

Breakout Session 2E: UNDRIP and Modern Treaty Implementation: Case Studies of the NWT and BC

February 25, 2025

3:15 PM – 4:45 PM

Moderator: Dr. Stephanie Irlbacher-Fox – BA, MA (Alberta), PhD (Cambridge)

Speakers:

- Dr. John B. Zoe— Modern Treaties Implementation Research Project
- R. Brent Lehmann— Partner, Ratcliff LLP
- Daniel T'seleie, Chief Negotiator, K'asho Got'ine

Dr. John B. Zoe

- Trying to seek recognition from territorial government and finally Canada
 - Not pushing it but finding ways of Indigenizing it so people can understand it. How do we explain UNDRIP?
 - About the rights of Indigenous people.
 - Holes of colonization – non-recognition in our original fabric/UNDRIP is a recognition tool to repair the hole and bring it back to fullness.
 - Legislation: traditional weaving tool to regain our fullness.

Daniel T'seleie

- How K'asho Got'ine has implemented UNDRIP
 - What is our mandate for self-governance agreements?
 - Getting control of what happens on our land.
 - Using the current ongoing negotiations to implement informed consent (an important piece in the UN Declaration).
 - Free prior informed consent processes will replace consultation processes.
 - The Sahtu Dene and Metis Comprehensive Land Claim Agreement is inconsistent with UNDRIP.
 - Very difficult to address.
 - Land claim is a tool that can also be used by the government.
 - Potential Court Cases.
 - The quickest but also most expensive way to achieve something in the court system.
 - Much faster than land claim agreements.

Brent Lehmann:

- UNDRIP in BC
 - 10 sections in the legislation – two are administrative in nature.
 - Affirm UNDRIP in laws of BC and Implement UNDRIP.
 - Goes beyond UNDRIP: Declaration on the Rights of Indigenous Peoples Act (DRIPA).
 - Joint decision-making agreements or consent agreements (Sections 6 and 7).
 - Declaration Act Secretariat with Indigenous Leadership.
 - Drawbacks and Challenges:
 - It was not developed with Modern Treaty Nations - Modern Treaty Nations have a distinct perspective.
 - No reference to the Constitution in the Act.
 - Weaponization of UNDRIP – Conflict between assertive rights (UNDRIP) with proven rights (those in the Treaty).
 - Non-Treaty nations have used UNDRIP at the cost of Treaty rights.

Q&A:

- **Q:** How should Indigenous people be approached for meaningful engagement?
 - **A:** In the context of legislative policy development. There are various stages, at least in BC. We wanted to be involved in the policy development stage. If we don't have input at that stage, you will have less influence afterwards. We have a lot more influence and are able to make meaningful changes if we are there at the policy stage.
- **Q:** Duty to consult has a huge burden on Indigenous people in order to prove the impacts. Has the prior informed consent managed to break away from that?
 - **A:** Free prior informed consent should mean that the government is approaching us at the pre-approval stage upfront rather than coming to us with the decision that has already been made. It is going to vary depending on the issue and Nation and is always a work in process.
- **Q:** Question related to terminology vs interpretation. There is no clear definition for inherent rights. Where does that lie with regard to Treaties? And where are the historical processes to educate newcomers? Is there consistency there?
 - **A:** In provincial and federal governments, they are shifting on the terminologies. Legally: Proven rights are treaty or course case rights; assertive rights are all the other rights. The term 'inherent rights' has replaced Aboriginal rights; the term is being heard more in court cases. Try not to get too hung up on the terminology. The use of different words over time can create confusion. It is critical to understand what it means when different terms are used. On the second part, onboarding is a

significant issue, and I don't know a way to get around that.

- **Q:** How can other nations benefit from the trail K'asho Got'ine is blazing?
 - **A:** We have been lucky to have good negotiators and that has been helpful. That can be helpful not in the sense of precedent because that is going to take years. Hopefully, when they review the language and if they have good negotiators, they will be able to use it.