

Breakout Session 4C: Co-Management: Reflections and Insights

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1:15 PM – 2:45 PM

Moderator: Brendan Bachand – Senior Associate, Pape Salter Teillet LLP

Speakers:

- Larry Innes— Partner, Olthuis, Kleer, Townshend LLP
- Heather Bourassa — Chairperson, Sathú Land Use Planning Board
- Kirk Cameron – Mayor, Whitehorse

Larry Innes:

- Where are we with co-management?
 - Modern Treaties have created a range of ‘innovative arrangements’ in which Indigenous peoples are engaged in making decisions related to lands and resources.
 - All systems and structures create institutions to enable Indigenous peoples to share knowledge and opinions, but the decisions are almost exclusively in the hands of public governments.
 - The aim was to ensure that the value of Indigenous Knowledge/Inuit Qaujimajatuqangit knowledge was seen and heard. There have been significant victories in this respect; now, there is no doubt that these types of knowledge have immense value and are considered in co-management.
 - Notwithstanding this, there remain underlying assumptions that the western scientific worldview best explains how the world works.
 - Indigenous Knowledge/Inuit Qaujimajatuqangit have filled gaps within these scientific processes, but more to be done.
 - The way Treaties were written makes clear (although in some more than others) that public governments (Ministers) have ultimate decision-making authority.
- This is out of step with UNDRIP and other developments outside of the modern treaty context where Free Prior and Informed Consent (FPIC) is being achieved in shared decision-making agreements.
- Will argue that the role of the government Minister in making the ultimate decision should not be understood to be to simply substitute the Minister’s views for that of the Indigenous party, but to finally ensure that the co-management partners have worked together in a collaborative shared decision-making process that seeks consensus or consent from both Treaty partners.
- Caribou story/Colville Lake Supreme Court decision

- The Government of the Northwest Territories was concerned by the caribou population decline and imposed a tag-based quota system of management despite Sahtu Dene and Métis saying they could manage on their own herd.
- When it became clear this system wasn't working, the co-management board under the Treaty (the Sahtu Renewable Resource Board, or SRRB) worked with the local renewable resource councils (RRCs) to develop a community-based system to replace the tag system.
- "We've had our own laws that have worked fine for 10,000 years," and we can rely on the Treaty to govern harvesting through RRCs".
- The SRRB recommended to the government that the resource council in Colville Lake could manage caribou hunting on their own terms. It would be more culturally appropriate and effective.
- The Minister of the NWT decided against that recommendation, saying that the proper Treaty interpretation was that RRCs could only manage "local participation."
- Multiple NWT courts decided that the Minister had the wrong interpretation of the Treaty. The Treaty clearly says that RRCs have the right to manage all participant harvesting in their respective local areas.
- The court said that RRC powers to manage wildlife harvesting under the Treaty should be respected, as there was.
 - There was no evidence that the Minister's quotas are more effective, or the only approach contemplated under the Treaty.
 - There was no foundation for the Minister's view that community-based approaches would not work
 - And clear that the Treaty intended that Dene law governing harvesting would be implemented into wildlife management.
- What is happening outside of the Modern Treaty context on Park and Conservation models?
 - In Indigenous Protected and Conserved Areas, establishment agreements provide that the Minister is not able to make decisions unless there is consensus on the approach with Indigenous partners.
 - FPIC ideas, applied in many non-Treaty contexts, have led to more progressive arrangements than Treaty contexts, where the rules and norms are more rigid.
 - It is important to think about federal/provincial/territorial governments' approaches to co-management in the Modern Treaty context, which still put Indigenous peoples in an advisory position to the Minister, versus the non-Treaty context, where FPIC is being implemented under shared decision-making structures .

Heather Bourassa:

- An overview of the Structure of the Sahtu Land-Use Planning Board:
 - There are two members appointed by Sahtu Secretariate, one by GNWT, and one by GoC. The board then appoints the chair.
 - The land-use plan is a living document and is reviewed periodically. For the land use plan to be approved, first the Sahtu Government must approve, then the territorial, then the federal government.
 - One of the largest land-use plans in the world includes Great Bear Lake.
 - Zones of land-use plans can be described by least to most protected: general use zone, special management zone, conservation zone, established protection areas (most protective).
- Internal challenges to co-management:
 - Geography, the area is large and vast. Limited knowledge of data availability.
 - Land-use planning isn't as well set out compared to other legal mechanisms in Modern Treaties.
 - Limited resources/capacity for governance of land within Sahtu. Position vacancies.
 - Federal government approval takes a long time.
 - Lack of interest in land-use planning.
 - Constantly having to educate bureaucrats.
- Success of land-use planning depends on exterior actors. One element of success is to codevelop a plan in person with government officials.
- Future goals for land use planning:
 - Revitalize the economy.
 - Robust analysis of goals.
 - Continued engagement with youth.
 - Education. Developed presentations for the schools.
 - "Novel tools for engagement," i.e. using social media
- Sahtu land-use planning has done a lot unilaterally to engage the federal government over the years.

Kirk Cameron:

- Modern Treaties and s35
 - Modern Treaties create various boards (e.g. water board). They are much stronger than boards under similar agreements.
 - Rights-based orientation of Treaties.
- Collective vs. individual rights within Treaties and self-government agreements
 - Role of the Charter of Rights and Freedoms.

- The Supreme Court of Canada found that a self-government agreement cannot be read like a simple contract but must be interpreted “more generously.”
- There are other important aspects of self-government agreements outside of just co-management. Services differ between agreements.
 - Community jurisdiction in the city.
 - In some cases, have primacy over settler laws.
- The new piece is referred to as the “co-governance model.” Not just management.
 - Not precisely sure what that means.
 - Has the potential to truly change from the Crown being the ultimate authority
 - Could this spur a new approach that will be applied to co-management?
- Treaties are owned by all of us, even if we’re not beneficiaries under the agreement.
- The Yukon Government continuously seems to reject the meaning/purpose of Treaties.
- Importance of symbolism:
 - When on the Whitehorse city council, insisted more flags, including First Nations, be installed in City Hall.
 - This was to recognize First Nations' status as equal or greater to other flags. It’s very important to the community.
 - It’s wrong that the procedures bylaw forces Chiefs to come to municipal hearings on settler terms.
- There will never be another province in Canada like the first 10 as a result of co-management.
 - S35 ensures that Treaties must apply and will not be derogated from because they reflect inherent rights.
 - Treaties re-ordered “91-92” division of powers.
- Structure between territorial governments and Treaty beneficiaries will likely continue to lead to conflicts, especially under the current leadership style of public governments

Q&A:

- **Q:** In the case of a federal government change and a shift of priorities, would Treaty powers be more protected because of the Colville Lake decision?
 - **A:** Likely yes; in a territorial context, First Nations are more “constitutionally empowered” than territorial governments. Where the law has moved and where UNDRIP comes into play, the clauses in Treaties can lead to re-interpretations of clauses in which public governments get the final say. This still may be technically true, but it’s subject to a lot more obligations of the public government (to obtain FPIC, etc.) before they get that say.