



## **Clayoquot Alliance Working Paper Series**

### **Civil society as planner**

Environmental non-governmental organisations facilitating change in coastal British Columbia

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Date: *January 2002*

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## Introduction

The past decade saw two events that forever changed the relationship between aboriginal and non-aboriginal people in British Columbia. In 1992, the *BC Treaty Commission Agreement* set the course for the negotiation of modern aboriginal treaties across much of BC (Tennant, 1996: 63)<sup>1</sup>. Once completed, large areas of provincial Crown land will be under some form of aboriginal control, including fee simple ownership.

Then in 1997, the Supreme Court of Canada handed down the landmark *Delgamuukw* ruling, requiring federal and provincial governments to consult with First Nations when proposed legislation, policies or planning decisions infringe on aboriginal title<sup>2</sup>. From the start, federal, provincial and aboriginal governments held different views of what constituted a ‘Delgamuukw consultation’, leading to conflict, including court action, protest and violence.

These two events have produced a climate of uncertainty, and a momentum against any change (outside of treaty negotiations) to the status of Crown land and resources<sup>3</sup>. BC and Canada are slow to make changes, being mindful of the potential for litigation and conflict. First Nations do not have the power to implement changes outside Indian Reserves, and hesitate to support government initiatives—fearful of prejudicing treaty negotiations or of unwittingly consenting to an infringement on their rights. The result has been, for the most part, a stalemate.

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<sup>1</sup> The *British Columbia Treaty Commission Agreement* was signed by BC, Canada and the BC First Nations Summit in 1992. The agreement marked the end of the tacit doctrine of *terra nullius*, which had been provincial policy for 120 years (Tennant, 1996:49).

<sup>2</sup> *Delgamuukw v. B.C.*, 1997. 3 SCR 1010, December 11, 1997. This decision defined *aboriginal title* as: (1) the right to exclusive use and occupation of land, (2) the right to choose to what uses land can be put (without destroying the ability of the land to sustain future generations of aboriginal peoples), and (3) an inescapable economic component of land use and occupation.

<sup>3</sup> Close to 95% of BC’s land area is provincial Crown land. Changes in status include new land grants (sale), leases, and changes in use.

## *Change in uncertain times*

My interest in this situation stems from my support of increased nature conservancy in BC, particularly in and around populated areas along the south coast. Conservation initiatives usually involve a change in land use status, and imply the reconciliation of Crown and aboriginal interests. Given the stalemate described above, how is this to be achieved? More broadly, how can effective territorial governance take place while treaty negotiations ensue, perhaps for decades?

One possibility that has presented itself is the intervention of civil society, “those social organisations, associations and institutions that exist beyond the sphere of direct supervision and control by the state” (Friedmann, 1998: 21). Acting as facilitator, such organisations—notably, environmental non-governmental organisations (ENGOS)—have brought First Nations and government agencies together outside the treaty negotiation arena, with the goal of improving the management and conservation of a First Nation’s traditional territory. This is a new role for ENGOS in BC, which have traditionally focused on public awareness campaigns involving media advocacy and civil disobedience.

## *Purpose of this paper*

The purpose of this paper is to examine the place of civil society as an intermediary between First Nations and government agencies in BC—essentially, between two or more levels of government. In the following section I briefly review the concept of civil society. I then recount an example (still ongoing) of an ENGO fostering dialogue between a First Nation and government agencies in the Vancouver city-region. I conclude by discussing the role of civil society as planner and facilitator of change.

## What is civil society?

Civil society is “an analytic concept at the heart of investigations into the modern political world...carrying with it immense conceptual wealth and extreme diversity of meaning” (Colas, 1997: *xxiv*, 33). This wealth and diversity reflects the long evolution of the term through the history of Western thought. In reviewing this history, Colas (22) notes that civil society is usually defined in the negative, with respect to what it is *not* (Table 1).

To Aristotle, civil society (synonymous with *state*) was that which surpassed family, household and *peoples*, designating the highest form of community or association (23).

Augustine’s civil society was in opposition to the Church,

inhabiting the *Earthly City* rather than the *City of God*. For

Hobbes and Rousseau, civil society involved an organised political community distinguished from the *state of nature*.

With Hegel and Marx we find that the “political development of society corresponds to a progressive differentiation of civil society from the state” (24). This very different approach—the

opposite of Aristotle—is the foundation upon which most modern renditions are based. For example, Cohen and Arato (1994: *ix*) define civil society as:

...a sphere of social interaction between economy and state, composed above all of the intimate sphere (especially the family), the sphere of associations (especially voluntary organisations), social movements, and forms of public communication.

Cohen and Arato (*ix*) distinguish civil society from the political and economic spheres of society, because “...the actors of political and economic society...cannot afford to subordinate strategic and instrumental criteria to the patterns of normative integration and open-ended communication characteristic of civil society”.

Table 1. Defining civil society in the negative (Colas, 1997: 23).

Opposed term	Source
<i>a people</i>	Aristotle
<i>City of God</i>	Augustine
<i>state of nature</i>	Hobbes, Rousseau
<i>state</i>	Hegel, Marx

## *Civil society, social movements and ENGOS*

Civil society, then, involves groups that seek to shape societal norms outside the direct influence of corporate capital and the state (Figure 1). Friedmann (1998: 22-3) makes a further distinction between *organised* and *mobilised* civil society, the latter engaging in the “terrain of political conflict and struggle”, the *political community* of parties, clubs and social movements (Figure 2). The concept of *social movements* has a rich history of its own, but for the purposes of this paper will be considered part of the mobilised portion of civil society, located in the area of overlap between ‘pure’ *civil society* and *political community*.

It is in this realm, I believe, that the traditional activities of ENGOS (in BC) are located. Most ENGOS have no imperative of profit or control. They “resist, protest, make demands on the *state*” (28), calling for better environmental policies and regulations. They “struggle against the *corporate* Leviathan” (28), exposing the impact of resource exploitation on ecosystems. When they mobilise public support around an issue, they can shape the destiny of the *political community*. All these activities fit in to the three- or four-part models presented here.

What happens to this understanding when ENGOS start mediating between different sectors of society (particularly between different levels of government), thereby planning and facilitating change? In the following section, I provide a first-hand account of an ENGO mediating between a First Nation (government) and several provincial and federal agencies in the Vancouver city-region. I then discuss the role of civil society as facilitator and planner.

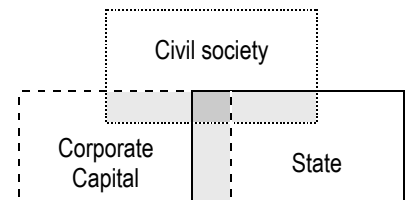


Figure 1. Civil society, corporate capital and the state.

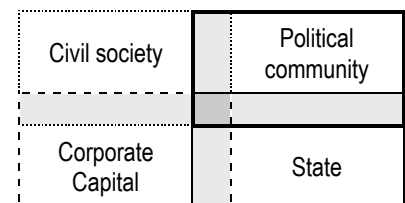


Figure 2. Civil society, political community, corporate capital and the state.

## Cooperation in Indian Arm

Over the past year, I have followed some of the activities of the *Canadian Parks and Wilderness Society* (CPAWS), a nation-wide ENGO with a BC Chapter based in Vancouver. I have been particularly interested in the techniques they have used to promote the creation of marine protected areas, of which there are very few in Canada. One of their areas of interest is Indian Arm, a fjord located north-east of Vancouver, on the edge of the Greater Vancouver Regional District (Figure 3).

Indian Arm is the southernmost fjord of the west coast of North America, a relatively pristine area on the edge of the most populated area of BC. Steep walls and a lack of road access have prevented much local settlement, except for some cottage leases (on Crown land) and marinas. However, mining, forestry, fishing and hydro power development have all had their impact on the Arm, leaving depleted fish stocks and an unnatural current regime (created by several large hydro outlet pipes).

Indian Arm falls in the core traditional territory of the Tsleil-Waututh First Nation. In 1994, the Tsleil-Waututh began modern treaty negotiations with BC and Canada, with Indian Arm as their primary target for acquiring fee simple lands and resources<sup>4</sup>. In 1998, as part of its mandate to double the parkland of BC, the provincial government (at the time<sup>5</sup>) created *Indian Arm*

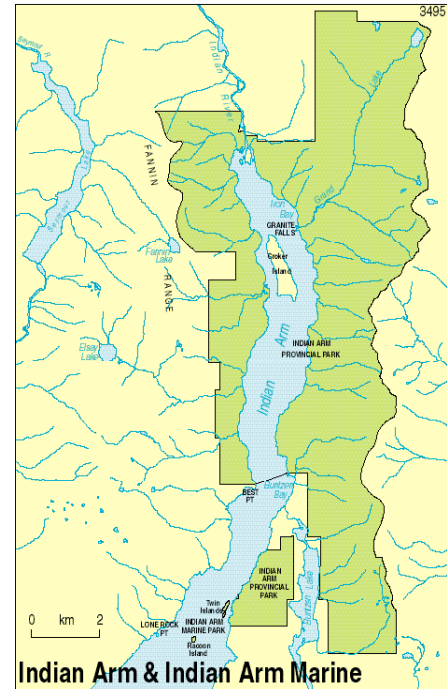


Figure 3. Indian Arm, including the Provincial Park and Marine Provincial Park. Source: BC Parks.

<sup>4</sup> Since 1997, these negotiations have been at stage four of six, the negotiation of an *Agreement-in-Principle* (for more information on the BC Treaty Commission process, see [www.bctreaty.net](http://www.bctreaty.net)).

<sup>5</sup> The New Democratic Party (NDP) was in power from 1991-2001.

*Provincial Park* and *Indian Arm Marine Provincial Park*. This was done with no consultation with the Tsleil-Waututh, as required by both the treaty process and the Delgamuukw decision.

Within days, the Tsleil-Waututh launched a court action<sup>6</sup> against the province. To hold these proceedings in abeyance, the provincial government signed an *Indian Arm Provincial Park Management Agreement* (1998: 1) with the Tsleil-Waututh, acknowledging the need to “co-operate ... in the planning and management of the Park pending the Tsleil-Waututh Nation Treaty Agreement”. Though this agreement has improved the relationship between the Tsleil-Waututh and BC Parks, it has not directly furthered the cause of conserving the marine environment— not least because BC Parks has no jurisdiction over the water column, or the seabed beyond the Marine Provincial Park.

Coastal zone management in Canada involves a multitude of government jurisdictions, complicating the already difficult task of limiting the impact of human activities on marine resources. Over a dozen federal and provincial agencies, local governments and authorities have some level of jurisdiction over Indian Arm. With the exception (perhaps) of BC Parks, most of these agencies are influenced by the momentum against change to the status quo, pending the outcome of treaty negotiations.

Cognisant of this stalemate, CPAWS began discussions with the Tsleil-Waututh in 1998, seeking a partnership that would allow them to promote the conservation of Indian Arm while still respecting aboriginal rights and title. The result was a protocol agreement, and Tsleil-Waututh co-sponsorship of a series of workshops promoting the protection and stewardship of the Arm (Symington, 2000: 3). A recent workshop<sup>7</sup> involved round table discussions on the

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<sup>6</sup> *Tsleil-Waututh First Nation (Burrard Indian Band) v. The Queen et al.*, BCSC, Vancouver Reg. C953912.

<sup>7</sup> I was in attendance at the *Health of Indian Arm* workshop, held October 16-17, 2001 in North Vancouver.

potential of creating a marine protected area in Indian Arm, and what form it would take (future workshops will take this discussion further).

The significance of the meeting was not the direct advocacy of CPAWS—which was subtly present—but the fact that all of the government agencies were in the same room together for the first time, along with the Tsleil-Waututh, other ENGOs, community leaders, academics, and citizens-at-large. With government agencies paralysed by ongoing treaty negotiations, CPAWS was a facilitator of change. In my mind, they were moving beyond the role of advocate to the role of facilitator and planner.

## **Discussion**

What happens to our understanding of civil society when mobilised groups become the key agents of change, particularly when they undertake planning tasks once left to the state? In this section I discuss three possible responses: (1) that civil society has taken on a state role, (2) that ENGOs have evolved as a social movement, and (3) that civil society is the new locus of the planning endeavour.

### *Civil society as planner*

There are several ways of conceptualising the role of civil society as facilitator and planner. To start, one could conceive that mobilised civil society is now performing a state function, filling a void left as the state engages in treaty negotiations. In our example, this could be considered partially true, in that CPAWS has gained a measure of influence over the future of Indian Arm, something that may not have happened in the absence of treaty negotiations. However, the state has not foregone any of its sovereign powers—it is only hampered in its ability to execute them.



Another possibility is that ENGOs have evolved as a social movement, beyond the simple production of self-identity through “diffuse, value-laden, non-negotiable demands that are articulated in mass protest actions” (Cohen and Arato, 1994: 556). In their more mature form, ENGO actions “shift from the expressive to the instrumental / strategic” (556), whose success involves:

...inclusion of representatives in normal politics involving party competition, participation in elections, parliamentary representation, the formation of lobby or interest groups, and eventually the occupation of government positions (557).

As suggested above, CPAWS could be thought to have evolved to occupy a government position. Again, this argument is not satisfactory, because CPAWS’ success is based on its ability to create a non-state space for open communication.

### *Civil society as the locus of planning*

This leads to what I believe is closer to the truth: that CPAWS —as mobilised civil society— is not filling someone else’s role. Rather, mobilised civil society is assuming a role that it is best equipped to do, a role that perhaps it should have had all along. In the three- and four-part models presented earlier, mobilised civil society is the (new) locus of planning for nature conservancy in BC. The reasons for this are twofold: (1) the importance of inclusive deliberation in conservation planning, and (2) the necessity, then, of a neutral facilitator.

Strategically, the importance of inclusive deliberation derives from the need to legitimate planning decisions at the local level (especially in aboriginal communities), thereby increasing compliance to conservation regulations. Though government agencies may try to be inclusive (sometimes with moderate success), they are forever hampered by the fact that they are the

sovereign power. They are often resented and distrusted, and likely have a long track record of ineffective public consultation.

This suggests the second point: that government agencies are unable to provide neutral facilitation in planning processes. Though they may have good intentions, government agencies still hold the levers of control, and are strongly biased toward a narrow range of preferred outcomes. By contrast, many ENGOs can operate as a relatively neutral third party, free to propose creative solutions without compromising its position of authority.

This is not to say that ENGOs are impartial, and do not run the risk of falling into disfavour with government agencies, First Nations and the public at large. An ENGO's position is tenuous, built solely on its reputation (*i.e.* respectable) and relationships (*i.e.* durable, long-term) with all concerned. If ENGOs can be thought to be maturing—as a social movement or as mobilised civil society—it is to build a public profile that makes them amenable to this new-found role, recognising and respecting their key position in shaping the future of nature conservancy across much of BC.

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