

Breakout Session 1E: Indigenous Laws, Legal Traditions and Rights

February 25, 2025

1:15 PM -2:45 PM

Moderator: Angela Wesley — Commissioner, BC Treaty Commission

Speakers:

- Rhea Lewthwaite – Director of Implementation, Tr'ondëk Hwëch'in Government
- Katie Fraser— Senior Negotiator for Lands and Environment, Tr'ondëk Hwëch'in Government
- Eve Dewald – Policy Advisor, Tr'ondëk Hwëch'in Government
- Christie Moulton – Chair of Judicial Council, Carcross/Tagish First Nation
- Dave Joe – Champagne and Aishihik First Nations

Rhea Lewthwaite, Katie Fraser, Eve Dewald – *Nihondëk, nidä'ole' Our Stories, Our Law:*

- How the Tr'ondëk Hwëch'in have been working to revitalize laws and rules (Rhea Lewthwaite):
 - Signed Comprehensive Land Claim (CLC) agreement in 1978, s. 13 on keeping law making authorities.
 - Oral culture, traditional stories are foundational to laws.
 - Offer guidance for learning how to behave in the world.
 - *Tsà' wëzhè* (Beaver Man) story: made agreements with land and animals to make it safe for the people as long as they lived within these agreements.
 - *Dënezhu Law* – maintaining a reciprocal relationship.
 - Key principals of moderation, humility and self-control.
 - Nature of the law: recognition that animals are ancestors and land is the spirit – no 'power over' but rather connection between.
 - Revitalization
 - Sought out partnerships with other nations, academic researchers (legal research unit at University of Victoria).
 - Workshops and storytelling within community and over Zoom.
 - Using workshops/storytelling to create a framework for application of law in context of CLC agreement.
 - Learning journal and published book.
 - Included not only citizens, but also members of the public and treaty partners who were interested.
- Land Vision and *Dënezhu* values (Katie Fraser)

- Story-telling process through workshops – data coded and themed.
- Four key values emerged: integrity, respect, justice/balance, interconnection
 - Spirit of the land is at the middle of these.
 - This led to the production of Land Vision framework document to guide all of nation's government actions and policy.
- Land Vision is an ongoing project – must keep telling stories for them to keep informing the law.
- Updated *Lands Act* – intention to renew with workshop data.
- Difficulty of translating key values to policies. What does this mean?
 - Healthy ecosystems.
 - Ability to access and continuously harvest.
 - Getting citizens out on the land – need infrastructure and camps.
- Governance Act – Applying Our Land Vision for Governance (Eva Dewald)
 - Relationships between Council, General Assembly and people.
 - Importance of trust.
 - Four principles are a guide for interpretation.
 - Integrity— knowing what is fair, what is right and upholding these truths.
 - Respect – everyone contributes, respect act itself, know your roles, respect yourself and others.
 - Interconnection – all aspects of governance work together.
 - Balance – balance between relative power of parts of government.
 - It is a living document.
- Administration of Justice – Applying Our Land Vision for Justice (Eva Dewald)
 - The same four principles are a guide for interpretation.
 - For example, approach to Child and Family Services respects a child's autonomy and ability to keep living in a *Dënezhu* way.
 - Looking at things from all directions, strive to bring things back to balance
 - Connections between community and identity.

Christie Moulton:

- Along same lines as Tr'ondëk, stories guide law-making.
 - Began research along this concept before nation even concluded agreement.
 - No funding for this at the time, had to seek it out.
 - Database of traditional stories, used to 'extract' traditional values from this.
 - Created a foundational document to guide all others.
- Family Act
 - "The reliance on western laws and processes has never benefited Indigenous people."

- Aim was to create a document that people could be proud of.
 - Act articulates on all family responsibilities.
 - Cultural vs colonial ways of thinking about law.
- Constitutional review/Judicial Act
 - Representatives from all six clans mandated by constitutions (Judicial Council)
 - Discussion level 3.
 - Passed constitution in 1997. Officially moved from elected C&C government to clan-system.
 - Judicial Act a priority.
- Path forward
 - “Our next seven generations.”
 - This is a long process, will be ongoing.
 - Service transfer agreement?
 - Overcoming lack of capacity and resources/funding is key.
 - Temporarily relying on Yukon Government for some capacity.

Dave Joe:

- Grandma used to tell stories as a means of educating, she never said “It’s time to learn.”
- *Teslin Tlingit* derived inherent right to self-government from stories and customs.
 - Modern treaty agreements did not extinguish inherent right to self-government (IRSG).
 - If you were to go to court to prove the IRSG you would have to jump through hoops to prove several things:
 - That IRSG existed at time of time of contact.
 - That the IRSG was ‘central and integral’ to the nation.
 - Laws of nation not ‘justifiably infringed upon’ by provincial/federal laws.
 - Rather than go through this “shaky common law process”, *Teslin Tlingit* pursued Modern Treaty Agreements with the government that had justice as “paramount concurrent jurisdiction.”
 - In case of conflict between nation’s laws and those of Canadian government, there is a process for determining paramouncy.
- Negotiation of Justice Agreement
 - Framework agreement for negotiation of comprehensive justice agreement.
 - Framework set out who would be responsible for what during negotiations, costs, relation to Charter of Rights and Freedoms.
 - Important question how charter and its predecessors in Western legal theory would interact with inherent rights and laws that pre-dated Magna Carta, etc.
 - SCC proclaimed that Charter must apply.

- Agreements eventually established “Peacemaker Court” component (2011), ‘enforcement component’ (2014), and ‘corrections and community services component’ (2025).
- Now working on fourth component on ‘community safety/policing’ – this will likely take time.
 - To enforce nation’s laws, Yukon law, Canadian law.
 - “We live in uncertain times”, we don’t know what Canadian government’s policy will be in six months.
 - Nonetheless committed to completing these agreements.

Q&A:

- **Q:** How do you build in succession planning, mentorship and knowledge-transfer in the work of governance and negotiating/implementing modern treaties?
 - **A:** Continuing to conduct workshops as processes unfold, and to bring youth and all ages into this work.
 - **A:** The passage of laws and knowledge has always been done orally. Being able to write them down is a wonderful compliment to this. We are developing programming for schools in regard to Traditional Knowledge, and it is very helpful to be able to document and record the stories that elders have told us to share with future generations.
 - **A:** Succession-planning is so important. In my work with Teslin Tlingit Council, there is a Youth Council that sits alongside general and Elders Councils. This allows them to learn from within the governance process. Transferring knowledge about laws, customs and traditions is never a finished process. *Teslin Tlingit* have a time-tested process for doing these things, but it is an onerous responsibility within governance.
- **Q:** Noting the ‘hybridness’ between Canadian and Indigenous laws and legal systems, does UNDRIP help, hinder, or even factor into your work?
 - **A:** UNDRIP has been described by the SCC as “part of the positive law of Canada”, but they don’t clarify how. I assume that UNDRIP principles will be a guide for how we proceed in our negotiations. So, it’s untested, but there could be room to interpret Canadian law in the context of UNDRIP (which is now statutory law in Canada and BC). I know the SCQ has begun testing within this kind of interpretation. So overall, it’s promising that Canada has implemented this into statutory law, but still not fully clear what the impact is.
- **Q:** Noting an issue that we’ll all have to deal with—I’m getting a bit concerned about the

issue of how governments in the North are approaching co-management, and what this really means. The spirit and intent of these Agreements was of co-governance, not only just the lands considered settlement lands, but being a part of all activities happening within traditional lands was a very important component. Governments in the North seem to have absolute control, which is not within the spirit of these agreements as understood. Hoping someone can address 'co-governance' vs 'co-management' and how rights and interests would figure into this conversation.

- **A:** It's quite interesting even as a self-governing First Nation, my nation has had to go to court to uphold our agreement. Once we signed our Agreements, we received compensation dollars, which go towards paying for the courts. For example, we have co-management of historic sites within the territory in an agreed-upon way and this works wonderfully.
 - **A:** Co-management is the other side of the coin of my work on Treaty relationships. It comes with a huge education of Treaty partners as a component, which is very onerous on us. It's vital to think about how these fits within the Treaty process more broadly.
 - **A:** A few things. First - I say to Treaty Partners, when there is a part of the Treaty that addresses an issue, implement that to avoid conflicts arising. Second - when the way that the treaty addresses an issue is unclear, consult to figure these things out. Third – where there is a duty to consult (Crown or Crown-approved activity), this must be done (i.e. honour of the Crown). Fourth – UNDRIP sets out requirement for consent. So overall, not everything will be contained within the Treaties, and when this is the case there are other instruments available that can be useful.
- **Q:** 'Judicial' vs 'justice' language, it's unclear which is appropriate in different cases. Asking Dave (in context of implementing a Justice Agreement), how do we retain trust with people when the RCMP "is the biggest gang in Canada," and have a huge influence over justice.
 - **A:** Generally speaking, I think there is a trust in these institutions, but a lack of understanding of *Tlingit* values, and there has to be education here. When we are looking to implement a policing agreement, our intention isn't to totally replace the RCMP – there are time-tested principles to rely on when navigating this re our traditional law. Community-safety offers have a different role to the RCMP. We have to carefully consider how to give our police forces adequate authority to enforce laws, while not making them too similar to the tactics employed by colonial powers.