

BACKGROUND: Collaborative Consent

Sept 21, 2017

Collaborative consent is a way of doing business and working together. It describes an ongoing process of committed engagement between Indigenous and non-Indigenous governments—acting as equal partners, each with their asserted authority—to secure mutual consent on decisions related to matters of common concern. It is an outlook, a process and an outcome. Collaborative consent approaches are tailored to the matters at hand and can be applied to a range of issues—from legal and policy development, through to projects that affect land and water. As laid out in the new report *Collaborative Consent and British Columbia's Water: Towards Watershed Co-Governance*, there are seven hallmarks of collaborative consent:

(1) Collaborative consent is based on respect, trust and the art of diplomacy between governments.

Example: Indigenous and Crown governments were partners from the beginning of the three-year negotiation process for the Alberta-Northwest Territories Mackenzie River Basin Bilateral Water Management Agreement. All parties were involved in the scoping of interests, options and development of all elements of the final agreements.

(2) All governments recognize each other as legitimate authorities.

Example: In the Kunst'aa Guu – Kunst'aayah Haida Reconciliation Protocol, both the Haida Nation and the province of BC explicitly acknowledge their conflicting views with regard to sovereignty, title, ownership and jurisdiction for Haida Gwaii territory. With these competing claims made clear, and despite them, the Protocol commits both parties to working together.

(3) Collaborative consent tables are decision-making tables, which means that representatives must have the authority to participate fully and make decisions at the table.

Example: The Haida Gwaii Management Council makes strategic resource management decisions, including for land use, forestry and conservation. Importantly, it has delegated Indigenous and Crown authority to make joint decisions.

(4) The scope of issues considered through the process can be extensive and ultimately must be satisfactory to all parties.

Example: Territorial and Indigenous governments in the Northwest Territories have co-drafted legislation, policies and plans in full partnership, including the Species at Risk Act. For this specific Act, a working group comprised of high-ranking officials from the Government of Northwest Territories and all Indigenous governments, and all parties' legal counsels, was tasked with co-drafting the legislation, which was a three-year process. The final draft legislation was still subject to the regular committee and public review process; however, very few changes were made since all matters of major concern had been addressed in the co-drafting process. The Government of Northwest Territories intends to co-draft and develop several more laws with Indigenous governments.

(5) Collaborative consent starts at the front-end and all governments commit to remaining at the table for the “long haul.”

Example: The Great Bear Rainforest negotiations spanned over 15 years and the Agreements and Order commit the parties to an ongoing governance relationship for between five and 250 years.

(6) Each government's interests must be dealt with in a satisfactory manner from their own point of view.

Example: The Northwest Territories water stewardship strategy, Northern Voices, Northern Waters, was developed with and had sign-off from all Indigenous governments across the NWT, and an Aboriginal Steering Committee (ASC) helped direct and guide the process. The strategy formed the basis for the NWT's transboundary water agreement negotiations with Alberta and BC, with the ASC continuing to help direct and guide the negotiations. A key issue in the negotiations was the interest that the NWT had in protecting traditional uses of the waters, which was a result of Indigenous government partnership. Some parties did not see this interest as being as important as upstream economic development. However, the focus in the negotiations on each government meeting its interests to its satisfaction meant that the transboundary water agreements had to protect traditional uses as well as economic interests (rather than one to the exclusion of the other).

(7) The process generates real outcomes.

Example: The Great Bear Rainforest Agreements and associated Coast Opportunities Fund generated actual outcomes on the landscape and for communities, including designation of conservation areas and investment in a Coastal Guardian Watchmen program.

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