



*NORTH ISLAND
OCTOBER 2003
COMMUNITY TO COMMUNITY FORUM -
FINAL REPORT*

*SUBMITTED BY
VILLAGE OF ALERT BAY
WINALAGALIS TREATY GROUP*

NOVEMBER 30, 2003



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I. INTRODUCTION

A. Purpose of the forum

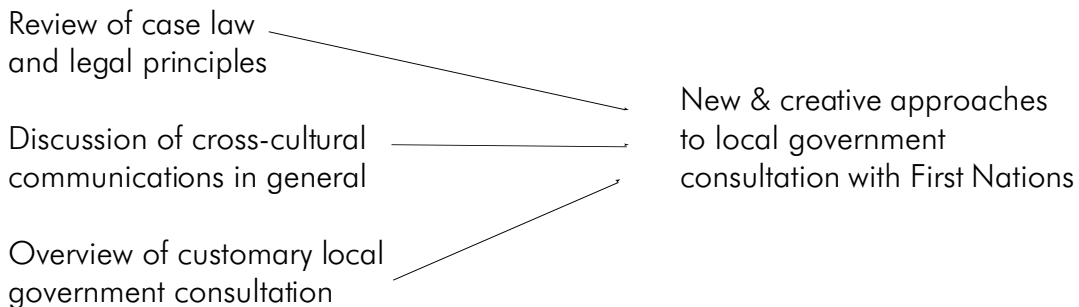
The workshop built on a March 24, 2003 Visioning Workshop sponsored by the Winalagalis Treaty Group and the Regional District of Mount Waddington that generated excitement among participants for further concrete work on improving local government-First Nations information-sharing and communications on the North Island. One important theme emerging from the conference was *consultation* and its changing nature, given recent court decisions. This workshop, therefore, was structured to advance our understanding of consultation by:

- exploring the latest understandings of what it means
- sharing models for effective consultation
- developing principles and/or guidelines
- outlining specific consultation processes

Primary invitees were local government officials from the Regional District of Mount Waddington's four municipalities and four electoral areas and the six First Nations which comprise the Winalagalis Treaty Group (Kawkiutl, 'Namgis, Da'naxda'xw, Gwa'sala-'Nakwaxda'xw, Quatsino, Tlatlasikwala). (See Appendix for letter of invitation and list of attendees).

B. Structure of the forum

The logic underlying the forum is captured in the following chart which shows the first three components of the workshop all leading up to and informing the last element - the effort to devise new and creative approaches to local government consultation with First Nations. The agenda appears in the Appendix.



II. PRESENTATIONS

A. Update of case law and legal principles

Rod Naknakim, a Cape Mudge Indian Band member and a lawyer with a specialty in aboriginal law, presented an overview of recent case law around consultation with First Nation. This was based on his work as advisor to the Hamatla Treaty Society and its five members Nations over the past ten years of treaty negotiations. Below are Rod's notes.

1. Introduction

I have been requested to do a brief summary of the law as it stands today in the area of the duty to consult between the Crown, third parties and First Nations in British Columbia. The purpose of the summary is for discussion purposes at the community-to-community forum to be held at Port McNeil on October 1, 2003. The law has changed significantly in the last ten years due to court decisions at the Supreme Court of Canada level.

My summary of law is based on the following cases: *Delgamuukw v. the Queen* [1997] 3 S.C.R. 1010, *R. v. Sparrow*, [1990] 1 S.C.R. 1075, *Halfway River First Nation v. B.C.* [1999] 4 C.N.L.R. 1, *Haida Nation v. B.C.* and *Weyerhaeuser* 2002 BCCA 147 and 2002 BCCA 462 and *Campbell v. B.C. (Attorney General)* (2000), 79 B.C.L.R. (3d) 122 (S.C.).

2. Legal Requirements of Consultation

There is a duty to consult with First Nations on both the Federal Crown and the Provincial Crown. The *Sparrow* case was one of the first cases to come forward with a clear duty to consult before infringing on an aboriginal right. The following was stated:

Within the analysis of justification, there are further questions to be addressed, depending on the circumstances of the inquiry. These include the question of whether there has been as little infringement as possible in order to affect the desired result; whether the aboriginal group in question has been consulted with respect to the conservation measures being implemented.

The consultation requirements set out in *Sparrow* have been expanded in the *Delgamuukw* case as the Supreme Court of Canada describes the requirements as it relates to aboriginal title:

There is always a duty of consultation. Whether the aboriginal group has been consulted is relevant to determining whether the infringement of aboriginal title is justified... The nature and scope of the duty of consultation will vary with the circumstances. In occasional cases, when the breach is less serious or relatively minor, it will be no more than a duty to discuss important decisions that will be taken with respect to lands held pursuant to aboriginal title. Of course, even in these rare cases, when the minimum acceptable standard is consultation, this consultation must be in good faith, and with the intention of substantially addressing the concerns of the aboriginal peoples whose lands are at issue. In most cases, it will be significantly deeper than mere consultation. Some cases may even require the full consent of an aboriginal nation, particularly when provinces enact hunting and fishing regulations in relation to aboriginal lands.

The *Halfway River* case stated there was a positive obligation by the District Manager to the

Halfway River First Nation to recognize and affirm its treaty right to hunt in determining whether to grant Cutting Permit 212 to Canfor as the court says:

The Crown's duty to consult imposes on it a positive obligation to reasonably ensure that aboriginal peoples are provided with all necessary information in a timely way so that they have an opportunity to express their interests and concerns, and to insure that their representations are seriously considered and wherever possible, demonstrably integrated into the proposed plan of action.

The Halfway River case also states that there is a reciprocal duty on First Nations to express their interests and concerns once they have had an opportunity to consider the information provided by the Crown, and to consult in good faith by whatever means available to them.

In both the Taku case and the Haida case, the BC Court of Appeal made it clear that the Crown's duty to consult arises before a First Nation is required to prove its rights or title in court.

The Haida case extends the duty to consult on third parties such as Weyerhaeuser who holds an interest on crown lands through the Tree Farm Licence that may affect the First Nations' aboriginal rights.

The Haida case also imposes a duty on the Crown to accommodate the aboriginal interests including economic and cultural concerns.

3. *Comment on BC's Consultation Guidelines*

BC's consultation guidelines fall short of meeting the legal requirements identified by the recent court decisions. The provincial government unilaterally developed BC's guidelines. They in fact provide for a way of making a decision that justifies no need for consultation. There are no provisions for accommodating aboriginal interests.

4. *Six Legally Enforceable Principles*

There are six legally enforceable principles of law from a First Nations perspective that has evolved from the recent court cases. These are:

1. Aboriginal title exists throughout BC and is an exclusive interest in the land itself, including the resources of that land.
2. Aboriginal title includes the right of a First Nation to choose how land can be used;
3. The Crown bears the onerous burden of justifying an infringement of Aboriginal title and must do so in light of its fiduciary duty toward Aboriginal peoples.
4. Aboriginal title has an inescapable economic component, such that inter alia fair

compensation will ordinarily be required when Aboriginal title is infringed;

5. The Crown and in some instances third parties such as resource companies, have a legal obligation to consult a First Nation and to seek to accommodate its Aboriginal title and Aboriginal rights; this obligation arises before such rights are proven in the courtroom; and
6. If the Crown cannot justify an infringement of an Aboriginal right, such as Aboriginal title, courts have the discretion to nullify a related permit or approval granted to a third party affecting Aboriginal title lands.

B. Discussion of cross cultural communications

The next section of the forum consisted of a moderated discussion by four panellists about cross cultural experiences in general; most of the panellists were veterans of many years on the North Island dealing with cross cultural communications. Those included:

Flora Cook, recently retired educator with School District 85. She had served as District Principal for First Nations, and is herself a member of the 'Namgis First Nation, who hails from Alert Bay. Flora worked extensively in First Nations curriculum development and prepared various teaching materials.

Rev. Howard Jacques is a Anglican Church of Canada minister who's served most of the North Island's communities over the last eleven years, and is an outspoken advocate on social justice issues.

Basil Ambers, a hereditary chief from the Mamtaglia and formal tribal council chair. Born on Village Island, Basil's experiences include many years working with troubled kids, overseeing a salmon enhancement program, founding the BC First Nation court worker program, and generally advocating for First Nations' rights.

Peter Paterson is a veteran journalist, with experience ranging from working for the CBC in Toronto to editing local papers. For town years during the Seventies and Eighties, he editor the *North Island Gazette* and more recently published the short-lived *Mid-Coast Beacon*.

The intent here was to examine cross cultural communications in general, without specific reference to local government, in an effort to gain some understanding that would help participants think about local government-First Nations consultation, a very specific form of cross cultural communications. Facilitated by Bernie Jones, Alert Bay Councillor and community development consultant, the panellists noted:

- The importance of attending to the communications process and taking pains to structure it carefully.
- Getting the audience's attention as the first step in effective communications
- How communications, such as through mass media, can lead to major changes in how people think about a subject
- The burden on First Nations of always having to be the ones to explain themselves.
- Talking to adults as adults, not as parents to children.
- Respecting the identity of individual persons, as opposed to the colonizers' practice of changing native names.
- Making someone feel welcome can pave the way for good communications.
- Making links with people through sharing the common experience of persecution.

C. Customary municipal approaches to consultation

After lunch, planner George Penfold presented an overview of how local governments think about and do consultation at this time. George's 20+ years of planning experience include college teaching, working on reforming planning practice (especially consultation with First Nations) in Ontario, and eight years of practice on the North Island. He's currently under contract to the Regional District of Mount Waddington. George's notes follow.

Creating Tools for Consultation and Communication Municipal, First Nations Consultation

Presentation Purpose

- Review general municipal consultation requirements and approaches
- Discuss implications for consultation with First Nations

Municipal Powers

- Roles and responsibilities, including consultation requirements, are defined by provincial legislation (Local Government Act in BC.)
- The purposes of a local government include good government for the community, providing services, providing stewardship of public assets, fostering the current and future economic, social and environmental well-being of its community.

Local Government Act confers specific powers on local governments including:

- Management of lands (private, municipal) and services
- Planning and zoning
- Disposing of municipal land and improvements
- Police
- Fire protection

- Health
- Highways, sidewalks, street lighting
- Water supply
- Sewers, Storm Drains and Drainage,
- Waste and Recycling
- Parks and recreation
- Parking
- Municipal Forest Reserves
- Taxation
- Business licenses
- Building regulations
- Regulation of animals
- Protection of Trees
- Removal and deposit of sand, gravel, soil
- Noise control
- Removal of dangerous buildings and other structures
- Regulate use of fireworks, explosives
- Consultation Options

Minimum requirements for consultation outlined in legislation include:

- Open Council and committee meetings
- Referendum
- Counter petition
- Public Hearings
- Public Meetings (town hall, open house etc.)

Consultation Requirements: Meetings

- Councils must establish procedures to be followed, including the time and place of regular meetings, advance public notice respecting the time, place and date of council and committee meetings, and the procedures for giving that notice.

Consultation Requirements: Planning

- Local government must consult with persons, organizations and authorities it considers will be affected, and provide one or more opportunities it considers appropriate for consultation.
- Municipalities must specifically consider whether consultation is required with other municipalities, First Nations, school district boards, other boards and improvement district boards, and Provincial and federal governments and their agencies.
- Consultation generally involves circulation of the relevant documentation and a 30 day period for response (agencies and organizations) and public meetings (general public)
- An Official Community Plan or zoning bylaw process must also include a public hearing.
- Hearing notice must be published in at least 2 consecutive issues of a newspaper, the last publication to appear not less than 3 and not more than 10 days before the public hearing.

- The notice must state the time and date of the hearing; the place of the hearing; in general terms, the purpose of the bylaw; the land or lands that are the subject of the bylaw; the place where and the times and dates when copies of the bylaw may be inspected.
- For site specific changes, notice must be mailed or otherwise delivered at least 10 days before the public hearing (i) to the owners as shown on the assessment roll as at the date of the first reading of the bylaw, and (ii) to any tenants in occupation, as at the date of the mailing or delivery of the notice, usually within 100 metres.
- The municipality can require the posting of a notice on land that is the subject of a bylaw, and specify the size, form and content and the manner and the locations where it must be posted.
- Many regional planning initiatives are approved by the province e.g., Regional Growth Strategies, OCP's, Zoning, Plans of subdivision. Consultation responsibilities are shared.

Municipal, First Nations Consultation

- Why Consult? If consultation is expanded, what is the purpose – information sharing, input on decisions, or joint decision making?
- What is the issue, or focus for the consultation? Municipal jurisdiction is limited to private land and related public services. What are FN interests in these matters? Possible areas of mutual interest may include:
 - Infrastructure
 - Shared natural features
 - Archaeological sites
 - Adjacent Development Impacts
 - Possible coordination of positions and approaches in responding to provincial or federal land use or related policy changes.
 - Possible coordination of services or facilities (joint use)
 - Possible coordination of economic, community development
- How much consultation is needed and with whom?
- "Legal" requirements (e.g., circulation of documents) may not be sufficient.
- Municipalities can go further than legislation but would probably require a joint agreement.
- Consultation processes in FN communities are not well understood by municipalities. Not clear who would be involved, on what issues e.g., staff, chief and council, elders, tribal council, treaty negotiations or community.
- How and for How long?
- Time limits (e.g., 30 days) do not fit with First Nations processes.
- Informal process can help (e.g., forums, administrators meetings)
- Consultation could also take the form of First Nation representation in relevant municipal processes or committees, or vice versa.
- For longer term processes, timing, and methods would have to be agreed to

If consultation is for more than sharing information:

- What do municipalities or First Nations do with input?

- What happens if there is a significant objection to a proposed action?
- What is the process of resolving the differences? There is no appeal or other `structured` process. Difference would likely be addressed through negotiation or courts.

First Nations, Municipal Consultation

- Generally, Reserve lands are considered federal lands, and First Nations issues are addressed government to government (federal or provincial.)
- With some exceptions (e.g., environmental assessment) municipal review not part of First Nations consultation processes.
- Are there situations where First Nations consultation with municipalities is appropriate?
- What process could be used?

III. NEW APPROACHES

A. Synthesis of working groups' discussions

Following George's presentation, participants were asked to divide into three groups and, using what they had heard throughout the day, come up with new ideas, tools, or twists on old tools, on how local governments could consult with First Nations. Following is a synthesis of key points made:

Working Together:

- Bands and local governments do things together when possible for efficiency, cost-savings and to avoid duplication; good for relationship building, e.g.:
 - Joint training (especially in service delivery – ambulance, fire etc.)
 - Job shadow programs
 - Establishing and maintaining public recreation facilities (e.g. not viable to have two recreation centres – share facilities / avoid duplication)

Addressing Issues Together:

- Make joint public statements on issues when possible
 - Moves us toward promoting and demonstrating cooperative relationships on the North Island
- Request and offer support for specific issues affecting local governments or First Nations
- Identify common visions/interests/issues/concerns and work together to address
- Enables First Nations and local governments to work together successfully on non-contentious issues
- Good practice for problem solving when difficult issues arise
- Some issues may be: responding to federal or provincial policies where there is mutual concern
- Make it possible for First Nations to be a part of the Mount Waddington Regional

District; perhaps create a North Island confederation of governments

Promoting the North Island Together:

- Seek joint funding for initiatives
 - Work together to maximize benefits from BC events (e.g. Olympics)
 - Promote North Island sports and athletes
 - Link to Indigenous Games
 - Joint Committees for Economic Development, Tourism, etc.

Information Sharing:

- Create on-going forums for information sharing (e.g. Treaty Negotiations, Regional Planning)
- Challenging to follow-up on these one-time forums
- Need funding and/or human resources to assist

Relationship Building Among Youth:

- Develop partnerships and cooperative events between First Nation and public schools

General Guidelines On Communication And Consultation

- Create a forum (time, place, occasion) for discussion
- Recognition of all players
- Respect
- Open forums so they are accessible to all groups, ages, etc.
- Structure which accommodates everyone
- Realistic timeline for consultation: contact with First Nation at inception of idea
- Recognition of, and respecting, common goals and concerns
- Reduce the filters (gatekeepers)
- Acknowledge financial costs of consultation

Building Trust

- By building the relationship
- By exchanging information
- By working on building community spirit
- By holding special events (e.g., feasts, potlucks, etc.)

Removing Uncertainty

- Clarity will come through finalizing treaties
- Reduce the fear of land claims

IV. FORUM EVALUATION

A. Evaluation method

A few weeks after the forum, a one-page evaluation questionnaire was mailed to all 30 attendees. Nine persons completed and returned the form.

B. Evaluation results

As shown in the table below, in terms of *format*, the panel session was most favourably received while the working groups were least satisfying. Four comments were added - two positive, two critical. One positive comment simply read "well presented," while another person liked the use of elders ("...they have a different approach.") but added that they "could have been a positive and informative asset to the working groups." The elders had no particular role in the working groups. One critical comment said the forum was too one-sided with First Nations land claims issues dominating the conversation. The other: "In my [working] group, they couldn't seem to understand that there could be no consultation without accommodation."

Ratings Sections	1 (excellent)	2	3	4	5 (less effective)
Presentations	2	4	1	2	0
Panel session	2	5	1	1	0
Working Group	1	3	2	0	1

Turning to the forum's *content*, respondents' ratings for the two formal presentations (Defining Consultation at Law and Reviewing Practical Consultation Models) were slightly higher than for the other sessions. Least well received was the panel session on Examining Cross Cultural Communication Issues and Experiences), even though it garnered the highest ratings in terms of format. Several comments were added to these ratings. One person emphasized the need for such forums to continue if relationships are to be enhanced. Another, also commenting on relationship-building, wrote that "We must be encouraged to feel a oneness - not a division." Yet another called for more commitment "to see the meeting through." Somewhat similar was another comment, saying "You can't have cross-cultural communication without proper representation from the other side." Finally, one participant noted that the information was "resourceful and informative."

Ratings Sections	1 (excellent)	2	3	4	5 (less effective)
Defining... law	3	3	2	1	0
Reviewing models	1	5	2	0	1
Cross-cultural experiences	1	3	2	2	1
Brainstorming	1	4	4	0	0
Relationship-building	3	2	3	0	1

Asked whether they would attend another Community to Community forum, all nine respondents checked "Yes." Respondents were then asked for their ideas for future forums. The many comments were categorized as follows:

About attendees (who should attend)

- keep numbers about the same
- youth
- forest industry representatives
- more elders and hereditary chiefs (2 mentions)

About content

- youth issues
- share results from other forums
- a series on natural resource issues (forestry, fishing, off-shore drilling)
- deal with "the hard questions" [not explained]

About process or format

- more chance for interaction
- more visuals
- spend less time re-reading hand-outs: just highlight the key points

Miscellaneous comments

- "cooperative attitude" of participants made for "enriching experience"
- more communication always needed

Participation

A piece of data not from the evaluation questionnaire is that the attendance was almost evenly split between First Nation and non-First Nations participants, an improvement over the previous forum. A half-dozen bands, three municipalities, and three areas of the Regional District were also represented.

V. FOLLOW-UP

A. Discussion of next steps

The expression of interest in future Community to Community forums from all nine evaluation respondents and the comments made to forum organizers at various occasions following the forum all argue for some follow-up. The sponsoring organizations and the Regional District of Mount Waddington (which sponsored a previous forum) all have an interest in some follow-up and conversations will definitely take place on the matter, starting with a close reading of the evaluation data.

VI. FINANCIAL REPORT

BUDGET ITEMS	BUDGET	ACTUAL EXPENSES			
		Village of Alert Bay	Winalagalis Treaty Group	Regional District	Total
Speakers	\$ 2000	\$ 1083		\$ 321	\$ 1404
Panellists	300	400			400
Lunch	750	374			374
Conf. organizing	2500	2097	627		2724
Hall rental	100	135			135
Contingency	350	149			149
TOTALS	\$ 6000	4238	627	\$ 321	5186

Notes:

Winalagalis Treaty Group incurred costs of \$4009.24, of which \$3381.99 was reimbursed by the Village of Alert Bay, per our original agreement about financing the workshop. The remaining \$627.25 of in-kind services represents a WTG contribution to the workshop. The Regional District of Mount Waddington also contributed to the workshop, covering half the cost of one of the speakers (\$321.). So, the "cash" cost of putting on the workshop was \$4238, with \$3000 of that coming from the UBCM and the remaining \$1238 coming from the Village of Alert Bay. The Village also contributed non-itemized, in-kind services for financial administration, workshop facilitation, and report preparation, printing and dissemination.

LETTER OF INVITATION
(Reduced)

FORUM PARTICIPANTS

Basil Ambers	Kwakiutl Nation
Doug Anweiler	Town of Port McNeill, Councillor
Flora Cook	'Namgis First Nation
Dan Cooper	Town of Port McNeill, Councillor
Greg Fletcher	Regional District of Mount Waddington, Executive Director
Gerry Furney	Town of Port McNeill, Mayor
Colleen Hemphill	Gwa'sala-'Nakwaxda'xw Nation, Chief Negotiator
Rev. Howard Jacques	Minister
Noreen Liepen	District of Port Hardy, Councillor
Mark McIntyre	Ministry of Forests
Maxine Matilpi	Kwakiutl Nation, Chief Negotiator
Brady Naknakim	Cape Mudge Band
Rod Naknakim	Cape Mudge Band & Hamatla Treaty Society
Peter Paterson	Beacon Publishing
George Penfold	Quwest Consulting
Reg Seaweed	Quatsino Nation, Chief Negotiator
Bill Shepherd	Regional District of Mount Waddington, Director
Rod Sherrell	Regional District of Mount Waddington, Director
Brenda Swanson	Regional District of Mount Waddington, Director
Dennis Walkus	Gwa'sala-'Nakwaxda'xw Nation, Councillor
Paddy Walkus	Gwa'sala-'Nakwaxda'xw Nation, Chief
Terry Walkus	Gwa'sala-'Nakwaxda'xw Nation, Councillor
Ralph Wallas	Quatsino Nation, Forestry Coordinator
Bill Wasden	Da'naxda'xw/Awaetlala, Treaty Negotiator ?
Alex Wilson	Kwakiutl Nation, Chief
Claudette Wilson	Gwa'sala-'Nakwaxda'xw Nation, Economic Development Officer
Forum organizers	
Nicole Javier	Winalagalis Treaty Group
April Hunt	Kwakiutl
Gina Wadhams	Winalagalis Treaty Group
Bernie Jones	Village of Alert Bay, Councillor

FORUM AGENDA
(Reduced)

EVALUATION FORM
(Reduced)