

# Gwaii Haanas: Working Together to Achieve Common Goals

**Ernie Gladstone**, Field Unit Superintendent, Gwaii Haanas National Park, Reserve and Haida Heritage Site, 60 Second Beach Road, Skidegate (Haida Heritage Centre), PO Box 37, Queen Charlotte, B.C., Canada, V0T 1S0; [ernie.gladstone@pc.gc.ca](mailto:ernie.gladstone@pc.gc.ca)

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## Introduction and overview

I WISH TO SHARE WITH YOU THE STORY OF GWAII HAANAS, and how a federal government and aboriginal people can successfully work together to achieve common goals through mutual understanding, appreciation, and respect. I will begin with a short overview of aboriginal rights and the evolution of the legal duty to consult with aboriginal people in Canada. I will then discuss consultation from a Parks Canada perspective, using Canada's relationship with the Haida Nation in Gwaii Haanas as an example, and I will finish with some of lessons I have learned in my work at Gwaii Haanas, and as a Haida person.

## Aboriginal rights

Aboriginal people have occupied lands in Canada for many thousands of years prior to European contact. They lived in diverse organised societies, each with its own culture, customs and character. We know this through both oral histories and archaeological evidence.

Aboriginal rights can no longer be extinguished through the assertion of Crown sovereignty, and this has been confirmed in Canada's 1982 *Constitution Act*. There are a number of treaties that exist in various parts of Canada. Indian treaties are a unique form of agreement in Canadian law because they have constitutional status. The intent of each of these treaties is to provide a means for the Crown to secure control of aboriginal land by way of surrender of aboriginal interest.

Aboriginal people retain specific rights within each of these treaties. These include things such as harvesting, self-government, and economic rights; however, many aboriginal people feel that their ancestors did not have the same understanding of the implication of these treaties as did the government of the day. There are also many places in Canada where aboriginal people have continued to live off the lands for thousands of years and treaties do not exist. For example, in British Columbia, very few treaties exist, and uncertainty over 90 percent of the land in the province remains in legal limbo because of unresolved land claims.

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Regardless of whether there is a treaty in place or not, the Crown, when carrying out its business, must do so in a way that respects aboriginal and Treaty rights. This includes the duty to consult, and it applies in all areas where aboriginal people have asserted rights, even though the rights may not yet be proven.

### **Evolution of duty to consult**

There have been a number of situations where aboriginal people have felt their rights were not respected by the Crown, and there have been a number of situations where the Crown has thought that aboriginal people have carried out activities that were beyond those that were considered aboriginal rights. Many of these situations have been brought before Canadian courts to seek clarification. This has set the stage for the evolution of the legal duty to consult in Canada.

The *Calder Decision* (1973) was the first of many turning points in Canadian law. It was the first time the courts recognised that aboriginal title can exist, even though it had not yet been granted by the Crown. This started the land claim process in Canada, and a way for aboriginal people to assert the title they believe they hold.

In 1982, the Government of Canada passed the Constitution Act. Section 35(1) of this act provides constitutional protection to the aboriginal and treaty rights of aboriginal peoples in Canada. “The existing Aboriginal and treaty rights of the Aboriginal peoples of Canada are hereby recognized and affirmed” (Constitution Act 1982). Since 1982, the Courts continue to interpret what this means.

In the 1990 *Sparrow* and 1997 *Delgamuukw* decisions, the courts set out tests that must be met to prove that aboriginal rights and aboriginal title exist. The courts also confirmed that aboriginal rights and title were not absolute, meaning that they could be infringed by government if it could be justified for things such as conservation and public safety. The *Delgamuukw* case is also significant in that the court gave greater weight to oral history rather than relying only on written evidence.

Twenty years after the *Calder* decision, things had not changed much in aboriginal communities. Aboriginal people had to spend many years in court or through the land claim process to have their rights determined.

In 2004, *the Haida* challenged this and the courts determined that the Crown has a duty to consult, and potentially accommodate, aboriginal groups where they had asserted rights, even if these rights have not yet been formally established or agreed to by the Crown. The level of consultation and accommodation is determined by the strength of the claim and the significance of the impact.

### **Parks Canada approach to consultation**

Parks Canada is responsible for managing Canada’s national parks, national marine conservation areas, and many of Canada’s national historic sites. One hundred years ago, when national parks were first created in Canada, aboriginal people were not included. The traditional way of life that existed in the national parks at that time was no longer permitted, and in some cases aboriginal people were physically removed, and relocated to areas outside of national parks.

This continued for many years; however this is no longer the case. There has been significant work done since this time to heal the past, and to include aboriginal people in the operation and management of national parks and sites. For many years now, and certainly throughout my career, the Parks Canada agency has long been committed to building strong, effective, and mutually beneficial working relationships with aboriginal peoples. Consultation with aboriginal peoples on a wide range of initiatives has become a major element in the operational policies of the agency.

At Parks Canada, the legal duty to consult applies when the Crown is planning or carrying out conduct that may adversely impact aboriginal or treaty rights. Some of these include the following:

- Wilderness designations, zoning
- Establishing a park, national marine conservation area
- Changing regulations
- Management planning
- Species at risk recovery planning
- Projects and initiatives

While our legal obligations are one reason we should consult, there are many other policy and good governance reasons why we should do this as well.

Legal reasons include the following:

- Statutory requirements in the national parks agency and national marine conservation area
- Treaties, agreements, and contractual requirements
- S.35, common law requirements, honour of the Crown

Policy and good governance reasons:

- Make informed and appropriate decisions
- Improve and create working relations with all those affected
- Risk management

From my perspective, the most important reason is that decisions made through consultation and input from other perspectives result in more effective decisions. Canada's legal obligations have been set out and defined by the *Constitution Act*, legal statutes, and courts of law—however, building a trusting relationship must go beyond simply meeting the evolving legal requirement to consult. Ultimately, the interest of aboriginal peoples, Parks Canada, and the public are best served by aboriginal people's meaningful involvement in all aspects of park and site management.

### **Beyond status quo**

As such, the Parks Canada agency is committed to engaging in effective consultation with aboriginal peoples based on three principles:

1. That it is inclusive—the consultation process will ensure access of aboriginal peoples to the process regardless of community capacities, geographic location, language, socio-economic background, or physical capabilities.
2. That it is meaningful—results will stand the test of time, and all interests are taken into consideration in the decision-making process.
3. And that it is based on the values of trust and respect—a two-way exchange of ideas and information based on openness, trust, integrity and mutual respect.

This commitment is clearly expressed in the agency's corporate plan, through work undertaken by the agency's aboriginal affairs secretariat, and through a national aboriginal consultative committee that meets directly with the CEO of Parks Canada three times each year. The agency has also created resources, such as the Handbook for Parks Canada Employees on Consulting

with Aboriginal Peoples, and a training program to help employees gain a common understanding of the Crown's legal duty to consult with aboriginal peoples. This course also provides staff with cultural awareness training and the tools to build meaningful relationships.

Aboriginal involvement in planning, management and operations of national parks and sites has contributed substantially to the quality of management of natural and cultural heritage resources, it has improved relationships between aboriginal groups and the government of Canada, and it has enhanced the experiences of our visitors have when they visit national parks and sites. Today, most parks and sites have some form of engagement process with surrounding aboriginal communities. Approximately 68 percent of the lands managed by Parks Canada are managed with the involvement of aboriginal people.

In 2011, Parks Canada will celebrate its one hundred year anniversary. In these celebrations, we will also celebrate the role aboriginal people and their histories play in Parks Canada today. One of the best testaments to the benefits of this is the establishment of Gwaii Haanas, where I have the privilege of working.

### **Gwaii Haanas example**

Gwaii Haanas, in the Haida language, means Islands of Beauty. It is located on Canada's west coast on southern Haida Gwaii, about 130 km off the coast of mainland British Columbia, and just south of Alaska. The area is designated as a Haida Heritage site, a National Park Reserve, and a National Marine Conservation Area Reserve. It also includes three National Heritage sites and one UNESCO World Heritage site.

Gwaii Haanas is a 5000 sq km (1930 sq mi) protected area that extends from the tops of the mountains to the ocean floor. It is known for its unique flora and fauna, its rich marine ecosystem, the continuation of Haida culture, and its cooperative management structure.

There are a number of political milestones that have led us to where we are today:

- In 1985 the Haida designated Gwaii Haanas as a Haida heritage site and led a protest, which resulted in ending logging activity that was taking place at the time in the area.
- This protest led to an agreement between the governments of Canada and British Columbia in 1988 to protect both the land and waters in Gwaii Haanas.
- Over the following five years the Haida and Canada negotiated the 1993 Gwaii Haanas agreement, which commits each to work together in managing the land in Gwaii Haanas.
- In 2010, Canada and the Haida entered another agreement. This second agreement builds on the first and speaks to how Canada and the Haida Nation will work together in managing the water surrounding the land.

### **Gwaii Haanas agreement**

For the purpose of today, I will focus on the first agreement, which was signed in 1993. This agreement, now 18 years old, is often referred to as an agreement before its time. When Parks Canada, on behalf of the government of Canada, and the Haida Nation entered into this agreement the relationship went beyond what was expected in the way of consultation. At the very heart of the agreement is actually an agreement to disagree. Both the Haida Nation and the government of Canada believe themselves to be the rightful owners of Gwaii Haanas. Both parties respect each other's views on this, and maintain their respective authorities under both Haida and Canadian laws. The agreement then goes on to talk about how the two will work together to protect the area. Canada and the Haida had different reasons for wanting the area protected, but the end result is the same.

Haida have an inseparable connection to the land and sea. They have protected Gwaii Haanas as an area where they can continue to carry out traditional activities and maintain the conti-

nity of Haida Culture. And the Government of Canada has protected Gwaii Haanas as a representative natural and cultural area that will be preserved for all time through maintaining an intact ecosystem and a place for people to appreciate and learn from.

The agreement provides a structure for how Gwaii Haanas will be managed. The structure is referred to as the Archipelago Management Board. The board is made up of equal representation from the government of Canada and the Haida Nation, and is responsible for all issues related to the planning, management, and operations in Gwaii Haanas.

The agreement directs that a consensus decision making process will be used. So, when an issue is presented to the board, all members must either agree or disagree before a decision can be made. If agreement is not reached, the issue is set aside until it can be revisited. The agreement includes a dispute resolution mechanism, where issues can be raised to more senior levels in our organisations; however both the Haida and the Canada representatives work hard not to fall back to acting under one jurisdiction. They make the AMB process work.

Despite the dispute over ownership, a cooperative relationship has been developed, and both nations have brought resources and skills to the table that have provided for what I believe is more effective management than if one party or government were to do it on their own. The Haida bring an established presence and knowledge of the area that has been gained through many generations of living connected to the lands and seas. Park Canada brings resources, skills, and knowledge gained through 100 years of managing protected areas.

### **Lessons learned**

The relationship between Parks Canada and the Council of the Haida Nation now extends beyond the terms of the agreement in sharing management responsibilities. This has not always been the case. It was very challenging in the beginning, and I will share some of the things that were learned along the way.

The significant success we have achieved together is based on our success in developing relationships. Relationships take time to develop. It is important that you do not rush, and that you take the necessary time to get it right. It took five years to reach the Gwaii Haanas Agreement in 1993—the success of the agreement stems from good communication and the dedication of time to *earn* trust and respect.

Be prepared to put contentious issues aside until meaningful discussions can take place around them. It is important to engage aboriginal people from the beginning and to ensure there is something in it for them. Trying to get buy in after the fact is difficult. We have also found the process more successful when you include aboriginal people on your team.

Another point I would like to make is that when decisions are made through consensus and through our management structure, the public is much more supportive of them, and they are much easier to defend. Finally, I want to say that Gwaii Haanas is viewed nationally and internationally as a positive example of how a federal government and aboriginal people can successfully work together to achieve common goals through mutual understanding, appreciation, and respect.

I believe the Gwaii Haanas process works well for two main reasons:

1. We have an agreement that provides a process for the members of the management board to make shared decisions under our two separate authorities.
2. The individuals who have been chosen to represent Canada and the Haida Nation on the Archipelago Management Board. Each person at the table is committed to and believes that working together is the most effective way to manage Gwaii Haanas. We do not consult each other and cooperate because the courts have told us we have a legal duty to—we do it because we believe it is the right thing to do.

## **Closing**

In closing, I would like to leave you with this quote. It was part of a speech by the late Chief Skidegate, Louis Collinson, in 1966. It signifies the importance of working together. Thank you to the Collinson family for allowing this quote to be shared.

People are like trees, and groups of people are like the forests. While the forests are composed of many different kinds of trees, these trees intertwine their roots so strongly that it is impossible for the strongest winds which blow on our islands to uproot the forest, for each tree strengthens its neighbor, and their roots are inextricably intertwined. In the same way the people of our Islands, composed of members of nations and races from all over the world, are beginning to intertwine their roots so strongly that no troubles will affect them. Just as one tree standing alone would soon be destroyed by the first strong wind which came along, so it is impossible for any person, any family, or any community to stand alone against the troubles of this world. (Chief Skidegate, Lewis Collinson, March 1966)