

Land Claims Agreements Coalition 2020 Conference:
Making Modern Treaties Work



***Co-relational Modern Treaty Bodies:
measuring success...***

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*Panel on Implementation Organizations:
Committees & Co-management Boards
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*Conference Theme:
“Making Modern Treaties
work...”*



- The Boards set up through Modern Treaty negotiations are key instruments to meet the objectives of those Agreements!
- Perhaps surprisingly, the Boards have been more successful than imagined!

“Hot off the presses”



- Professor
Graham White
- ubcpres.ca
- Discount Code
this month:
EMPOWER40



My focus today...



- Yukon context, particularly:
 - Yukon Fish & Wildlife Management Board (YFWMB)
 - Renewable Resources Councils (RRC)
 - Yukon Salmon Sub-committee (YSSC)
 - Yukon Environmental & Socio-economic Assessment Board (YESAB)
 - Designated Offices (DO)

Themes (1)



- Co-management bodies (CMBs) a *compromise*.
- CMBs' value comes from their *influence*, not direct decision-making role.
- Power rests in their integral *weave* inside the governance framework.
- CMBs have *evolved* since early days; far more effective today.
- They're all *different* in structure & mandate.
- Constitutional *protection* is necessary!

Themes (2)



- *Success* heavily dependent on
 - *who* is appointed
 - *governance partners*
 - *visibility* of substance and process
- Architects understood the value of *connection* to communities (decentralization).
- *Capacity* remains a problem especially in decentralized structures and given massive mandates.
- Independence important to *credibility*.
- Public policy *reach* is considerable.

Compromise...



- CMBs *not* the outcome of Indigenous desires at the negotiations table.
- A compromise.
- Dene/Metis negotiator, Bob Overvold:
“The feds had no self-government policy... We wanted as much control over lands, resources and wildlife as possible but we were hitting a brick wall and eventually gave in and accepted the creation of co-management boards...” (White, p. 35)

Influence (1)...



- Most CMBs have power through their influence, not direct decision-making authority (exceptions: Yukon Water Board)
- YESAB example:
 - All assessment findings are given to Decision Bodies who approve project licensing/controls
 - DBs are: federal departments, Yukon Government and First Nations where projects are on Category A & B lands.

Influence (2)...



- CMBs influence is different:

“although the regional resources councils in Yukon only offer ‘advice’ to government, it is ‘advice with a difference’... this is a considerable restriction on the traditional powers of a Minister of the Crown.”

(Simmons & Netro in White p. 303)

Integral weave...



- The governance “business” in Yukon around land, resources, environment, ecology and development is now inexorably tied to the CMBs.
- Can’t get around YESAB!
- In communities, can’t decide on fish and wildlife matters without RRC’s input!

They've evolved...



- The CMBs have evolved since inception.
- RRCs are a great example:
 - Far more influential today (LSCFN work plan process)
 - YFWMB/RRC relationship is now far stronger
- Similarly YFWMB and the YSSC relationship now working effectively.
- More to come: YESAB (e.g. pre-submission engagement)

They're all different...



- Product of the period when Treaty negotiated.
 - UFA precedes Inherent Right Policy and therefore self-government in Yukon is separated from Treaty
- Accidents of history; if August 1984 ratification had succeeded Yukon would look very different!
- Product of the negotiators and the mandate.

Constitutional protection...



- As “creatures” of Modern Treaties, the s.35 umbrella provides strong protections from interference by legislating authorities.
- Doesn’t mean they won’t try!
 - Federal Bill S-6 threat to YESAB.
 - Yukon Government and the Peel Land Use Plan.
 - Federal Bill C-15 impact on Northwest Territories regional land and water boards!

Success; who...



- History of the CMBs suggests that who is appointed has a great bearing on success.
- In part dealt with through appointment requirements in Treaties. These ensure Indigenous involvement.
- But, at the end of the day it's the people!

Success; partners...



- CMBs work when there is a genuine willingness to work together. Thus history has been chequered!
- Early days of the YFWMB.
- Today, there are strong working relationships especially with the Minister of Environment!
- YFWMB respectfully keeps out of the way of the RRCs and the YSSC.

Success; visibility...



- Architects knew that decisions behind closed doors do not lead to community “buy in”.
- Processes set up through Treaties require engagement & information sharing:
 - YESAB Online Registry
 - RRC engagement on Traditional Territory fish and wildlife work plans (LSCFN example)

Decentralized structures...



- Community connection is fundamental.
- Structures drive this value:
 - Designated Offices (6)
 - RRC structure
- NWT C-15 lesson!
- Particularly important in Yukon where Whitehorse is so dominant!

Capacity...



- Age-old problem!
- Not enough money.
- “Influencers” and “knowledge keepers” at community level are in short supply!
- Impediments to getting qualified resources at community level (DO experience).
- Mayo and housing!

Independence/Credibility (1)...



- Inextricably linked.
- Independence a fundamental value and in Yukon this means appointees have the interest of Yukon at heart; they do not represent the party who put them there!
- The CMB gains credibility because it is seen as acting without government (all government) interference.

Independence/Credibility (2)...



- We do not “park” our histories however!
- Appointments usually reflect:
 - Strong connection to community (including Indigenous citizenry)
 - Strong connection to topic
 - Strong connection to Yukon generally
 - Commitment to public service
 - Background/expertise

Reach...



- In short MASSIVE:
- YESAB and Yukon Water Board cover all Yukon (a little complicated on North Slope).
- FN's wanted reach and they got it!
- YSSC takes it to another level: significant impact on international discussions with USA on Yukon River Panel.

Important? ...



YES

Last thought ...



- Work remains to be done: effective use of Traditional Knowledge a big challenge.