

Opportunities for Mediators and Arbitrators in Natural Resource Disputes



Angela Stadel

astadel@telus.net

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Natural resource conflicts – key features

- Decision-making authority – not private
- Multiple parties - power asymmetry between parties at the table and away from the table.
- External drivers ex. global supply chain, climate change, environmental conditions.
- Link to livelihoods, culture and identity.
- Complexity and uncertainty – differing scales.
- Deep-rooted structural issues.

Federal legislation and tribunals

- ***Canadian Environmental Assessment Act CEAA 2012*** – mediation was removed as a process option.
- **National Energy Board** - Pipeline Arbitration Board
- ***Species at Risk Act*** – Section 11 Conservation Agreements.
- ***Oceans Act*** – 40 (2) “shall encourage activities that foster understanding and management of oceans and marine resources”



Photo: Parks Canada



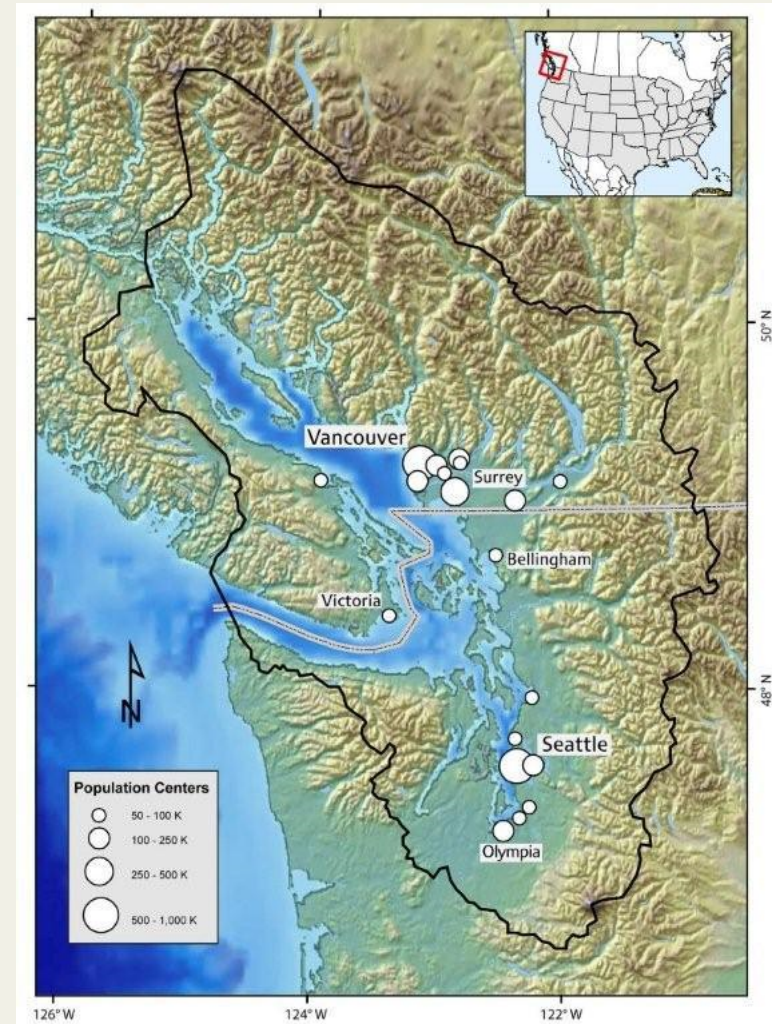
BC Provincial legislation and tribunals

- **BC Environmental Appeal Board** – early screening, settlement conference or mediation.
- ***Water Sustainability Act*** – replaces Water Act in 2016
- ***Agricultural Land Commission Act*** – Section 13 – Dispute resolution on community issues
- **Surface Rights Board** – right of entry and compensation



Transboundary treaties and agreements

- **Columbia River Treaty** – water and energy
- **Pacific Salmon Treaty** – resource allocation
- **Salish Sea** – shared marine system – Coast Salish Gatherings



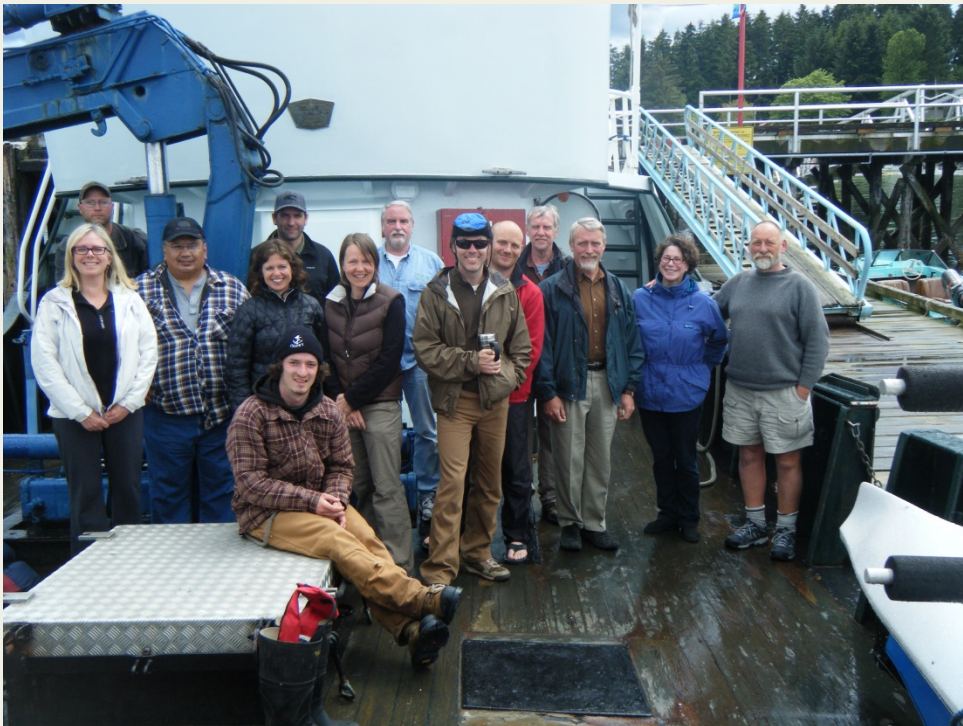


Canada needs to adopt a broader approach rather than strictly satisfying the legal duty if it hopes to obtain greater Aboriginal support for projects. A broad approach involves identifying and balancing competing claims, interests, and ambitions prior to the commencement of regulatory processes.

- Doug Eyford, Forging Partnerships, Building Relationships 2014

Tools and approaches

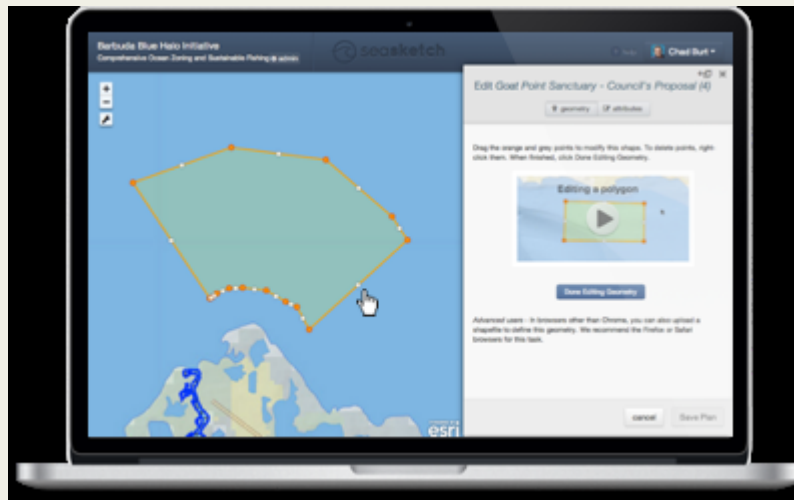
- Shift from ideological to technical aspects of a dispute.
 - ex. Use of joint fact finding/technical committees
- De-link resource ownership from resource use and management.



- Field trips/joint visits – create a shared experience and change of dynamic.

Tools and approaches

- Use of scenario building/visualization tools ex. SeaSketch



- Agreements that incorporate adaptive management and contingencies.

From remediation to prevention

- Designing collaborative planning/management processes with parties.
- Facilitating dialogue
- Sustaining productive engagement in the conflict.

When people stay with conflict, they engage in the ongoing struggles of their lives directly, clearly, respectfully, without avoidance, and with full realization that these are issues that will be with them over time.

- Bernard Mayer, Staying with Conflict, A Strategic Approach to Ongoing Disputes, 2009 p. 9.