

SHARED GOVERNANCE



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SHARED GOVERNANCE

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This report is a companion document to the September 2022 report Governance Back: Exploring Indigenous Approaches to Reclaiming Relationships With Land, david Suzuki.org/science-learning-centre-article/governance-back-exploring-indigenous-approaches-to-reclaiming-relationships-with-land/



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INTRODUCTION

This report sets out to explore some of the forms that shared governance and decision-making can take—both historical models that can be improved upon, and new and evolving models that can serve as templates for shared land governance initiatives.

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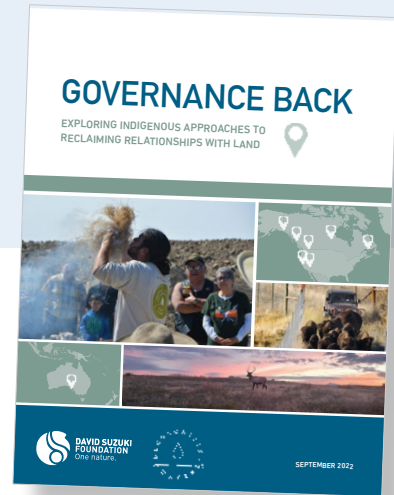
When explorers and settlers came to Canada, they asserted claims of ownership over lands that were already inhabited and governed by Indigenous Peoples. Indigenous systems of governance, which had been in place for millennia, did not reflect European notions of ownership and control, but rather an ethic of belonging and relationship. Some have referred to these relationships as “stewardship,” while others preferred terms used in Indigenous languages to describe responsibilities and obligations to all parts of creation; for example, *“inaakonigewin”* in Anishinaabemowin.

Most Indigenous Peoples did not claim ownership of land, but rather connection to and responsibility for their lands, territories and waters. When making treaties regarding shared land use in Canada, Indigenous Peoples agreed to co-exist and share occupancy and some benefits of those lands. Most Indigenous Nations—those that did not make treaties and those that did—continue to maintain that there was no surrender of lands. They did not sever their sacred relationship to lands and waters despite words used to that effect in the written versions of treaties, or assumptions made by the state where no treaties were negotiated.

To date, agreements to share the land have not been honoured by settlers or the state. The jurisdiction (the authority to make decisions and to act on responsibilities), sovereignty and self-determination of Indigenous Peoples has been gradually and sometimes violently stripped away by state action and inaction. A glaring example is the historical requirement to obtain a pass from an Indian agent to leave a reserve for any purpose, including to sell agricultural products or hunt.

In other cases, industry and extraction have profoundly scarred the landscapes of Indigenous people, chasing away or sickening the plants and animals, poisoning the water and destroying livelihoods and homes. Often, Indigenous people have been excluded from the tables where decisions are made about the use of their lands, resulting in deep ecological, cultural and spiritual loss for individuals, families, communities and Nations.

This is a companion report to “Governance Back,”¹ which engaged with the reclamation of Indigenous governance in a variety of contexts. There are overlaps between the two reports, and we recommend reading them together to conceptualize the dynamic opportunities for shifts in land governance.



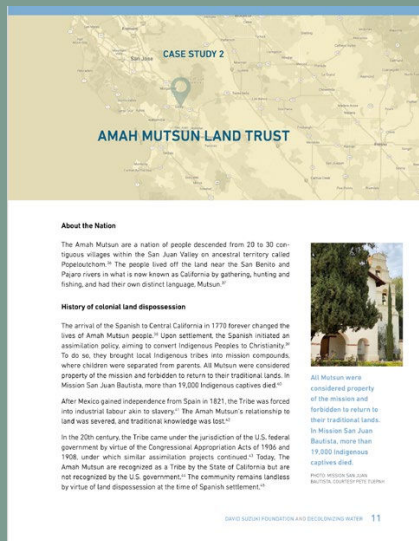
While consultation and accommodation of Indigenous Peoples has been mandated by the Supreme Court of Canada as part of the fulfilment by the Crown of constitutional obligations relating to treaty and aboriginal rights,² in practice this often fails to take into account the cumulative impacts of industrial extraction over time,³ and does not provide for the standard of “free, prior and informed consent,” as set out in the United Nations Declaration on the Rights of Indigenous Peoples.⁴

Within what is now called Canada, structures of co-management have been created, with varying success, to engage Indigenous Peoples in decision-making within their territories. However, these administrative bodies generally operate within westernized procedures and decision-making frameworks that often discount Indigenous scientific knowledge and legal principles. Significant under-resourcing of Indigenous governance exacerbates these issues.

This report sets out to explore some of the forms that shared governance and decision-making can take—both historical models that can be improved upon, and new and evolving models that can serve as templates for shared land governance initiatives. Through a literature review and interviews with knowledge-holders involved in (or studying) shared governance projects, it explores the strengths and weaknesses of well-established co-management models, from the Gwaii Haanas National Park Reserve, National Marine Conservation Area Reserve and Haida Heritage Site (hereafter Gwaii Haanas); the Yukon Water Board; and the Beverly and Qamanirjuaq Caribou Management Board to more recent approaches like the management structures for the Great Bear Rainforest and Thaidene Nëné Protected Area.

As the case studies in this report on “Shared Governance” illustrate, historical collaborative management bodies often serve as advisory bodies to state governments; they are not the ultimate decision-makers, and their recommendations can be disregarded.

- 1 Aimée Craft and Rachel Plotkin, *Governance Back: Exploring Indigenous Approaches to Reclaiming Relationships with Land*, David Suzuki Foundation and Decolonizing Water, 2022, david Suzuki.org/science-learning-centre-article/governance-back-exploring-indigenous-approaches-to-reclaiming-relationships-with-land/
- 2 See, for example, *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73, scc-csc.lexum.com/scc-csc/scc-csc/en/item/2189/index.do?r=AAAAAQAFaGFpZGEAAAAAQ
- 3 However, a recent decision, *Yahey v. British Columbia*, 2021 BCSC 1287, affirmed that cumulative impacts within a territory could constitute an infringement of treaty and Aboriginal rights, bccourts.ca/jdb-txt/sc/21/12/2021BCSC1287.htm
- 4 UN Declaration on the Rights of Indigenous Peoples, un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf



The case studies in “Governance Back” are drawn from Canada and other countries and illustrate creative solutions that are manifesting in a modern context. These solutions are responsive to lands and waters, as well as the interests (past, present and future) of Indigenous Nations that maintain their relationships to their territories.

There is no singular approach to reclaiming Indigenous governance. Creative mechanisms, built on longstanding relationships between the land and the people, and rooted in Indigenous self-determination, are required.

To live in right relationships and work toward reconciliation, colonial approaches to land ownership, control, access, possession and exploitation must be set aside in favour of decision-making mechanisms that meaningfully include First Nations, Inuit and Métis Peoples, and their values and laws.

In some cases, boards are involved in managing particular components of a landscape (usually a component that is being harvested or extracted), but not in the governance relating to the whole of the territory.

Furthermore, even when Indigenous people are at the table, their knowledge is often received in relation to western science, as part of regulatory evaluation of the environment. The western notions of the “public good” applied in these evaluations has often privileged economic interests over environmental and social interests. Even where state governments collaborate with Indigenous governments, they almost always retain final decision-making power. Furthermore, governments generally continue to claim full ownership of the land and resources under consideration as Crown land, which makes up almost 90 per cent of all lands in Canada.⁵

To live in right relationships and work toward reconciliation, colonial approaches to land ownership, control, access, possession and exploitation (based on the doctrines of discovery and terra nullius) must be set aside in favour of decision-making mechanisms that meaningfully include First Nations, Inuit and Métis Peoples, and their values and laws.

In addition to restitution of Indigenous lands, Indigenous knowledge and people’s active participation in decision-making are essential to realizing shared governance. In an era of climate and biodiversity precarity, the intimate and long-dating knowledge that Indigenous Peoples have about their lands and waters is essential to the ecological survival of all beings.

5 In Canada, 41 per cent of land is managed by the federal government and 48 per cent by provinces.

CASE STUDY 1

BEVERLY AND QAMANIRJUAQ CARIBOU MANAGEMENT BOARD

PHOTO ERWIN AND PEGGY BAUER

What led to shared governance?

Caribou are a significant source of sustenance, culture and lifestyle to the Indigenous Nations in northern Manitoba, Saskatchewan, Nunavut and the Northwest Territories. In the late 1970s, population estimates of declining caribou and increasing industrial pressures catalyzed concerns. This led to a new approach based on co-operation among communities and governments with an interest in the Beverly and Qamanirjuaq herds.”⁶



“[There are] twenty communities relying on those two herds alone. We did an economic feasibility study as to what it would cost to replace just in food value alone in those communities for those two herds and it was \$20 million a year. So, it’s very, very important, and that’s not to overshadow the cultural aspect of it, which is very important.” — Earl Evans, chair of the Beverly and Qamanirjuaq Caribou Management Board ⁷

⁶ Beverly and Qamanirjuaq Caribou Management Board website, “History of the BQCMB,” arctic-caribou.com/about-bqcmcb/history/

⁷ Personal communication, Earl Evans, February 15, 2022.

Structure of shared-governance model

First signed in 1982, the Beverly and Qamanirjuaq Barren Ground Caribou Management Agreement⁸ led to the creation of the Beverly and Qamanirjuaq Caribou Management Board (BCQMB), for which the objective is long-term conservation of the Beverly and Qamanirjuaq caribou herds for Indigenous communities whose traditional and contemporary ways of life include the use of caribou, as well as for all Canadians and people of other Nations.

The BCQMB—the first co-management board in Canada—is unique in its geographic reach as it consists of eight community members from the following regions: Kivalliq, Nunavut; southern Northwest Territories; northern Saskatchewan and northern Manitoba. Five members represent the governments of Canada, Nunavut, the Northwest Territories, Saskatchewan and Manitoba. The board makes recommendations to the appropriate governments on behalf of traditional users for conserving and managing the Beverly and Qamanirjuaq herds of barren ground caribou and their habitat.

After significant consultations with land users, recommendations are brought forward that include harvest limits and allocation, criteria for regulating harvest methods, methods of traditional user participation to assist in caribou management, caribou research proposals, recommended standardized data collection and presentation, plans, processes and permit conditions for land use and human activities on the caribou ranges and a herd management plan.⁹

The Beverly and Qamanirjuaq Caribou Management Board was the first co-management board in Canada.



“We make recommendations, and our recommendations are very, very well thought of and very well respected across the region by all governments. I mean we had one big uranium mine shut down in Nunavut; it was supposed to be the first big uranium mine in Nunavut, the first one ever and we sat as intervenors and sat in on the hearings and we produced enough evidence to have that project shut down. Areva was a huge uranium company and there’s a lot of uranium companies vying for a spot in Nunavut to take over, to set up there, but we stayed in our point of view on what it would do to the caribou and the people and the wildlife. There’s a lot of unknowns there that weren’t answered. We had that project postponed and put on the shelf. So, we do have some pull although we are an advisory body.” — Earl Evans¹⁰

PHOTO: BCQMB

8 Beverly and Qamanirjuaq Caribou Management Board website, “Beverly and Qamanirjuaq Barren Ground Caribou Management Agreement,” arctic-caribou.com/pdf/Current_Agreement.pdf

9 Ibid.

10 Personal communication, Earl Evans, February 15, 2022.

Scope of shared decision-making within the model

Board decisions aim for consensus and require a majority vote; each member has one vote. The board does not have decision-making power, but its recommendations have rarely been overturned.

Shared governance challenges still to overcome

The agreement has a ceiling for costs that is deemed insufficient,¹¹ and requires a stronger, long-term funding commitment. It also requires revitalization of the mandate, as well as full-time dedicated staff.

“They seen a need for it in the '80s and that is 40 some years ago now. And it just continued on, it's the longest serving board, I think in Canada. Yeah. We have five governments, biologists and harvesters, all working together.” — Earl Evans¹²

PHOTO: BCQMB



11 BQCMB news release, “Caribou Board Seeks Essential Funding,” arctic-caribou.com/caribou-board-seeks-essential-funding/

12 Personal communication, Earl Evans, February 15, 2022.

CASE STUDY 2

GREAT BEAR RAINFOREST AGREEMENT

PHOTO FROM PROVINCE OF BC/FICKR



What led to shared governance?

Environmental organizations and First Nations opposed unsustainable logging practices along the coast of British Columbia in the 1990s. When the logging companies, faced with protests, began to enter into dialogues about altering their status quo operations, First Nations demanded a seat at the table, stating that no changes should be made to their traditional territories without their consent. An agreement between the Province of B.C. and First Nations was developed to implement forest protections and a new land-use regime that involved deep consultation and constrained decision-making abilities of provincial ministers.

A number of legal instruments govern the Great Bear Rainforest, upholding the objective to conserve 85 per cent of the forest and 70 per cent of old growth over time,

Structure of shared-governance model

A number of legal instruments govern the Great Bear Rainforest, upholding the objective to conserve 85 per cent of the forest and 70 per cent of old growth over time, including the Great Bear Rainforest Agreement (GBRA); the Great Bear Rainforest (Forest Management) Act,¹³ the Great Bear Rainforest Land Use Objectives Order and the Central and North Coast Biodiversity, Mining and Tourism Area Order.¹⁴ The Province of British Columbia is a party to all of the agreements: the Land and Resource Protocol Agreement

¹³ *Great Bear Rainforest (Forest Management) Act*, SBC 2016, c 16.

¹⁴ Order-in-council 2002-09, as found at gov.bc.ca/assets/gov/farming-natural-resources-and-industry/natural-resource-use/land-water-use/crown-land/land-use-plans-and-objectives/westcoast-region/great-bear-rainforest/central_north_coast_biodiversity_mining_tourism_area_order_2009.pdf

is signed with the Coastal First Nations,¹⁵ an agreement in principle is signed with the Nanwakolas Council and strategic and land-use planning agreements have been signed with the Gitxaala, Haisla, Heiltsuk, Kitasoo/Xaixais, Kitselas, Kitsumkalum, Metlakatla and Wuikinuxv Nations. There are also a number of non-signatory partners, including environmental non-governmental organizations, municipalities and forestry companies.

“It sounds and graphically looks bureaucratic, but a three-level approach tends to work ... with an Executive Council, of Ministers and Chiefs, a Management Forum of senior officials from the Crown governments and the Nations, being the second level, and then below that are joint technical and science/traditional knowledge tables. Whether its for Indigenous Protected Areas, or Guardian authorities, or other topics, the work of stewardship through each Nation’s Stewardship Directors, there is an organization structure underneath to achieve what needs to be achieved in terms of the jointly agreed upon agenda.” — Paul Kariya, senior policy adviser, Coastal First Nations¹⁶

PHOTO FROM PROVINCE OF BC/YOUTUBE



Scope of shared decision-making within the model

The GBRA is not a co-management board in the classic sense but rather a series of legal agreements between the provincial Crown and First Nations, supported by continuous dialogue and negotiations through joint tables to protect and manage land collaboratively through provincial legislation and other legal tools.

Four important elements of the Great Bear Rainforest Agreement are:

- **Land and Resource Protocol Agreement:** This “established a Land and Resource Forum through which the First Nations and the provincial government would meet to share information and work together toward implementing the ecosystem-based management elements of the GBR agreements.”¹⁷
- **Reconciliation Protocol:** Defines ongoing consultation relationships (including levels of engagement by decision) and commits provincial government funding to

15 The Coastal First Nations are “a unique alliance of nine Nations living on British Columbia’s North and Central Coast and Haida Gwaii,” coastalfirstnations.ca/our-communities/why-a-coastal-alliance/

16 Personal communication, Paul Kariya, January 29, 2022.

17 Deborah Curran, “Legalizing’ the Great Bear Rainforest Agreements: Colonial Adaptations Toward Reconciliation and Conservation,” *McGill Law Journal*, 62:3, 2017, pp. 813–60, doi.org/10.7202/1042775ar.



The provincial Crown largely maintains final decision-making authority. There's also a continued challenge to maintain resources through a conservation economy model, as the dominant economic model in British Columbia, and in every province, remains extractive.

PHOTO FROM PROVINCE OF BC/YOUTUBE

consultation. It also recognizes Aboriginal title, rights and interests. Each party retains its own interpretation of its jurisdiction.¹⁸

- **First Nations Protected Area Collaborative Management Agreements:** Signed for collaborative management of specific conservancies or sometimes all conservancies within a traditional territory. Sets out process for collaboration and government-to-government discussions on enumerated items such as exercise of rights/title, development of economic opportunities in the areas, etc.¹⁹
- **2016 Land Use Order:** This order, alongside the Forest Management Act, outlines the objective of protecting 85 per cent of the forest and 70 per cent of old growth over time, "achieving a high level of ecological integrity."²⁰

The Great Bear Rainforest also extends its protection measures to the ocean, through the Marine Plan Partnership for the North Pacific Coast (MaPP).²¹

A central aspect of the GBRA is also social and economic well-being through Coast Funds, the mandate of which is to support First Nations in achieving their goals for sustainable economic development and conservation management in the Great Bear Rainforest and Haida Gwaii.²² Coast Funds has been able to leverage private and public dollars to create significant change within communities.²³

Shared governance challenges still to overcome

The provincial Crown largely maintains final decision-making authority. There's also a continued challenge to maintain resources through a conservation economy model, as the dominant economic model in British Columbia, and in every province, remains extractive.

18 Ibid, Curran.

19 Ibid, Curran.

20 Province of B.C., *Great Bear Forest Agreement Coast Land Use Update*, gov.bc.ca/gov/content/industry/crown-land-water/land-use-planning/regions/west-coast/great-bear-rainforest#:~:text=The%202016%20Great%20Bear%20Rainforest,area%20available%20for%20sustainable%20forestry.

21 See Marine Plan Partnership for the North Pacific Coast (MaPP), mapocean.org/ and Akshay Kulkarni, *First Nations leaders, federal officials create marine refuge on B.C. Central Coast*, CBC News, February 5, 2023, cbc.ca/news/canada/british-columbia/marine-refuge-first-nation-conservation-1.6737910

22 Coastal Funds website, "Who are we?" coastfunds.ca/about/who-we-are/?tab=funders-members

23 According to the Coastal Funds website (Ibid), "The fundraising and negotiations that resulted in the creation of Coast Funds are globally recognized as an example of Project Finance for Permanence (PFP). The aim of PFP is to help establish the conditions required to secure the ecological, financial, organizational, political, and social sustainability of globally important places. The PFP process often takes many years and a high-level of collaboration between disparate partners, but provides a durable foundation for long-term landscape-level conservation success."

... if one looks at our member Nations, the conservation economy is just emerging, it's starting. And, our modeling indicates it's going to be a tough slog to get out of resource extraction to get to value-added restoration and conservation. So that's a compelling force to say, "we have to break out of the old mode and what do we get to next?" Well, it means more access to resources and more control for the Nations and a greater say in how resources from our regions will be utilized and shared." — Paul Kariya²⁴

PHOTO FROM PROVINCE OF BC/YOUTUBE



²⁴ Personal communication, Paul Kariya, January 29, 2022.

CASE STUDY 3

YUKON WATER BOARD



What led to shared governance?

Prior to 1972, there was no water-licensing body, despite a significant history of water use in mineral extraction processes.²⁵ The Yukon Water Board was created in 1972 by the Northern Inland Waters Act²⁶ to manage water licensing in the territory. However, it did not have a shared governance model in the form of a quasi-judicial tribunal (co-management with Indigenous participation) until 2003, as a result of land claim agreements.²⁷

The board issues water-use licences for water use and the deposit of waste to water bodies.

Structure of shared-governance model

The board is a quasi-judicial co-management body. Each of the following organizations nominate three members: Government of Canada, Government of Yukon and Council of Yukon First Nations.

Scope of shared decision-making within the model

“The objectives of the Board are to provide for the conservation, development, and utilization of waters in a manner that will provide the optimum benefit from them for

²⁵ Personal communication, Nicole Wilson, February 8, 2022.

²⁶ *Northern Inland Waters Act*, RSC 1985, c N-25, laws-lois.justice.gc.ca/eng/acts/N-27.3/

²⁷ Personal communication, Nicole Wilson, February 8, 2022.

PHOTO ADAM JONES/FLICKR
TWO MOOSE LAKE, YUKON

all Canadians and for the residents of the Yukon in particular.”²⁸ The board issues water-use licences for water use and the deposit of waste to water bodies. The board is an independent quasi-judicial body established under the Waters Act and the Water Board Secretariat provides administrative support and works on the board’s behalf.

Property rights over water are retained by Crown governments,²⁹ as confirmed in the Umbrella Final Agreement. Although the Nations have a right to “traditional use” of water—to exclusive rights to use water flowing through settlement lands that is “substantially unaltered as to quantity, quality and rate of flow, including seasonal rate of flow,” this right is subject to certain limitations.³⁰

“I’ve always found it weird that co-management in Yukon is tripartite, why do Yukon government and the federal government each get a third, then the First Nations only get a third, why can’t it be 50/50 and Yukon government and the federal government have 50%. And then that would actually set you up better for some kind of joint decision-making process.” — Nicole Wilson, Canada Research Chair in Arctic Environmental Change and Governance³¹

KLUANE LAKE, YUKON, E LEE PHOTOGRAPHY/FLICKR COMMONS



Shared governance challenges still to overcome

Property rights over the water remain with the Crown. Although water is given special protection on settlement lands, title is not transferred. Therefore, Crown laws and western world views continue to dominate the legal fabric of this board and regulatory regime. The board’s makeup is dominated by federal and territorial government representatives who hold the balance of decision-making power.

²⁸ *Waters Act*, s 10.

²⁹ *Waters Act*, s 3.


³⁰ Umbrella Final Agreement, 14.5.0; 14.5.1; 14.8.0, rcaanc-cirnac.gc.ca/eng/1297278586814/1542811130481

³¹ Personal communication, Nicole Wilson, February 8, 2022.

CASE STUDY 4

GWAII HAANAS

What led to shared governance?



Similar to the Great Bear Rainforest, the governance body emerged from concerns about unsustainable logging practices, this time in the 1970-80s. While initially a proposal was tabled to protect the South Moresby Wilderness Area, the Haida Nation designated the area a “Haida Heritage Site” under Haida law in 1985 and blockaded further logging incursions. Yet logging continued until 1987, when the South Moresby Memorandum of Understanding was signed by Canada and British Columbia. In 1988, the South Moresby Agreement was signed. This created the space for Canada and the Haida Nation to explore National Park Reserve status.³²



In 1993, the Government of Canada and the Council of the Haida Nation signed the Gwaii Haanas Agreement. The agreement expresses respect for Canadian and Haida interests and designations, and includes a mutual commitment to protect Gwaii Haanas, and to agree to disagree on the matter of jurisdiction and ownership of the land.

In 2015, the Haida Nation also released a marine plan with the province,³³ and it continues to work to advance ocean governance under the Marine Plan Partnership. The Haida continue to participate in numerous marine protection processes.³⁴

PHOTOS CHRISTINE RHONDEAU/
FLICKR COMMONS

32 *History of Establishment, Gwaii Haanas National Park Reserve, National Marine Conservation Area Reserve, and Haida Heritage Site.* Government of Canada, pc.gc.ca/en/pn-np/bc/gwaiihaanas/info/histoire-history

33 Haida Gwaii Marine Plan, 2015, mappocean.org/wp-content/uploads/2015/09/HGMP-WEB-2015-07-08.pdf

34 *Sea Changes: Working Together on Haida Gwaii*, haidanation.ca/wp-content/uploads/2021/04/Sea-Changes.April_30-Final.pdf

Structure of shared-governance model

The agreement was the first of its kind in Canada as it was constructed without compromising Haida rights and title. It states, “The parties maintain viewpoints regarding the Archipelago that converge with respect to objectives concerning the care, protection and enjoyment of the Archipelago ... and diverge with respect to sovereignty, title or ownership...”³⁵ The agreement “is a nation-to-nation agreement that established a co-operative management body called the Archipelago Management Board (AMB).” It upholds Haida legal rights and title to the land and the sea, and commits to the continuity of Haida culture.”³⁶

The agreement outlines both Nations’ commitment to preserve Gwaii Haanas for future generations,

“Views differ on who would have the legal right to make a final decision — Canada would say Canada and Haida would say the Haida Nation — but it’s not really about that because we operate on a consensus decision making model where all members of the Archipelago Management Board make decisions by using their independent authorities.” — Ernie Gladstone, Gwaii Haanas superintendent³⁷

PHOTO BRODIE GUY / FLICKR COMMONS



Scope of shared decision-making within the model

The agreement outlines that members will strive to achieve consensus in decision-making.

In the event of a clear and final disagreement of AMB members on a matter, it will be referred to senior representatives of the parties to attempt to reach agreement in good faith.

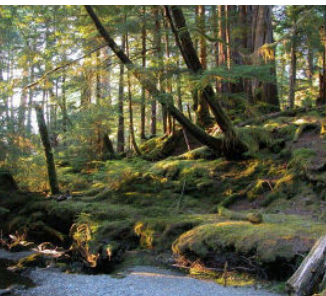
In 2021, the Haida Nation, Canada and the Province of B.C. signed the historic GayGahlda | Kwah.hlahl.dáyaa Changing Tide Framework Agreement, which sets out a pathway toward reconciliation between the Canada, the Province of B.C. and the Haida Nation.³⁸

³⁵ *Gwaii Hanaas Final Agreement*, haidanation.ca/wp-content/uploads/2017/03/GwaiiHaanasAgreement.pdf

³⁶ Coastal Funds website, coastfunds.ca/news/25-years-of-co-management-of-gwaii-haanas/

³⁷ Personal communication, Ernie Gladstone, February 22, 2022.

³⁸ GayGahlda | Kwah.hlahl.dáyaa Changing Tide Framework Agreement, as found at haidanation.ca/sdm_downloads/haida-laas-special-issue-the-gaygahlda-changing-tide-framework-agreement/



“The court in one case described the decision-making process as an innovative way of making decisions and working together to make truly shared decisions without having to say under whose authority they were made.” — Ernie Gladstone³⁹

PHOTO PETER MORGAN/FLICHR COMMONS

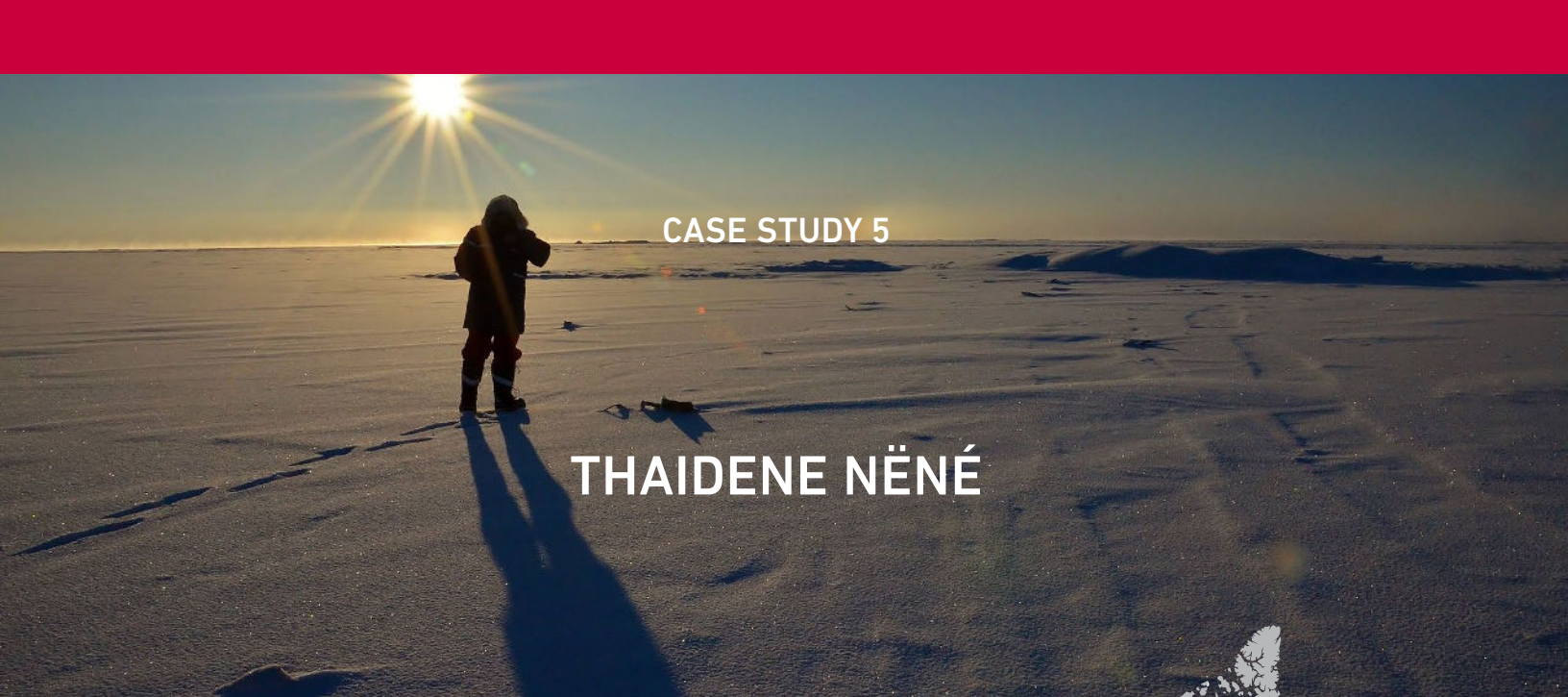
Shared governance challenges still to overcome

Although both sovereignties and jurisdictions are acknowledged in the agreement, Parks Canada generally has more financial resources to invest in protecting Gwaii Haanas than the Haida Nation. Interviewees believe that this has not, however, led to an imbalance of power, in part because of the commitment of all the parties to cooperative management and consensus-making through the ABM. The Haida have also asserted a strong claim of Aboriginal title, which provides them with an important political and legal advantage in their shared decision-making relationship.



PHOTO DALE SIMONSON/FLICHR COMMONS

³⁹ Personal communication, Ernie Gladstone, February 22, 2022.



CASE STUDY 5

THAIDENE NĒNÉ

What led to shared governance?

The shared governance framework was the result of increased industrial pressure (the discovery of diamonds) and the progression of the Akaitcho Dene Land Claim and Self Government⁴⁰ negotiation process.⁴¹



Structure of shared-governance model

The board is governed by “the Parties”: the Government of Northwest Territories, the Łutsël K’e Dene First Nation and Parks Canada.

The parties each appoint an equal number of members to the Thaídëne Nene Xá Dá Yáłtı, body, which guides operations and governance, and advises the board “on subjects such as cultural protection and rejuvenation, ecological protection, access and use permits, budgets and expenditures, and research and monitoring.”⁴² The board is 100 per cent Indigenous, and Dene is spoken at meetings.

The board is 100 per cent Indigenous, and Dene is spoken at meetings.

The Nation, in partnership with a conservation organization, raised \$15 million for a trust fund, which the federal government matched. Yearly interest and investment income are used for the park’s management and operations.⁴³

PHOTO FROM
TRANSPORTATION SAFETY
BOARD CANADA/FLICR

40 Govt NT website, *Concluding and Implementing Land Claim and Self-Government Agreements*, eia. gov.nt.ca/en/priorities/concluding-and-implementing-land-claim-and-self-government-agreements/akaitcho-dene-first

41 Personal communication, Steven Nitah, June 17, 2022.

42 *IPCA Governance Models: A Snapshot of Existing Conservation Governance Arrangements*, prepared by Megan Youdelis. A Project of the Conservation Through Reconciliation Project (forthcoming); and *Agreement to Establish Thaidene Néné Indigenous Protected Area, Territorial Protected Area, and Wildlife Conservation Area Between the Łutsël K’e Dene First Nation and The Government of Northwest Territories*, landoftheancestors.ca/uploads/1/3/0/0/130087934/gnwt_agreement.pdf

43 Thaidëne Nene website, landoftheancestors.ca/thaidene-neumlneacute-fund.html



“There’s a deep relationship already between the individuals on the Board ... you know they have been to residential school together...” — Steven Nitah, lead negotiator⁴⁴

PHOTO KYLEWITH/FLICKR COMMONS

Scope of shared decision-making within the model

The Thaidēne Nene Xá Dá Yátlı makes all decisions by consensus.⁴⁵ Thaidēne Nene Xá Dá Yátlı is developing a management plan to be approved by the parties within five years of the agreement’s launch. Once the parties accept the recommendations, they become official decisions.

The agreement includes a dispute resolution process that ensures problems that cannot be resolved are referred to the chief and the minister to attempt to reach an agreement in good faith.⁴⁶

Building and maintaining trust between the Crown and the First Nation remains challenging.

Shared governance challenges still to overcome

Building and maintaining trust between the Crown and the First Nation remains challenging. In fall 2022, a culture camp in Thaidene Nēné was raided by NWT wildlife officers. This created significant tensions in the relationship between the Łutsel K’e and the territorial government. Iris Catholique, Thaidene Nēné manager for Łutsel K’e Dene First Nation, stated that the raid was “a completely unreasonable search and an unnecessary violation of our Aboriginal and treaty rights. It reminds us that all the talk about reconciliation and new relationships is just talk until there is a real change in how other governments deal with us on the ground.”⁴⁷

“Thaidene Nēné is very unique, it’s a ground-breaking relationship. The mandate that my team had was to negotiate the implementation of the spirit and intent of the treaty where we can share the land, share the responsibility and share the benefits of it.” — Steven Nitah⁴⁸

44 Personal communication, Steven Nitah, June 17, 2022.

45 Agreement to Establish Thaidene Nēné.

46 Agreement to Establish Thaidene Nēné.

47 April Hudson, Łutsel K’e Dene First Nation decries ‘forceful invasion’ of culture camp by wildlife officers CBC North, September 15, 2022, [cbc.ca/news/canada/north/enr-culture-camp-lutsel-k-e-review-1.6593490](https://www.cbc.ca/news/canada/north/enr-culture-camp-lutsel-k-e-review-1.6593490)

48 Personal communication, Steven Nitah, June 17, 2022.



ANALYSIS

While the goal of shared governance is laudable, true sharing of decision-making requires equality amongst the parties. This includes equality in the authority to make decisions, but also in terms of the resources available to parties, the influence on the process and the ability to meaningfully affect the ultimate outcomes.

In the case of Thaidene Nënë, according to Steven Nitah, one of the lead negotiators, “the First Nations government had to have authority similar to that of Parks Canada or greater, similar to that of the Government of NWT or greater for Thaidene Nënë.”⁴⁹ In the case of Gwaii Haanas, while the different governments assert they each have the final authority, superintendent Ernie Gladstone says, “we focus on the common goals of protection and agree to disagree on who owns the land.”⁵⁰

In other circumstances, the Crown holds a clear veto power. For example, in Yukon’s tripartite context, the territorial and federal governments each are allocated a third of the board appointments, and the First Nations the other third. According to academic Nicole Wilson, Canada research chair in Arctic environmental change and governance, even though there’s a joint decision-making body, the decision-making is not equal. In her view, a true shared structure would require joint decision-making in which the First Nations actually have the ability to say no. This would be facilitated by having at least half the board members representing First Nations.⁵¹ Reconsideration of the status quo of Crown jurisdiction over water is also needed.

Equal partnership can be difficult to achieve, especially in the face of power imbalances and systemic racism, including economic imbalance. Many of the initiatives are

Equal partnership can be difficult to achieve, especially in the face of power imbalances and systemic racism, including economic imbalance.

PHOTO LESLIE PHILIPP/
FLICKR COMMONS

49 Personal communication, Steven Nitah, June 17, 2022.

50 Personal communication, Ernie Gladstone, February 22, 2022.

51 Personal communication, Nicole Wilson, February 8, 2022.

structured in ways such that the shared management power is exercised through the ability to make recommendations, with the final decisions continuing to rest with the Crown. Even those bodies that have decision-making power are usually subject to ministerial discretion to overturn those decisions.

The fact that the ultimate jurisdiction over lands and resources often remains with the Crown's veto is in stark contrast to the inherent authority of Indigenous Peoples within their own territories and the values of free, prior and informed consent.



Resource-specific management

Many of the agreements that have led to shared management and decision-making are a result of disputes relating to industrial resource extraction. For example, according to Nitah, Thaidene Néné was born from the “confluence of the discovery of diamonds in our territory, along with the framework on the Akaitcho land claims process... The elders said ‘okay we need to protect the heart of the homeland and we need to do it in a strong protective regime.’”⁵²

Although Canada had previously suggested a park in 1969-70, Lutselk'e First Nation opposed it, until pressures from impending mineral extraction projects and the recognition of treaty and Aboriginal rights in section 35 of the Constitution Act, 1982, created both more urgency and more leverage for the Dene.

Other examples reflect the same desire to curb extraction. In the Yukon, continued use of water without permitting after the gold rush ultimately led to the creation of a water board. Following that, in British Columbia, the Gwaii Haanas and Great Bear rainforests were being heavily logged. Nations fought to protect those areas from further exploitation, using their own laws and legal orders to protect their interests in the land. According to Gladstone,

*The Haida Heritage Site was a designation made under Haida law through the Constitution of the Haida Nation. So, the Haida Nation wasn't protesting against what was going on. It was the Haida Nation upholding Haida law and saying this has been designated as a Haida protected area, so it's our job to stop resource extraction because that's not in line with our government's designation.*⁵³

There is a significant challenge when decisions are parsed into categories, such as the mandate to monitor only one form of impact. Administrative decision-making bodies primarily take a focused approach to either a limited territory or one particular component within a territory. It often rests on the presumption that nature is a resource (or a set of resources) in need of human management. This does not align with the environmental

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PHOTO WIKIMEDIA
COMMONS/
PENNYWEASEL

⁵² Personal communication, Steven Nitah, June 17, 2022.

⁵³ Personal communication, Ernie Gladstone, February 22, 2022.

holism framework that characterizes many Indigenous legal orders. According to Wilson, “Yukon First Nations also criticized current water governance arrangements for failing to adequately reflect First Nation water ontologies, epistemologies and governance systems.”⁵⁴

Some have reflected that when co-managing a “resource,” the decision-making becomes streamlined into a western approach. Anthropologist Stella Spak writes, “Co-management boards can be perceived as an attempt to get First Nations to buy into the Western approach to resource management, thus laying the groundwork for future-cooperation.”⁵⁵ However, this need not be the case; some examples, such as the Archipelago Management Board in Gwaii Haanas, Thaidene Nene Xá Dá Yátti and the MaPP project in the Great Bear Sea, exemplified coordinated approaches to broad areas in need of protection.

Funding

In many cases, as demonstrated by the BCQM case study, control over the resources available to support the joint management or shared decision-making process is inadequate and limited by the will of state governments to provide funding. Some Indigenous advocates have posited that this is a deliberate strategy to perpetuate dependency, subject the decision-making process to limitations of scope and to influence ultimate outcomes. According to scholar Graham White, “Funding is also intimately linked to independence, with most boards funded entirely by the Crown.”⁵⁶

The Thaidene Néné Trust and Coast Funds aim to curtail these funding challenges by ensuring a stable, long-term funding vehicle that is managed by the First Nations for the purposes of advancing a set of goals related to protection.

According to Nitah,

The Thaidene Néné Trust is owned by the Lutselk'e Dene First Nation, they own the trust fund. They have a legal responsibility that their first expenditure has to be to fulfill their commitments prescribed within the management establishment agreement and what's agreed on in the management plan to work on.

54 Nicole J. Wilson, “Querying Water Co-Governance: Yukon First Nations and Water Governance in the Context of Modern Land Claim Agreements,” *Water Alternatives*, 13:1, 2020, pp. 93–118.

55 Stella Spak, “The Position of Indigenous Knowledge in Canadian Co-Management Organizations,” *Anthropologica*, 47:2, 2005, pp. 233–46.

56 Graham White, “Not the Almighty”: Evaluating Aboriginal Influence in Northern Land-Claim Boards,” *Arctic*, 61, 2008, pp. 71–85.



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PHOTO THAIDENE NÉNÉ/FACEBOOK

Shifting off the land

The case studies also illustrated that some land governance processes have a colonizing/bureaucratizing effect, “drawing Indigenous people off the land and into offices to become professional managers.”⁵⁷ Those who have been most intimately involved with and have the most knowledge of the land and water become valuable commodities that are then removed from the land to become administrators. In those cases, the management process itself takes a western-centric approach. The converse is also true where the on-land activities are encouraged by the board and become an important source of information for decision-making. Land-based activity and reporting, such as occurred in the BQCMB, was the preferred model of most interviewees.

In some cases, many resources are committed to the decision-making process but little happens on the ground to enforce and support the decisions. According to Wilson, this causes distrust: “You go through this whole proceeding to make a decision about a water licence when people aren’t even sure that it’s being enforced.”⁵⁸ Continued links between assessment, decision-making and enforcement are key components of a progressive shared management approach.



There are deep divides between concepts relating to western views that resources like water can be owned, managed and controlled.

PHOTO THAIDENE NĒNĒ/FACEBOOK

Different world views and approaches

There are deep divides between concepts relating to western views that resources like water can be owned, managed and controlled. As Wilson outlines, “Regulating water was inconsistent with traditional practices.” There are often clashes between Indigenous laws and state regulatory regimes “and yet most of these cooperative mechanisms are poorly equipped (if at all) to consider or resolve conflicts of laws issues. Where Indigenous values, principles and laws encroach on the powers of the province or the federal government, they are deemed invalid.”⁵⁹

As former Land Manager Norma Pyle articulated in the Governance Back report, even with Blueberry River First Nation’s success in achieving decision-making power, they are still limited by operating within a pre-existing industrial framework of land governance. She describes what a more ideal framework would look like, to her: “I would flip it so that resource extraction would not be the priority. Functioning ecosystems, inclusive of water, wildlife and First Nations Peoples would become the priority. Putting First Nations back into the ecosystem—a functioning ecosystem includes Indigenous People.”⁶⁰

57 Paul Nadasdy, “Imposing Territoriality: First Nation Land Claims and the Transformation of Human-Environment Relations in the Yukon,” *Ice Blink*, 1st ed., University of Calgary Press, 2017, p. 333–376.

58 Personal communication, Nicole Wilson, February 8, 2022.

59 Ibid.

60 Supra note 1, Craft and Plotkin.

In many cases, processes continue to be dominated by western views and can be perceived as adversarial or hostile, as Wilson articulates:

In the hearing process, often people, Elders, come and talk about water and stuff like that but I think it's still this kind of challenge of how do you properly even express these relationships in that really court type context and this is the same kind of critique that people have been raising of courts or these types of decision-making bodies were it's a very Western kind of institution and then you're just asking people to input their knowledge into this very strange context. Even if knowledge holders were given equal space, I still think that there's a barrier there.⁶¹

This was also noted by an observer of the historical processes governing management of the Beverly caribou herds in the early 2000s:

Little seemed to distinguish this meeting from any other Euro-Canadian bureaucratic meeting. Meetings were generally held in rented hotel board rooms, or in school classrooms when meetings were held in Indigenous communities. [...] Due to the essentially bureaucratic nature of much of the discussion... government representatives generally held the floor for about 80% of the time.⁶²

Alternatively, in Thaidene Néné and Gwaii Haanas, Indigenous values are central to the mandate of the boards, supported by the fact that Haida and Dene people make up the majority (if not all) of their membership.

Legal liability

One additional issue that may emerge under shared-governance models is the issue of legal liability; when the authority for a First Nation to make binding decisions regarding resources in a specified area is upheld, this authority is accompanied by an inherent set of legal liabilities. Like any other government, when Indigenous governments or management bodies make decisions, they are exposed to the risk of being sued over the contents, effects and/or application of those exercises of authority. This risk is one reason why there has been limited uptake in water management under the Clean Water Act by tribal governments in the U.S.⁶³



In Thaidene Néné and Gwaii Haanas, Indigenous values are central to the mandate of the boards, supported by the fact that Haida and Dene people make up the majority (if not all) of their membership.

PHOTO HODNETT CANOE GUIDES/FLICKR COMMONS

⁶¹ Personal communication, Nicole Wilson, February 8, 2022.

⁶² Supra note 55, Spak.

⁶³ Nicole J. Wilson, "Seeing Water Like a State?: Indigenous Water Governance through Yukon First Nation Self-Government Agreements," *Geoforum*, 104, 2019, pp. 101–13.

What should shared governance and decision-making look like?

Shared governance can be a complex proposition, and there is not a one-size-fits-all solution. However, Canada itself is built on the division of powers between the federal government and provinces, each having their own areas of jurisdiction, responsibility and protocols for approaching shared responsibility. The progressive shared decision-making structures built around the mutual recognition of jurisdictions (or at the very least the agreement not to dispute jurisdiction in order to advance a common goal) profiled in this report, such as Gwaii Haanas and Thaidene Nënë, seem to function in ways that significantly incorporate Indigenous knowledge and values. Interviewees agreed that true shared decision-making should rely on Indigenous leadership, be adaptive, flexible, and properly resourced.

While recommendatory boards were common in the past, including those generated from treaty negotiations or management of a particular species (e.g., caribou), the ability to make only recommendations instead of enforceable decisions spanned from potentially hampering the value of the board to being considered an affront to Indigenous aspirations and claims of inherent authority. As Nicole Wilson explains, “A number of the First Nations talk about wanting to make some water licensing decisions themselves and not even necessarily have a co-management board.”⁶⁴

Furthermore, the emphasis on environmental decision-making over specific “resources” does not align with the outcomes most Indigenous Nations aim for in their assertions of responsibility in relation to territory, lands and waters. Some of the management bodies created more recently take into account Indigenous values and processes for decision-making, provide resources for the decision-makers and ensure that the bodies are composed of at least half (if not more) Indigenous representatives.

In the case of Thaidene Nënë, the board comprises entirely Indigenous representation, including all government-appointed representatives. Entities that adopt consensus-based approaches are generally preferred, and we were told that they reflect an Indigenous approach to decision-making and the responsibility frameworks that the Indigenous Nations operate within. The management plan of Gwaii Haanas clearly reflects Haida jurisdiction. According to Gladstone,

*If you look through that management plan, you’ll see references to Haida law. Everywhere you see a reference to ecology, you’ll also see a reference to culture and there are clear objectives around culture, Haida language ... So, I think that that management plan is probably the best tangible example — it doesn’t look like any other Parks Canada management plan because the Haida law and other elements are built in.*⁶⁵



The Indigenous laws and legal order of the Nations must be invoked from the conception of the management initiative through to the day-to-day operations of any organization and in the continued lives of the Indigenous people.

PHOTO THAIDENE NĒNÉ/FACEBOOK

⁶⁴ Personal communication, Nicole Wilson, February 8, 2022.

⁶⁵ Personal communication, Ernie Gladstone, February 22, 2022.

This need to incorporate Indigenous laws and world views is echoed by Nitah: “we are also adding Indigenous world views and value systems in everything we do, especially the management of ecological integrity of Thaidene Nënë. Lutselk’e has already developed a five-year plan for Thaidene Nënë ... that’s what is being used right now to manage Thaidene Nënë in large extent...”⁶⁶

The Indigenous laws and legal orders of the Nations must be invoked from the conception of the management initiative through to the day-to-day operations of any organization and in the continued lives of the Indigenous people. This includes building management plans on the basis of Indigenous legal orders and their legal values. As Nitah outlines,

*We are protecting Thaidene Nënë using our own Dene Law. Canada and the GNWT are also using their laws to designate areas within Thaidene Nënë, including the Canada National Parks Act, the Territorial Protected Areas Act and the Wildlife Act. We will continue to practice our way of life in Thaidene Nënë, as our rights to hunt, fish, trap, gather, travel, make cabins and trails, and so on, will continue in Thaidene Nënë, as it always has.*⁶⁷

As part of good decision-making, robust access to information (ideally including on-staff specialists) and resources is essential. Information collection should include consultations with Indigenous people who are on the land as well as on-staff specialists; the need for Indigenous knowledge in management and decision-making is key. Decision-making should not simply use traditional knowledge as a “fact finding” tool but should incorporate Indigenous values and ethics throughout the management of the lands, waters and territories.⁶⁸ This should extend to Indigenous beliefs regarding the appropriate treatment of the “resource” being managed and the encouraged use of Indigenous languages in the process. As Paul Kariya, senior policy adviser, Coastal First Nations, states, “Traditional Knowledge and the best that modern science and knowing can bring together, melded together, is how the work is done.”⁶⁹

Gladstone reflects,

*In developing that plan, the first thing we actually did was adopt six principles based in Haida law and Haida ethics and we use those, so this is Traditional Knowledge and they’re defined in the management plan. This Traditional Knowledge guided the entire planning process, and we continue to use those principles with community members and stakeholders such as commercial tourism operators, and commercial fishermen.*⁷⁰



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PHOTO E LEE
PHOTOGRAPHY/
FLICKR COMMONS

66 Personal communication, Steven Nitah, June 17, 2022.

67 Ibid.

68 Nicolas Houde, “The Six Faces of Traditional Ecological Knowledge: Challenges and Opportunities for Canadian Co-Management Arrangements,” *Ecology and Society*, 12:2, 2007, p. 34.

69 Personal communication, Paul Kariya, January 29, 2022.

70 Personal communication, Ernie Gladstone, February 22, 2022.



There's no other data like what the Nations have in terms of grizzly bear populations, and they shared these with other governments, including B.C. and Canada.

PHOTO THAIDENE
NĒNĒ/FACEBOOK

Most of the case studies in this report illustrated the success of Guardians programs as part of the overall strategies of land connection and preservation. In the case of caribou management, as Evans notes, "It's the Indigenous people on the ground that are allowing for timely responses to problems with real data and knowledge..."⁷¹ According to Gladstone, the Guardians of Gwaii Haanas "are world renowned. These are the stewards who are trained to do the forest work, the wildlife work, and they're on the water in vessels to do the work on the water."⁷²

Local harvesters play an important role in providing information to the BQRMB, as Evans describes: "that kind of information you can't get anywhere else. Harvesters play a very, very important part in the whole scheme of things."⁷³ Local knowledge, including partnerships with local non-Indigenous communities, has greatly assisted with the sources of knowledge for decision-making and the ultimate legitimacy and implementation of decisions and recommendations. As Kariya explains, "Because of the GBR agreement and protocols framework, because of the joint technical work at the local level, and with academic institutions, foundations and others involved, our member Nations have good data and are developing frameworks to utilize these for real world problems. There's no other data like what the Nations have in terms of grizzly bear populations, and they shared these with other governments, including B.C. and Canada."⁷⁴

The issue of reliable, long-term, adequate funding provides a solution to the insecurities many shared-decision-making boards face, and commitments to that funding can enhance internal resourcing and staffing, research and operations. According to Kariya:

*I think one of the most challenging aspects of this is the governance piece. Nations are under resourced, because while all these boxes and bureaucratic layers are necessary, they have to be funded and staffed and that hasn't kept pace. And so the Nations still approach the table in an unfair, unequal situation.*⁷⁵

Where secure and stable funding is available, it allows Nations to have a greater say. Steve Nitah asserts that "the Trust gives us is the ability to be Dene. To think Dene to force Dene to continue to implement the world views of Dene and Indigenous people from around the lake. To create transformational change in how conservation can be done."⁷⁶

The creation of collaborative spaces and spaces for the recognition and management of disagreement are essential. Gladstone, speaking about the Gwaii Haanas Agreement, notes:

71 Personal communication, Earl Evans, February 15, 2022.
72 Personal communication, Ernie Gladstone, February 22, 2022.
73 Personal communication, Earl Evans, February 15, 2022.
74 Personal communication, Paul Kariya, January 29, 2022.
75 Personal communication, Paul Kariya, January 29, 2022.
76 Personal communication, Steven Nitah, June 17, 2022.

At least the first page of that agreement is a disagreement. But also, it defines what both governments had in common and defines a process for delivering on those common objectives around protecting the area for future generations. Both Haida and Canada bring their respective authorities to the table to make decisions — the Haida members have been delegated authorities from the President of the Haida Nation, through the Haida Constitution, to make decisions on behalf of the Haida Nation at the table. It's the same with myself with Parks Canada — I've been delegated authority from my minister through the National Parks Act to make decisions as well. And so, we have a full consensus-based decision-making process so we either all agree or we all don't agree on an issue.⁷⁷

Kariya points to the value of collectively facing challenges: “If I were to put a conceptual frame on it, I'd say nothing builds relationship better than joint problem solving. That's what it really comes down to, structured joint problem solving between governments.”⁷⁸

While the interviews and case studies above did not focus on self-determination, constitutionally protected rights or the application of UNDRIP in a shared decision-making context, it is important to note that each of these legal concepts has significant bearing on the development and maintenance of Crown-Indigenous relationships and management of lands and waters within Indigenous territories.

In sum, good shared decision-making and governance needs to consider economic, social and environmental well-being and must rely on the Indigenous systems and principles of governance that have been applied in those territories for millennia.



⁷⁷ Personal communication, Ernie Gladstone, February 22, 2022.
⁷⁸ Personal communication, Paul Kariya, January 29, 2022.



CONCLUSION



“Co-governance is the ideal, where the jurisdiction would actually be shared or where Indigenous peoples would just have their jurisdiction acknowledged.” — Nicole Wilson⁷⁹

Models exist where both Indigenous and state jurisdictions are upheld, and governance occurs side-by-side, directed by different legal orders and principles, but in harmony.

TOP PHOTO JIM HOFFMAN/
FLICKR COMMONS

EAGLE PHOTO PROVINCE
OF BC/YOUTUBE

There’s a wide range of what land and water governance can look like under both Crown and Indigenous laws. Responsibilities to nature and the maintenance of biodiversity exist under both sets of laws. These are, ultimately, collective responsibilities that Crown laws and policies have so far failed to uphold.

“Shared Governance” illustrates mechanisms that have, to varying levels of success, created innovative spaces to honour cooperative partnerships and shared governance.

Models exist where both Indigenous and state jurisdictions are upheld, and governance occurs side-by-side, directed by different legal orders and principles, but in harmony (though not perfect harmony, of course), as illustrated in the Gwaii Haanas and Thaidene Néné examples.

Ultimately, as modelled in the preceding “Governance Back” report,⁸⁰ the way forward must be charted by creativity—by cultural and regulatory innovation. This includes replicating and improving on existing templates, such as the ones profiled in this report, and creating new, exploratory mechanisms not yet modelled or put into practice.

Collectively, we need to step back from the insufficient objective of ensuring that Indigenous Peoples participate at decision-making tables. Rather, we must move toward a commitment that Indigenous Peoples are integrated into, and leading, decision-making

⁷⁹ Personal communication, Nicole Wilson, February 8, 2022.

⁸⁰ Supra note 1, Craft and Plotkin.

processes, and that they play a partnership role in defining the shapes of the processes wherein decisions are made.

The case studies in this report illustrate that creating seats at current tables is inadequate, as most tables are designed by the Crown—so too are the meeting structures and, most often, framing of subject matter (i.e., nature as resources to be managed and extracted).

An inherent imbalance of power also exists when the Crown is financing Indigenous participation. This can be rectified by trusts such as the ones established for the Great Bear Rainforest, Gwaii Haanas and Thaidene Nëné.

Instead of merely “carving out spaces” for Indigenous Peoples in Crown-created decision-making processes (and continuing to clutch the carving knife), those in positions of power must learn from Indigenous decision-making processes, region by region, community by community, and Nation by Nation. Settlers must be willing to be brought into Indigenous legal and governance frameworks when invited to do so—to listen to Indigenous-led ways of framing the conversation, and to explore what it looks like to support Indigenous jurisdictional authority.

As this report illustrates, initiatives along this spectrum are starting to occur. Emergent examples also abound outside of the boundaries of these case studies. For example, the Gitanyow Huwilp Recognition and Reconciliation Agreement between Gitanyow Nation as represented by Gitanyow Hereditary Chiefs and the province of B.C. states, “This Reconciliation Agreement will be implemented by each of the Parties in accordance with their respective laws, policies, customs, traditions and their decision-making processes and authorities.”⁸¹

The B.C. First Nations Energy and Mining Council’s 2022 report “Indigenous Sovereignty: Consent for Mining on Indigenous Lands” contains this introduction from Sheryl Lightfoot: “As a member of the UN Expert Mechanism on the Rights of Indigenous Peoples, I’m seeing first-hand how critically important it is that state legal and policy systems transform to adapt to Indigenous laws and cultures. I appreciate that this project—and this report—endeavour to do just that—collect and share steps that Indigenous peoples are taking to self-determine and exercise their sovereignty.”⁸²

It’s the dawn of a new era, as optimistic as that might sound. Iterations along the spectrum of shared governance are being, and must continue to be, explored, from joint structures and regulations to the recognition of and deference to existing Indigenous governance authorities. As with “Governance Back,” the future is ripe with burgeoning conversations and initiatives, grounded in Indigenous self-determination and building on the imperative of reconciliation in Canada.

Settlers must be willing to be brought into Indigenous legal and governance frameworks when invited to do so—to listen to Indigenous-led ways of framing the conversation, and to explore what it looks like to support Indigenous jurisdictional authority.

81 *Gitanyow Huwilp Recognition and Reconciliation Agreement between Gitanyow Nation as represented by Gitanyow Hereditary Chiefs and the province of BC*, gitanyowchiefs.com/images/uploads/land-use-plans/Gitanyow-R-R-Agreement-2012.pdf

82 BC First Nations Energy and Mining Council, *Indigenous Sovereignty: Consent for Mining on Indigenous Lands*, 2022, fnemc.ca/wp-content/uploads/2022/01/FNEMC_mining_consent_FinalReport.pdf.



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Decolonizing Water's long-term goal is to create a self-sustaining water and ecological monitoring program that will enhance protection of water resources and fulfill the promise of Indigenous water governance.



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