INTRODUCTION

The Shared Decision Making (SDM) in BC project represents an effort to understand more clearly where SDM Agreements have come from, what they mean, and how they are working so far.

This document summarizes the outcomes of a multi-year, collaborative research project that explored the emergence of government-to-government (G2G) agreements between First Nations in British Columbia (BC) and the Provincial Crown, related to land and resource management decision making. Beginning in the summer of 2012 and completed in early 2015, this independent research project examined published and unpublished documents, involved numerous interviews with both First Nations and provincial agency practitioners, and included several face-to-face dialogues among those who have hands-on experience of negotiating and implementing these agreements in various parts of the province. This report draws together the findings of the research project, and supplements more detailed individual products, which are available via the project website.

The completion of this document comes at a time of particular uncertainty with regard to G2G relationships in the province. In particular, a high profile ruling from the Supreme Court of Canada in June 2014 has shed new light on the nature of Aboriginal title in the province, and has both reshaped expectations and prompted many new questions about how decisions are to be made in areas of BC where Aboriginal title remains unresolved.

In the context of this uncertainty, the results of the SDM in BC project offer insight into practical efforts to strengthen G2G relationships, and to establish innovative approaches for land and resource decision making in a world where authority and jurisdiction remain contested. Recent experience from the implementation of shared decision making arrangements in BC also highlights how such efforts contribute to the broader project of reconciliation between Aboriginal peoples and other levels of government.

“SDM Agreements provide a framework for collaboration between two governments who despite their differences, seek to build working relationships with one another, develop trust, and find ways to reach mutually agreeable decisions about how land and resources should be managed.”
WHAT ARE SDM AGREEMENTS?

Since 2009, over a dozen SDM Agreements have been established in geographies across BC, in the form of ‘Reconciliation Protocols’ or ‘Strategic Engagement Agreements’ (see Figure 1). Each SDM Agreement is unique, responding to a particular set of local circumstances and priorities. These agreements share a number of common features, however, which reflect the efforts of the Province and First Nations to keep pace with a legal and socio-political landscape that has evolved rapidly since 1990.

Legal Drivers for Shared Decision Making

By the early 1990s, BC had joined Canada and First Nations at the treaty table but still maintained that Aboriginal title, if it existed at all, did so in a form that did not interfere with BC’s jurisdiction. This position was soon overtaken by a series of legal rulings that compelled BC to engage much more directly in efforts to give effect to the Canadian constitutional protection
for existing Aboriginal title and rights in the ‘interim period’ prior to treaty definition or court recognition of these rights.

The legal rulings of the late 1990s and early 2000s also established that the question of whether and how First Nations are to be involved in decision making about their territories should always be a key part of the analysis to determine if government action is consistent with the Crown’s constitutional duties. These cases therefore opened up the space for new conversations about how the respective decision-making rights and responsibilities of the Crown and First Nations could and should be reconciled, through two pathways:

1. Negotiations towards lasting reconciliation through treaty negotiations; and
2. Negotiations to secure meaningful involvement of First Nations in land and resource decision-making in the interim.

In November 2004, the Supreme Court of Canada judgments in the Haida1 and Taku River Tlingit2 cases further raised the bar, holding that, although Aboriginal title does not constitute a veto power, the Crown has a duty to consult First Nations with regard to resource management decisions—including strategic level decisions such as land use planning—even before a claim of Aboriginal title has been fully proven in court.

**Operational Drivers**

Although the landmark court rulings of the 1990s and early 2000s were heralded as significant steps toward clarifying the relationship between Aboriginal and provincial title, they also created a significant administrative burden for both parties.

In order to meet its legal obligations, BC developed a ‘referrals process’ as a structured approach to consultation. Unfortunately, the volume and technical scope of referrals frequently outstripped the capacity of First Nations’ staff to respond in a meaningful way, which resulted in frustration and lost opportunities for both parties. The inefficiencies of the referrals process also created costly delays and uncertainty for industry proponents. In response, the province began developing a framework for Strategic Engagement Agreements (SEAs) that sought to engage First Nations in a more meaningful way and on a more respectful basis, meet the Crown’s legal obligations, and improve the efficiency and predictability of consultation.

**Political Drivers**

Throughout the late 1990s and into the 2000s, high profile land use conflicts in the province, as well as a controversial referendum on the treaty process, raised tensions between the Province and First Nations. Many of those in positions of leadership on all sides acknowledged the need for a new approach that could begin to address pressing legal and operational requirements, while also paving the way for longer-term solutions. This new approach was formalized in a 2005 policy statement, negotiated between the Premier’s Office and the First Nations Leadership Council, which set out a vision and principles for a new relationship.

As part of the New Relationship vision, the parties agreed to negotiate G2G Agreements for shared decision-making regarding land use planning, management, tenuring and resource revenue and benefit sharing. Efforts were also made to clarify further the relationship between Aboriginal peoples and the Crown through legislation, although this initiative ultimately failed.

By the late 2000s, a number of First Nations were also engaged in direct, government-to-government discussions at the regional scale regarding shared decision making in their respective territories, sometimes in conjunction with land use planning or related to economic benefit sharing negotiations.

The various SEAs and RPs across the province, each tailored to the specific circumstances of the local situation, have become the primary reflection of the state of shared decision making in BC, and represent on-going efforts to breathe life into the New Relationship vision.

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1 Haida Nation v. British Columbia (Minister of Forests), [2004] 3 SCR 511, 2004 SCC 73
2 Taku River Tlingit First Nation v. British Columbia (Project Assessment Director), [2004] 3 SCR 550, 2004 SCC 74
PERSPECTIVES AND VALUE OF SDM AGREEMENTS

The complex mix of legal, political and operational drivers that have led to the emergence of SDM Agreements helps to explain differences in perspective regarding what they are intended to achieve, their significance in terms of advancing reconciliation, and their potential merits. In particular, when viewed through the lens of relevant legal principles, recent government-to-government agreements about land and resource decision-making can be conceptualized in two quite different ways, or as a combination of both:

a. A form of interim accommodation of First Nations governance and decision-making rights that has the potential to serve as a stepping stone to full recognition;

b. An engagement framework to bring greater efficiency and predictability to the consultation process in the interim period, to reduce conflict over land and resource decisions, and increase land use certainty.

“To a large degree, SDM Agreements have been developed and implemented ‘under the radar’ and without public fanfare.”

The relative emphasis one places on these two viewpoints, both with their roots in relevant case law, may explain some of the differences in perspective that arise in implementation of shared decision-making agreements. Indeed, with varying emphasis, both goals are reflected in the language of many of the agreements.

As a result, and notwithstanding efforts to define the intent of the agreements in precise legal language within the documents themselves, some assume that SDM Agreements are intended as an expression of shared decision making as called for in the
New Relationship vision; others see them as merely a form or enhanced consultation; yet others may have an opinion that falls in between, but perhaps assume that there is value in building working relationships and establishing new forms of collaboration in decision-making, and suggest that this is a significant and worthy step toward longer term reconciliation.

To a large degree, SDM Agreements have also been developed and implemented ‘under the radar’ and without public fanfare. As a result, there is little written information about their scope and intent, although a BC Factsheet confirms that SEAs lie along a spectrum of G2G Agreements and are intended to:

1. Advance reconciliation with First Nations.
2. Improve social and economic circumstances in First Nations communities by:
   a. Closing the social and economic gaps by collectively working towards the objectives of the Transformative Change Accord, and
   b. Developing new processes and structures for shared decision making, resource revenue and benefits sharing where possible, as committed to in the New Relationship.
3. Increase consultation effectiveness by:
   a. Shifting the nature of the engagement from transactional to strategic through the Engagement Frameworks;
   b. Ensuring that provincial legal obligations regarding consultation are fulfilled;
   c. Improving relationships with First Nations and increasing governance capacity at an aggregate level, and
   d. Committing to develop additional consultation approaches over time (a building blocks approach to a more comprehensive agreement)

First Nations perspectives on the intent of SDM Agreements are more diverse, and are described variously as:

- Securing formal recognition of their territory;
- A mutually respectful, government-to-government relationship consistent with the New Relationship vision statement;
- Implementing a land use plan, or creating mechanisms to ensure that fish and wildlife or cultural values are conserved;
- Securing a more influential role in resource management decision making;
- Securing resource revenue from development activities occurring within their territory;
- Improving coordination among multiple First Nations as they each consider development applications not only within their own territory but also in areas of shared territory or ‘overlaps’; and,
- Building capacity and strengthening internal policy and governance arrangements.

First Nation practitioners have made clear that they view SDM Agreements as simply one modest step in their efforts to realize their own nation’s vision, which often speak to concepts such as social and economic well being for the community, an equal say in decision making within their own territory, and self-government.

Notwithstanding these differences in perspective, research results from the SDM in BC project indicate that ratings of the overall value of SDM Agreements remain relatively positive (see Figure 2).

Two surveys, completed in 2013 and 2014 respectively, suggest that overall ratings of the value of SDM Agreements are quite high. In a 2013 survey (N=25), the overall rating of SDM Agreements was 7.7/10 (or 77%) on a scale of 1 (very little value) to 10 (very high value), with the average rating from First Nation practitioners slightly lower (6.9/10 or 69%) than for their provincial counterparts (8.4/10 or 84%; see Figure 6). A similar but more limited survey completed among First Nations practitioners in the Fall of 2014 confirmed that the overall rating remained high (7.2/10 or 72%, N = 9).
NEGOTIATING SHARED DECISION MAKING

What works? What could be improved?

The SDM in BC research project has studied a number of aspects of the negotiation and implementation of SDM Agreements in order to identify strengths, weaknesses, and areas for improvement. Based on this work and on feedback from practitioners, the Step by Step report identifies specific factors that contribute to successful SDM arrangements, including the following:

- Taking time to build a shared experience of working together as the basis for negotiation;
- Retaining respected individuals who can act as a ‘broker’ or ‘bridge’ to help bring the parties together, set realistic expectations, and frame the work ahead in a constructive light.
- Ensuring sufficient technical capacity and capabilities are available to engage in negotiations and to sustain involvement over an extended period;
• Establishing a Reference Caucus or group of trusted advisors to offer guidance as the negotiations progress;

• Sustaining effective internal governance including channels of communication and decision making;

• Securing senior representation to ensure those at the negotiating table have a clear mandate to make decisions in a timely manner;

• Sharing a realistic sense of what is practically achievable, along with a clear understanding of what the SDM Agreement is intended to deliver—and what it can not;

• ‘Ramping up’ for implementation well before the negotiations are completed to ensure all the right pieces and people are in place once a deal is reached.

• Maintaining continuity in staff between the negotiation phase and implementation, to maintain institutional memory, trusted relationships, and to ensure that there are ongoing champions for the agreement.

“We had training done before signing the agreement, and when the agreement was finally in place, we were all ready to go and the system was up and running when we ‘hit the on switch’. In contrast, for [another SDM agreement] we spent a year negotiating a 100-page document that clarified what the agreement meant. People got upset. Instead of being able to turn on the lights, we had more work to do. The lesson: there are no shortcuts. You have to get things underway well at the beginning. And the problem is that we tend to leave a bitter taste in people’s minds if things do not start out well, which is a problem over the longer term.”

Provincial Practitioner

“I am sometimes nervous that if key players stepped away from the table, then I am not sure what would happen. We can get off track if some of the people who have been involved for a while do not help to remind people of the benefits of this collaborative approach... When people are frustrated and when some are tempted to throw in the towel, then people that have been around for a while can remind them of the positive side of all of this. Mistrust is very deeply entrenched and so these kinds of fears and concerns come up fairly regularly... There needs to be people on both sides that remember what it was like before.”

First Nations Practitioner

“Many folks within government agencies or First Nations who were not involved in the negotiations can miss (or misunderstand) the nuances that were said but not written, or that were understood by the negotiators but not clearly articulated in writing. You need to put people in key positions that can stay for a while.”

First Nations Practitioner
GOVERNMENT TO GOVERNMENT FORUMS & JOINT INITIATIVES

The centrepiece of many SDM Agreements is a senior G2G Forum, made up of representatives from each of the signatory parties. The particular design and composition of these G2G Forums varies, as does their title, but their function is to oversee the implementation of the SDM Agreement and provide a platform for discussion of strategic issues.

Research results suggest that the perceived value of these senior forums is generally high, and that they are valued elements of the implementation arrangements for SDM Agreements. Practitioners note several important considerations for a senior G2G forum:

- G2G Forums can serve as a single point of engagement between the parties, providing a focus for consistent, face-to-face engagement over time, relationship and trust building. While they can provide an efficient ‘single window’ for collaboration on strategic issues between First Nation departments and provincial agencies, a G2G Forum also has the potential to become a bottleneck, restricting opportunities for dialogue among staff or community members who are not present at the table.

- It can be a challenge to secure representation at the G2G Forum by those with sufficient seniority and experience, particularly in light of limited resources and capacity on all sides. At the same time, practitioners note that it can also be challenging to bring in senior decision makers on just an occasional basis, because they may not have had the opportunity to build the necessary trust to work through difficult issues.

- Another challenge for each G2G Forum is identifying a manageable suite of strategic issues, and successfully dealing with them in a timely and effective manner. G2G Forums can provide a venue both to raise strategic issues and to frame solutions. However, some First Nations practitioners report that their particular G2G Forum has become a place where issues are raised—particularly those thorny issues that cannot be dealt with elsewhere—but that the G2G Forum sometimes fails to serve as an effective mechanism to get things resolved.

- For many SDM Agreements, implementation includes the establishment of various working committees or ‘Joint Initiatives,’ each charged with specific planning or management tasks. Joint initiatives are one of the more flexible aspects of SDM Agreements, and offer considerable room for creativity and innovation; however, they also demand a commitment of significant time and attention, and care must be taken to ensure the proliferation of initiatives does not outstrip the capacity of the parties.

For all of these reasons, the effectiveness of the G2G forum relies heavily on the leadership of the respective Co-Chairs for the Province and First Nation(s) signatories. The Co-Chairs must be prepared to facilitate timely engagement within and between a broader set of representatives for the two governments, and to be creative in problem solving.

“Ideally, you have people at the table that understand, inside out and backwards, the agreement itself and the reasons behind it. They have to be bought into the idea of relationship and be willing to put that at the forefront. The more you have people able to work collaboratively, and focus on the relationship, even when things are difficult, the more successful you will be.”

Provincial Practitioner

“We have retained good institutional memory from the negotiations phase, which provides a good foundation for implementation. We have developed good working relationships, and have built on a lot of trust. We now have an ability to work through issues creatively at the table and among staff who support the forum’s work, although some of this ability is being lost as there is turnover among agency staff and as new provincial representatives come on board that do not have the same history or working relationships.”

First Nations Practitioner
“It is remarkable to see the increase in mutual respect and professionalism—in fact, this is one of the greatest benefits is the maturing of the relationship on all sides.”

Provincial Practitioner

“Encouraging dialogue is also key. We need to talk in between meeting times and informally. We engage and communicate on a weekly basis. We try to demystify any rumours that are going on. We are taking the G2G function beyond its formal intent and focusing on relationships.”

First Nations Practitioner
G2G ENGAGEMENT PROCESS

Another key element of SDM Agreements—and perhaps the feature for which they are best known—is a G2G engagement process for the consideration of development applications. This mechanism improves on the existing referrals process by providing: a consensus-seeking framework to reach agreement on the depth of engagement for any given application; defined process steps and timelines; and, opportunities for direct cooperation between technical representatives. The G2G engagement process seeks to generate a consensus recommendation regarding the acceptability of a given resource management activity, for consideration both by provincial statutory decision makers and by the First Nation(s) involved.

Benefits of G2G Engagement

G2G engagement processes help technical staff from First Nations and provincial agencies to understand their respective values and interests more clearly, have the potential to reduce conflicts over land and resource management issues, and offer the opportunity for partnership. Engagement processes also provide greater predictability, and can reduce processing times for applications by streamlining consultation steps. By varying the depth of engagement required based on the significance of the proposed activity and the potential for impacts, G2G engagement processes also enable the parties to focus their time and attention on the most important decisions.

Variations among G2G Engagement Processes

Key variations among G2G engagement processes under different SDM Agreements relate both to the mechanics of the process and to the assumed decision-making role of the First Nation(s) involved. The Step by Step report provides details on different approaches to the following:

- **Information Sharing:** The manner in which an application ‘package’ is shared among provincial agencies and First Nations management departments ranges from basic e-mail communication to coordination through an online management ‘portal’ that offers tools for more detailed analysis and reporting.

- **Setting Engagement Levels:** Different agreements employ varying methodologies for establishing the appropriate level of engagement between the parties.

- **Timelines:** Although efforts have been made by negotiators to ensure timelines set out for G2G engagement processes are reasonably similar across all SDM Agreements, variations do occur.

- **Scope of Decision Making Role for First Nations:** Most SDM Agreements assume that the product of G2G engagement processes is a recommendation to the relevant statutory decision maker; some SDM Agreements also state explicitly that the relevant First Nations will also consider a recommendation developed under a G2G engagement process. Differences in the assumed decision-making role of the First Nation under an SDM Agreement lead to quite different conceptions of the G2G engagement process.

The Step by Step report describes a number of other elements of SDM agreements that have proven value in strengthening working relationships, increasing certainty, and advancing shared objectives.

“G2G engagement is working quite well. The model and the framework have given us a much more organized structure, even if it’s challenging to keep up with work because of capacity limitations... The [engagement] model has certainly benefitted both parties—having the same vocabulary, speaking the same language, establishing means to communication that didn’t exist before. [It has] resulted in some very positive decisions that reflect [our First Nations] values. We now have concurrence in decision-making with the province, where before it was unlikely.”

First Nations Practitioner

“We have realized the need for building understanding among [First Nation] and agency staff, including building working relationships. We have had several sectoral meetings... [that] allow for personal relationship building and there are a lot of ‘Aha moments.’ They suddenly realize that the [First Nation] and provincial agencies have some common interests; for example, concerns about the quality of information provided in an application.”

Provincial Practitioner
“It is all about relationships. Before we started, it was uncommon for staff to meet with First Nations directly. It was intimidating at first, but now people can talk with one another and trouble shoot.”

Provincial Practitioner

“[We are] still quite positively surprised by the amount of effort BC is putting into the [G2G engagement] process. They have hired a number of people... and have filled a few key positions... all of which is geared toward effective implementation of these agreements. They are trying to make this work. Things are going quite well between BC and ourselves, although we do come up against issues from time to time. We are also trying to get our own internal processes better aligned so that we can fulfill the agreement.”

First Nations Practitioner

“Because of the clearer relationship/organization and enhanced ability to communicate and share information in the collaborative process, [the G2G engagement process has] allowed us to understand and receive information about pending decisions and effectively respond to them. In some cases we were able to providing a lot of information that has resulted in a favourable outcome for [our First Nations]. In at least two cases where we have said ‘no’ to applications the Province has concurred.”

First Nations Practitioner

“Our SEA is going well in at least two areas: the relationship building between government and [our First Nations], which has really brought line ministry staff into regular contact with our operational team—a huge improvement over previous limited contact. Functions include significantly increased communications around points of contention and issues and needs. It serves to build awareness and education around [First Nations’] perspectives that previously haven’t been well-understood. Internally, it’s worked to bring our community leadership together and similarly develop stronger lines of communication among the bands that are SEA members.”

First Nations Practitioner
CHALLENGES FOR G2G ENGAGEMENT

The establishment of G2G engagement processes heralds a significant shift in the way resource development applications are considered in areas of the province that are subject to an SDM Agreement. Not surprisingly, the introduction of these new processes has not been without challenges. The Step by Step report analyzes key considerations and potential solutions.

Building Trust

A G2G engagement process represents a departure from the status quo of referrals. Adjusting to this new reality takes time, for staff members from Crown agencies and from First Nations departments alike. Successful implementation of an SDM Agreement requires an open mind, a willingness to spend time building working relationships face to face, and a healthy dose of patience and tolerance. The G2G Forum has a particular responsibility to provide both leadership and stewardship of the process.

Focus on Transactional Efficiency

One of the key drivers for the introduction of SDM Agreements from the perspective of the Crown is the need to improve processing times for development applications. However, the speed of transactions is not in itself a measure of success. Any assessment of the performance merits of G2G engagement should examine effectiveness, not just efficiency, and the quality and durability of resource management decisions made.

Process Complexity and the Need for Consistency

One of the challenges for G2G engagement is the complexity of the process itself. This complexity can impose very significant transaction costs on both Crown agencies and First Nations departments, particularly where capacity is already stretched thin by a high volume of applications, or where there are multiple higher-level engagement processes underway for several major projects, each of which requires a dedicated working group. The parties must balance the aim of greater consistency with concerns about watering down SDM Agreements. There are opportunities for greater standardization of purely administrative and transactional details of engagement processes across multiple agreements, at least at a regional scale.

Tools and Templates

In a number of cases, the implementation of G2G engagement processes prompted the development of new administrative tools and templates, both for tracking information exchanges and for recording the results of engagement transactions. Such tools and templates need to be used consistently, and refined over time by mutual agreement.

Fettering

One of the persistent points of contention in the implementation of engagement models relates to the fettering of statutory decision makers. The Province holds to the view that statutory decision makers retain full discretion to make their own decisions, in keeping with current legislation. Many First Nations contest the legal analysis on which the provincial position is based.

Coordinating Among Multiple Agencies or Multiple Signatory First Nations

In many cases, multiple First Nations are joint signatories to an SDM Agreement. In these instances, implementation may require the establishment of new arrangements among individual First Nations and regional technical bodies established to serve their collective interests, to support effective communication, coordination, and dispute resolution. Similar challenges are faced within the provincial system, as multiple agencies need to coordinate their review of development applications under a G2G engagement process, within agreed timelines.

Handling Confidential Information

Almost all SDM Agreements include explicit provisions related to the sharing and management of confidential data between the signatory parties. Despite this, many First Nations practitioners continue to be hesitant in sharing sensitive information related to cultural values within their territory. Further work is needed to clarify guiding principles and best practices.

“Prior to the agreement, we had to deal with shifting boundaries, and frequently we did not even get the referrals to the right place. The [current engagement] model puts all those issues ‘behind the First Nation curtain’. It is very efficient for BC.”

Provincial Practitioner
Linkages to a Land Use Plan

There is considerable variation in the strength of linkages between SDM Agreements in various parts of the province and strategic land use planning products. Development of a land use plan or other spatially-explicit reference layers in advance facilitates agreement among the signatory parties on what kind of activities can happen where and under what conditions, making the assessment of a given development application much more straightforward.

Feedback and Accountability

G2G engagement processes conclude with recommendations being submitted to one or both governments for decision. Some agreements also include a provision for reporting back on the decisions made in light of these recommendations. This provision encourages statutory decision makers to be more transparent and accountable about the manner in which they arrived at their decision, and their rationale.

Limited Accommodation Toolbox & Influence Over Decisions

One of the key concerns for First Nations practitioners is the narrow range of options for statutory decision makers to respond constructively to issues and concerns identified through the G2G engagement process. The lack of a well-developed provincial policy on the management of cumulative effects, for example, limits how Crown agency representatives can respond to First Nations concerns about the pace, scale and distribution of impacts from multiple resource developments. In some cases, First Nations are concerned that despite their substantive engagement, statutory decisions are largely unaffected.

Achieving Measurable Results on the Ground

Many practitioners are anxious to ensure that their investment of time in G2G engagement delivers results. In the absence of systematic monitoring processes—particularly field monitoring—many First Nations find it difficult to determine if anticipated results are actually being achieved. More needs to be done to demonstrate the value and positive impact of G2G engagement processes.

Non-Participating Agencies and Advanced Level Engagement

Some key processes and agencies, including applications under the Environmental Assessment Act, are not subject to G2G engagement. This is cause for significant concern among many First Nations. Some progress has been made as experience in this area of G2G engagement develops, but there is room for improvement.

Engagement on Policy and Legislation

The current position of the Province is that consultation on new provincial policy or legislation is not within the scope of an SEA. Some First Nations practitioners argue that this is inconsistent with recent legal rulings and have urged provincial staff to reconsider.

“A lot of provincial resource managers did not really know how to handle Aboriginal interests being put forward in such a comprehensive, holistic manner. We have struggled to make the shift from a decision-by-decision viewpoint, but it has brought forward the cumulative effects issues. We are being forced to find solutions to those kind of problems, which is actually a good thing for everyone.”

— Provincial Practitioner

“Our biggest challenge is the ‘mandate gap.’ This exists in a broader consultation context: we consult, we engage, and we use impact analysis tools to determine the extent of infringement on FN rights—but then what? The legislative framework to say ‘no’ to proponents is very limited, and so we are dealing mostly with mitigation. The toolbox to deal with these things is light.”

— First Nations Practitioner
WHAT IS SHARED UNDER SDM AGREEMENTS?

Given the complexity of SDM Agreements and differing perspectives regarding their intent, it is not surprising that confusion persists over what aspects of decision making are to be shared, both in conceptual terms as well as in practice. Such confusion can lead to misunderstandings that can, in turn, aggravate working relationships, and cause procedural difficulties.

Table 1 in the following pages summarizes the nature and scope of sharing that occurs under different aspects of SDM Agreements in BC.

“What are shared in decision-making arrangements are the structures for consultation. We are sharing/making decisions together on what that process looks like. We are sharing decisions on how we are going to talk to one another, what G2G structures look like, and what are kinds of things to discuss. There is a great deal of shared decision making in negotiations, but do agreements actually allow for the sharing of decision making? There is, for example, no shared decision making on actual authorizations. Perhaps this is more accurately described as ‘shared stewardship’?

First Nations Practitioner
The following table offers a brief summary of different aspects of SDM Agreement implementation, with comments on the nature and degree of sharing in each case. For a more detailed exploration of this topic, see the SDM in BC Project Backgrounder on the Sharing of Decision Making in BC.

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<th>ASPECT OF IMPLEMENTATION</th>
<th>NATURE AND SCOPE OF SHARING</th>
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| Framework for land and resource management | • Provincial statutes and regulations typically shape the “rules of the game” for land and resource use, including the nature of permits and approvals required, what decisions are to be made on what issues, and when.  
• First Nations were not involved in the creation of the resource management regime that is now in place in BC and, with a few notable exceptions, did not participate as full partners in the development of strategic land use plans. With that in mind, the provincial regime may identify resource management decisions of genuine interest to First Nations, but those decisions are largely framed through a provincial lens.  
• SDM Agreements offer a framework for collaboration as land and resource management matters are considered, but the scope and nature of the decisions at hand have already been prescribed by a management regime defined by one of the parties alone. |
| Design of Institutional Arrangements | • Institutional arrangements established under SDM Agreements generally include the G2G Forums, G2G engagement processes, the various G2G committees or working groups established by agreement to tackle specific management issues, and mechanisms for dispute resolution. Most SDM Agreements have set in place institutional structures that appear to be relatively conventional in terms of western democratic governance.  
• Joint design for collaborative structures and processes is a central feature in the growing literature on collaboration, and is a core principle for the development of co-management arrangements. Processes and structures are likely to be both more effective and more durable if the parties who will be using them are involved in their design and development.  
• Institutional design of G2G institutional arrangements were informed by provincial design principles dating back to 2008. Many of the more recent institutional arrangements are based on templates from earlier agreement.  
• It is not clear whether First Nations involved in some of the earlier SDM negotiations proposed other, quite different institutional approaches that might have been more consistent with their own cultural norms and governance traditions. Some institutional structures and arrangements may accommodate different cultural traditions, for example through opening prayers or other similar protocols, opportunities for presentations by Elders, or in terms of the manner in which discourse at a meeting table is conducted. |
| Information Sharing | • Information sharing occurs at several stages, including:  
• in the negotiations phase, as both parties share information related to their fundamental rights, interests and concerns;  
• via the G2G Forum, as each party brings forward information related to any matter relevant to the implementation;  
• through the G2G engagement process as individual applications are considered; and,  
• within the various committees or working groups established under an SDM Agreement.  
• Confidentiality agreements are a common feature of SDM Agreements.  
• It is not always clear how information provided by First Nations, particularly related to cultural values, are interpreted by statutory decision makers. |
### Deliberations in the G2G Engagement Process (Operational Issues)

- The consensus-seeking nature of the G2G engagement process is one of the central features of the sharing of decision making under an SDM Agreement. In this manner, First Nations can exert influence over decisions that will determine whether a particular development activity will be approved, and how that activity will be carried out.
- The technical capacity and capabilities of First Nations often do not match their provincial counterparts, which results in a reliance on agency staff to provide analysis or mapping services, creating a perceived imbalance during technical discussions.
- When timelines are pressing, telephone calls or face-to-face meetings that are needed to allow for consensus seeking may not occur, which leaves both parties relying on their initial exchange of information and perhaps a series of brief e-mails to arrive at recommendations. In some cases, the initial response from the First Nation is simply received and used to inform a unilateral, provincial statutory decision.

### Shared Vision for Land Use

- Strategic land use planning products:
  - In some cases, land use planning largely preceded the establishment of SDM arrangements (e.g., Nanwakolas, Central Coast);
  - In other cases, a land use plan was jointly negotiated in parallel with the SDM Agreement (e.g., Taku);
  - In some instances, components of one or more land use planning products have been consolidated and reaffirmed through an SDM Agreement (e.g., Kaska, Gitanyow); and,
  - In some cases, linkages to existing land use plans are notably absent (e.g., TahlTan SDM Agreement and Cassiar Iskut Stikine LRMP); and,
  - In other cases, there is no strategic land use plan in place at present (e.g., Stó:lō). In those instances where no strategic land use plan is in place, or when a plan has been developed by provincial agencies with only limited or no substantive input from the relevant First Nations and is contested—or vice versa—the signatory parties to an SDM Agreement may lack a common vision for land use within the geographic area in question.

### Deliberations at the G2G Forum (Strategic Scale)

- G2G Forums provide a single point for discussion between one or more First Nations and multiple provincial agencies, and in many cases have allowed for the gradual development of trusted working relationships among representatives of the signatory parties.
- G2G Forums provide a venue for the identification of issues of shared concern at the strategic scale and potentially for the joint development of mutually agreeable approaches to address such issues collaboratively.
- There are some concerns that G2G Forums are successful at identifying issues but have a less convincing record of resolving such issues in a consistent and timely fashion.

### Working Groups and Joint Management Initiatives

- The structures provide an additional vehicle for sharing information, the building of working relationships, and for the consideration of joint management initiatives related to land and resource matters.
- Because these working groups are often addressing issues at a more local scale and as many operate ‘under the radar’ and without the degree of public or third party scrutiny that is applied to G2G Forums, they offer opportunities for shared experimentation and the development of new collaborative management approaches.
### Implementation of Resource Management Decision

- With the notable exception of the BC-Haida RP, most SDM Agreements indicate that the G2G engagement process is considered complete when recommendations have been generated and are submitted to the respective decision makers for each signatory party, subject to the application of any dispute resolution procedures provided for in the SDM Agreement. What happens after the recommendations have been developed and submitted is not considered part of the shared decision making process.

- Few First Nations systematically and consistently notify proponents of a First Nations decision on a given application following completion of G2G engagement, although some First Nations may choose to issue a letter of support for a given project, or communicate informally with many of the proponents active in their territory.

- In many cases, only the Crown is routinely issuing authorizations or communicating in any systematic manner with proponents. Many development proponents are not fully aware that a separate First Nation decision has been made on their application, or do not view it as having any significant influence on the manner in which development activities will be undertaken.

- In some cases, signatory parties to SDM Agreements have agreed to notify one another of their respective decisions once the engagement process has been completed.

### Working Relationships and the Building of Trust

- There is often a general naiveté among those who have completed a negotiated agreement regarding the complexity and demands of the implementation phase. Timelines for implementation are almost universally over-ambitious, and the failure to meet milestones can erode confidence in the implementation process more broadly. The parties that have completed the negotiations commonly commit insufficient financial and human resources to the implementation phase, which can lead to delays, declining confidence in the agreement, or frustrations among implementation teams.

- The implementation phase can involve considerable on-going uncertainty and unpredictability, and can place significant demands on those responsible for leading the implementation process.

- There is often a cultural shift that needs to occur among representatives of First Nations and provincial agencies, some of whom may have experienced many years of strained working relationships, in addition to many years of tense negotiations, but who are now invited to work alongside new partners, shoulder-to-shoulder and in a spirit of collaboration.

- The leadership role of G2G Forum Co-Chairs is considered critical in creating a climate in which trust building can occur.
LOOKING AHEAD: RESILIENCE AND ADAPTABILITY

SDM Agreements offer an absorbing example of cooperation between a state-level government and indigenous peoples. They also provide practical lessons and insights, particularly with regard to the importance of face-to-face engagement and some of the necessary ingredients for the building of trust in a context where authority and jurisdiction remain contested. Given the evolving context in which SDM Agreements operate, the Step by Step report examines how well these arrangements are poised to adapt to changing legal and political circumstances.

Success of SDM Agreements

The SDM in BC Project has found moderate to strong support for SDM Agreements among practitioners who are involved in implementation. There is a general sense that SDM Agreements have considerable merit and are worth the significant investment of effort required for implementation:

- SDM Agreements offer a standing arrangement for coordinated, strategic-level discussions on land and resource management issues on a respectful G2G basis.
- The Co-chairs of the G2G Forums play a critical role in problem solving and trouble-shooting, and can serve as champions of the SDM Agreement for their respective constituencies. SDM Agreements also have the potential to create a community of practitioners who are all pulling in the same direction.
- SDM Agreements have introduced a more predictable, consistent and coordinated process for the consideration of land and resource management applications, allowing both parties to focus their limited time and resources on the most important issues.
- Some modest capacity building has occurred through the G2G engagement process.
- G2G engagement has the potential to provide greater certainty for economic development, by opening doors for closer cooperation directly between proponents and First Nations, and offering opportunities for impact benefit agreements and joint ventures to be established for mutual benefit.
- Finally, various joint initiatives provide space for collaboration on planning and management issues and ample room—as yet, perhaps not fully explored—for innovation and experimentation.

Room for Improvement

Without a doubt, there have also been growing pains. The Steps Toward Reconciliation report identifies several areas where further work is needed to fulfill the promise of SDM Agreements:

- Improving the Effectiveness of G2G Forums: At the G2G Forum level, there are hints of growing unease that many of the strategic issues raised cannot be readily resolved within existing provincial policy mandates. Continued efforts are needed to explore how existing regulatory tools and instruments can be applied more consistently or used in innovative ways to address the shared interests of the signatory parties. It may be necessary to identify new tools and approaches. Stronger linkages are also required between those participating at the G2G Forum table and those responsible for land and resource management and decision-making behind the scenes. Closer alignment among provincial agencies in terms of budget priorities could help to build a broader commitment to implementation of SDM Agreements.
- Refining G2G Engagement Processes: To reduce overall transaction costs, efforts are needed to reduce the complexity of G2G engagement processes, achieve greater consistency in following procedural steps and timelines, and set in place the necessary administrative tools and templates. All parties need to do more to help each other understand what decisions have actually been made on any given application, and how those decisions have been arrived at.

PHOTO CREDIT: JULIAN GRIGGS
• **Ongoing Commitment to Improving Process Effectiveness & Relationship-building:** Sustained commitment will be required to address workload and capacity issues. For the Province, this means continued efforts to engage all resource agencies in implementation of SDM Agreements and a willingness to identify and pursue opportunities for practical improvements over time. For First Nations, this means continued efforts to strengthen technical capacity internally, a sustained focus on key priorities for effective implementation, and continued tolerance for the gradual pace of incremental changes within the provincial bureaucratic system. For both parties, the success of SDM Agreements demands a willingness to shift attitudes, move beyond past conflicts and strained relationships, and create a new institutional culture based on partnership, cooperation and mutual respect. It may also demand a high level of tolerance for continued tension and ambiguity, given the realities of implementing a working arrangement in the face of unresolved questions of authority and jurisdiction.

• **Social and Economic Benefits:** Despite the stated intent of many SDM Agreements, the extent to which implementation has generated social and economic benefits remains unclear. As yet, there has not been any systematic evaluation of the economic return on investment from SDM Agreements, nor any assessment of the relative merits of negotiating such an agreement compared to other alternatives. More structured assessment is needed to identify best practices in this area.

• **Ensuring Long-Term Funding Support:** Finally, confidence in the long-term durability of SDM Agreements has been undermined by a lack of certainty over funding. At present, financial support from the Province for SDM Agreement implementation is limited to sequential 3-year funding agreements, which are subject to approval by Treasury Board and Cabinet. Revenue sharing agreements have been proposed as an alternative source of funding for implementation, but the framework for these agreements has not been accepted by all of the First Nations involved in SDM Agreements. Until the conundrum of funding is solved, the long-term future of SDM Agreements remains unclear.

Despite all of their benefits, SDM Agreements still fall well short of the aspirations of many First Nations, who have been adamant and consistent in their calls for more equal decision making roles and authority. Many First Nations practitioners look to the Haida Gwaii Management Council as the leading example of such an arrangement, and have called for changes to be made in the fundamental design parameters of SDM Agreements in light of recent court decisions. In this context, several First Nations representatives have made it clear that, in their view, SDM Agreements may be a good thing, but represent just one step forward on a longer journey.

“SDM agreements are trying to breathe life into the New Relationship, and to establish a collaborative decision making approach in non-treaty environment. They’re at cutting edge of what is possible given current laws and politics. People need to understand that these agreements are shifting the way BC andFNs deal with one another—they really are changing things.”

Provincial Practitioner

“(SDM agreements represent] such a complex undertaking. They are a step in the right direction, but these agreements won’t do everything... Cultural change is hugely difficult.”

Provincial Practitioner

“Even the failures offer examples and ideas about how we can make things better. We have been able to get the province on our side in the past... It’s about the power of rapport and dealing with the right people inside of government. The best approach is to make the short term gains with the long term goal in mind. It’s like a football game: We are not going to get a field goal from the 5 yard line on our end...”

First Nations Practitioner

“At the end of the day, this is still consultation. We want to get to real decision making in our homeland—decision making that is meaningful. I still think of this as a pilot, but there is real potential... It is only a stepping stone to where we want to get to... We don’t want to be consulted for the rest of our lives.”

First Nations Practitioner
THE NEED FOR NEW APPROACHES TO MONITORING AND EVALUATION

The success of SDM Agreements will depend in part on the willingness of those involved to reflect on both successes and failures, and make improvements where they are needed. Periodic assessment of what works and what does not is essential for any complex enterprise, and SDM Agreements should establish mechanisms to provide reliable feedback on performance.

The evaluation of SDM Agreements is made more challenging because of questions over the value of conventional evaluation methodologies in this context. A ‘compliance-audit’ approach to evaluation is relatively straightforward in situations where causal relationships between activities, milestones, and results are well understood and easily quantifiable. Such an approach is less suitable to SDM Agreements, where causal relationships are not always well understood; indicators of success are difficult to define; the legal and political context is in flux; and some important results—such as the building of mutual trust—are not easily measured.

New approaches to program evaluation could help the parties assess not only whether things are working, but how well those involved are learning together about what is working and what is not. Such ‘developmental evaluation’ approaches reframe conventional questions into a more exploratory and qualitative form better suited to the evaluation of SDM Agreements.

An alternative evaluation framework developed by the SDM in BC project draws both on the principles of developmental evaluation, and on an understanding of the distinct ‘conflict levels’ at which differences between the parties may arise and be resolved (see Figure 4).

“On both the provincial side and our own, we are run off our feet. By the time we want to evaluate ourselves, people may be gone and we won’t remember... We are more anecdotal, not systematic in our monitoring.”

First Nations Practitioner

“Continuous improvement’ requires ‘continuous evaluation.’”

Provincial Practitioner

“I think the purpose of the evaluation is something to be negotiated and it ties directly to the business case (as Province likes to frame it), understanding that purpose of the evaluation and negotiating that rationale—what is it that you want to look at and why... and our business cases aren’t the same.”

First Nations Practitioner

“If this agreement becomes tested and it is not achieving what we set out to achieve (or worse, is working against us) then it would be inappropriate. We have given BC interim certainty. Right now, BC may be taking this somewhat for granted in a couple of places. If the cost benefit analysis does not add up, then it would be inappropriate.”

First Nations Practitioner
FIGURE 4: A PROPOSED EVALUATION FRAMEWORK FOR SDM AGREEMENTS
FURTHER STEPS

Building a Constituency of Support for SDM Agreements & Third Party Involvement

To date, the negotiation and implementation of SDM Agreements has largely occurred out of the limelight. While this has provided space to work through the early stages of a new, collaborative governance arrangement without being under constant public scrutiny, it has also meant that few British Columbians are aware that these agreements are in place, and even fewer fully appreciate their merits. As a result, there is as yet no broad constituency of support for SDM Agreements.

Evidence of the effectiveness of SDM Agreements—whether through improved land use certainty, shorter timelines for permit approvals, increased local capacity, expanding economic opportunities, or successful joint initiatives to tackle resource management issues—would do much to highlight their benefits.

Further work is also needed to improve awareness of SDM Agreements and their benefits among third party stakeholders.

Ongoing Collaboration Within a Community of Practice

SDM Agreements have established a renewed climate of cooperation among those who are involved in implementation. Between June 2013 and December 2014, the SDM in BC Project has expanded that cooperation to the provincial scale, bringing together technicians and other representatives from provincial agencies and First Nations departments in a fledgling ‘community of practice,’ to exchange information, share insights, and identify best practices. The opportunity for practitioners to come together in this way has been widely appreciated.

There is a compelling case to be made for further collaboration among those involved in the implementation of SDM Agreements at the provincial scale, or at minimum at the regional scale. Those situated on the ‘front lines’ of SDM Agreements have already established rapport and have the benefit of close and trusted working relationships, making this an invaluable opportunity for exploratory discussions on complex issues, and for experimentation in a low-risk setting.

“It is important to think about sharing information more publicly. There is limited information available about SDM Agreements, and about the work FNs and BC are doing to build relationships. We need public buy-in to avoid losing the politicians along the way.”

First Nations Practitioner

“We need to deal with the issue of third parties—this is a tough one. If there is a major project proposed, we need the proponent, FNs and the Provincial Government to uphold the New Relationship. Industry was not a party to the development of the New Relationship, but they need to be part of making it actually work. There is a strong absence of third parties stepping up to plate. In the absence of an MOU with a proponent, there is nothing there. But if you have an SEA, you have a greater ability to engage with industry. We need mechanisms to bring third parties into the agreement.”

First Nations Practitioner
Such collaboration would focus on the practical questions of implementation and should not include political representatives, to ensure the initiative is not construed as a forum for provincial scale negotiations. Much of the detailed work related to the implementation of SDM Agreements would also need to occur between the signatories of each agreement, ensuring that approaches continue to be tailored to local circumstances.

Key features that would enable a community of practice to sustain effective collaboration include the following:

- a clear mandate secured at senior levels within MARR;
- voluntary participation by each First Nation;
- opportunities for discussions among First Nation practitioners alone, in addition to forums where provincial staff and First Nations representatives could meet and engage in dialogue together;
- funding support to cover logistical costs (e.g., venue bookings, travel and accommodation);
- clearly-defined responsibilities and resources for the coordination of the collaboration; and
- the definition of a ‘shared agenda’ to support continuous improvement over time, while providing flexibility for participants to be involved to a greater or lesser degree depending on their own priorities and interests.

The Step by Step report provides additional considerations for the establishment of a community of practice, along with an initial list of potential topics for discussion.

SELECTED FIRST NATIONS FEEDBACK ON SDM IN BC PROJECT

- “Being able to meet the other individuals involved with SEAs and get an understanding of what they are dealing with, the dynamics of what they are dealing with...helps to understand similarities and differences.”
- “I really appreciated the project bringing in the province to engage with us. We do not get other opportunities to engage at that level, at least not since the negotiations. It has been useful to deal with this in a forum with all the SEAs present in the same room.”
- “I think that it has helped me as an individual to know how other agreements are being treated and how our work compares to others, what BC is saying to us versus others... It has also been helpful to understand how the political story about these agreements is playing out among all FNs in the province.”
- “It has definitely helped looking at best practices that other FNs have been using and applying them to our agreement.”
- “Having a forum to talk to other FNs and having [the project team’s] insights was very helpful... Having a safe forum to discuss openly the ups and downs and pros and cons was useful... The other value was in bringing in outside experts ... Those experts help to broaden the scope and our understanding.”
- “The SDM project has definitely benefitted our awareness and scope of understanding of SDM in various forms, very helpful in our implementation of our SEA. It’s given us access to info that we wouldn’t have otherwise, opportunities to talk to other FNs/Province with these types of agreements. Learning about their experiences has been hugely valuable.”
Despite the common use of the term, research by the SDM in BC project suggests that the meaning of ‘reconciliation’ in the context of SDM Agreements is often not held in common. As one example, SDM Agreements are explicitly not intended as vehicles to resolve outstanding jurisdictional issues, which some might argue is an essential aspect of true reconciliation. At the same time, research clearly demonstrates that both First Nations and Provincial practitioners find significant value in these agreements. Given that the structures and processes available under SDM Agreements are both practically workable and relatively effective, they may well prove to be sufficiently resilient to adapt as needed to changing political and legal realities.

Research to date indicates that the structures and processes available under SDM Agreements are both practically workable and relatively effective, and represent some of the leading examples of collaboration in BC. Given the time and effort that has been dedicated to implementation thus far, it is reasonable to hope that these structures and processes are sufficiently resilient to adapt as needed in light of changing political and legal realities. SDM Agreements therefore offer a suitable container for figuring out how such adaptation should occur in practice.

Further research and more detailed discussions among practitioners is needed to determine how SDM arrangements,
along with a growing range of tools and strategies to help bridge differences and strengthen working relationships in the face of conflict, can be harnessed in practical ways to further reconciliation in the coming years. It might be possible to adapt to new contexts by making relatively modest adjustments to the roles of First Nations and provincial agency decision makers within the existing G2G Forums and G2G engagement processes. The Step By Step report identifies various ways that SDM Agreements and G2G Forums can cultivate increased sharing and pragmatic opportunities for collaboration.

SDM Agreements offer an opportunity for small but significant steps toward deeper forms of reconciliation, by facilitating understanding of differing worldviews, helping to enrich shared understandings of history, and enabling collaborative approaches to land and resource management in practice. As First Nations and the Province of BC continue to work towards reconciliation over the longer term, it may be that experience gained from the face-to-face work of negotiating and implementing SDM Agreements will prove at least as valuable as their content.

“The new solutions we have introduced replaced old structures. If the model works well, it ‘develops it own legs.’ The word gets out on the street and the model starts to sell itself. That is a hallmark of whether something is working.”

Provincial Practitioner

“We are still at an early stage with these agreements and are now realizing that there are differences among our perspectives. We are continuing to learn. But are we more capable of engaging on more challenging issues, and can we devote the time necessary to do so? We continue to unfold what reconciliation looks like, in terms of institutional cultures. As part of the settler Canadian community, I grew up with zero history of First Nations, and so we are talking about culture change. It is about ‘unpacking the colonial project.’”

Provincial Practitioner

“We have built a platform for the relationship that provides stability and a place, actually a number of places for important conversations to happen... If the current attitudes and the current process continue to be implemented, I don’t see what could get in the way of continued success. But the world is complex. There could be changes in political perspectives. There could be major issues that arise. It is about resilience. It is not just that things might come out of the woodwork and knock these agreements down; it is a question about whether they can get back up! There has to be recognition of the value of an enduring relationship. There will be places where inevitably we cannot come to agreement on specifics. Any marriage is like that. The question is, do you want to be right or do you want to be happy? No one is going anywhere and so we need to work together. The phrase ‘We are all here to stay’ is key. So how do you want that to go? Even if the agreement is terminated, we still need to talk together and work through things after all.”

Provincial Practitioner

“Cultural change is hard for both sides. These agreements will succeed or fail based on the willingness on both sides to make it work... We are overcoming decades of conflict, which simply takes time. Face to face time is critical.”

First Nations Practitioner
The SDM in BC collaborative research project examines the emergence of non-treaty agreements that create new mechanisms for engagement on land and resource matters at strategic and operational levels, as a step toward longer-term reconciliation.

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**JULIAN GRIGGS**  
Project Director  
Shared Decision Making in BC  
Associate, Centre for Dialogue  
julian@dovetailconsulting.com

**JENNA DUNSBY**  
Project Assistant  
Shared Decision Making in BC  
sdm@dovetailconsulting.com

*sfu.ca/dialogue/sdm*