indigenous rights while giving proponents clear and competitive timelines, costs, and decision rules. An economic framework can help governments and project participants focus reform where it is most likely to improve economic outcomes and make the approval process more reliable. [MLI](#)

About the author



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Appendix A: High-low sensitivity values used

Variable tested	Base value	Low value	High value
Affected nations	6	4	8
Territorial overlaps	3	2	4
Agreement probability per nation	0.90	0.85	0.95
Consultation-capacity delay	0.75 yrs	0.60 yrs	0.90 yrs
BC risk premium	1.5%	1.0%	2.0%
Benefit sharing	\$12M	\$9M	\$15M
Coordination delay	0.50 yrs	0.38 yrs	0.63 yrs
Indigenous-related legal delay	0.25 yrs	0.19 yrs	0.31 yrs
Federal–provincial overlay delay	0.10 yrs	0.08 yrs	0.13 yrs

Endnotes

- 1 The model treats the standard time required for environmental assessment, permitting, regulatory review, and ordinary local-community consultation as part of the baseline approval timeline. It estimates Indigenous-specific effects beyond that baseline.
- 2 The symbol T_j^{base} refers only to the baseline approval timeline. The framework uses the symbol T_j elsewhere for the number of nations involved in territorial disputes.
- 3 This linear approach is a simplifying assumption that keeps the model straightforward. In many queueing systems, waiting times rise non-linearly as utilization approaches full capacity ($\rho \rightarrow 1$). In practice, consultation delays may therefore rise more sharply when consultation capacity becomes highly constrained.
- 4 Alberta's historic treaty structure, greater land-status certainty, and more standardized consultation process reduce expected legal, coordination, and timing effects relative to BC. The model still includes Alberta-specific consultation requirements. The Alberta values allow for direct consultation, traditional land-use and knowledge studies, benefit-sharing, and Indigenous-related delay. The treaty structure supports higher per-nation agreement probability and durability than in BC, but agreement-formation risk is not zero.
- 5 (1) The Alberta legal delay component assumes the project area is not subject to active cumulative-effects litigation (Killoran et al. 2023); (2) Projects in Treaty 6 or Treaty 8 territories should use a higher D_{AB}^{Ind} value. Include the Alberta Energy Regulator's (AER) nonroutine hearing delay only when Indigenous parties trigger a hearing or when inadequate consultation findings delay AER action (AER Undated). When this occurs, incrementally add roughly 6 months of delay; (3) Before the AER can approve a project, the Aboriginal Consultation Office (ACO) must confirm that consultation was adequate. This is a separate queue that First Nations capacity alone does not capture (Alberta Undated b). Projects caught in periods of ACO backlog, or where analysts underestimate the ACO processing allowance, may experience longer delays.

constructive *important* *forward-thinking*
excellent *high-quality* *insightful*
timely *active*

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May I congratulate **MLI** for a decade of exemplary leadership on national and international issues. Through high-quality research and analysis, **MLI** has made a significant contribution to Canadian public discourse and policy development. With the global resurgence of authoritarianism and illiberal populism, such work is as timely as it is important. I wish you continued success in the years to come.

– The Honourable Irwin Cotler

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