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## IMPLEMENTING DELGAMUUK'W

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Biography of Marty Weinstein  
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Dr. Martin Weinstein is a natural resources scientist, trained as a biological oceanographer and an animal ecologist at McGill University. His research focuses on the socio-economic side of resource management, and the relationship of long-established communities to their environment and renewable resources. He has been involved in aboriginal land use mapping in Canada for the last 25 years. He is the research designer for 11 major aboriginal land use studies in northern Quebec, the Yukon, and BC, and has been an advisor on research methodology for a further three studies. These studies involved documenting the land use of over 30 aboriginal communities. He has also been the designer and primary researcher for 5 harvest studies. Marty's particular interests include traditional ecological knowledge, customary systems of resource tenures, community resource management and the resolution of conflicts between aboriginal land use and sea use and industrial-scale resource management. He operates a consulting practice from Comox, and is an Adjunct professor at the UBC Fisheries Centre.

Good morning. First I should really thank the Union of B.C. Indian Chiefs, and particularly Leigh Ogston, for inviting me to attend this conference. This has been very interesting. The first two days have been very exciting and quite valuable, certainly for me and, I suspect, for lots of other people here. So I think the Union and Leigh and the other people at the Union that were involved in organizing this conference really need to be thanked and appreciated for doing so. I'd also like to thank the Coast Salish people for welcoming us all to their territory.

This is a panel on sharing information. In some ways the topic for this panel is really a departure from the theme of this conference. The conference theme deals with changing the present status of the Supreme Court's Delgamuuk'w decision. The decision, as we all know, has enormous potential, but making the moves from potential to implementation obviously requires focused information and an ability to effectively use the information. Most of the sessions in this conference discuss how to focus the information -- that, after all, is what research does. Conference sessions talk about what kinds of information are required to establish aboriginal title according to the tests laid down by the Supreme Court. This panel is somewhat different from the other panels because its focus is really on an existing program.

The traditional use study, or T.U.S., program was set up by the provincial government around 1995 to deal with government's administrative needs. When the lower courts made their rulings on Delgamuuk'w in 1991 and in 1993, the B.C. government suddenly found that it had inherited a fiduciary responsibility to protect aboriginal rights within its jurisdiction. And since most lands and resources and other type of issues fall under provincial jurisdiction -- from forestry to road construction to mining to urban development, and so on -- government's need for information about aboriginal culture and resource knowledge suddenly became very, very pressing. Government devised the T.U.S. program as a means for filling in their blank maps. From government's point of view, the T.U.S. program is a method to obtain information required for its administrative responsibilities. From the First Nations' point of view the T.U.S. program is an opportunity to obtain funding to meet many needs -- funding to conduct the kind of research needed to protect aboriginal rights has been very difficult to come by. The T.U.S. program was seen as a very desirable source of funding by many First Nations. In addition to collecting and compiling aboriginal geographic information, the program was seen as a source of training and as a means for building capacity in important areas, including research, resource management, computer and GIS [Geographic Information System], and, more generally, administrative and negotiation skills. Additionally, the benefits included the creation of much needed employment on reserves. The downside of the T.U.S. program was -- and still is for a lot of groups -- the information-sharing requirements that were written into the funding contracts. Many First Nations struggled to renegotiate the information-sharing requirements before signing their contract. Others signed and then struggled afterwards with finding a method that would provide the kinds of protection that they felt was required. Still others walked away from the program entirely and found other sources of funding for doing the same work.

I think that it's fair to say that all First Nations are troubled by the information-sharing requirements of the T.U.S. program. It's very clear that there is a need to share information. Looking more generally, information has no value unless it's shared between people -- information is a form of communication, after all. But information, as the cliché tells us, is also power. Who holds the power depends on the rules for information-sharing. Legal and financial organizations are skillful in protecting their information and ensuring that the methods they use for sharing will not work against their interests.

I think that the origin of the conflict in the T.U.S. program over information-sharing results from a mistaken view of aboriginal geographic information. At its earliest stage the T.U.S. program concentrated on so-called cultural information. Conflicts at that time had emerged over forestry impacts on such things as archeological sites, on petroglyphs, and on culturally modified trees. At the time it was not as easy as it is now to see that these were essentially economic and legal

conflicts. Rather, the conflicts were seen outside the aboriginal communities as tied to social values in the same way as impacts to heritage buildings, as community halls and old theaters, are. As the T.U.S. programs got under way, many First Nations expanded the topics to be mapped to cover issues they had been long concerned about. When the early ethnographers, such as Franz Boas, conducted their research at the turn of the century, they tended to ignore resource geography while they covered fishing and hunting methods that were used by First Nations. With some exceptions, they never mapped the places that people hunted, fished, or collected plants. The record that they left us is very rich, but it's largely empty about resource geography.

For many First Nations the conflict between industrial resource development, such as logging and mining, and community use of resources is the major source of contention with government. Consequently, many of the traditional use studies focused on resource use. It would be surprising if it were any other way. Historically, resource use -- fish, animals, plants, and minerals -- was the basis for aboriginal economies. Much aboriginal geography is defined by the interrelationship between residency -- where people live and travel -- and the economic use of the traditional territory to make a living. Other aspects, such as spiritual relations to place, are also often tied to animal and plant use. Many, and likely most, First Nations still rely on the resources of their traditional lands for significant parts of their livelihood. This has been clearly shown for aboriginal communities across the Canadian north by the extensive research done in those communities during the last twenty-five years. However, comparable data is lacking for B.C. aboriginal communities. We don't know the economic basis for B.C. aboriginal communities; we don't know the extent of their dependence on their harvests from the traditional territory. Those kinds of studies have not been done in British Columbia. Nonetheless, we can assume that the same kind of thing is true for B.C. aboriginal communities as is true for northern communities in which, in some cases, harvest from the land may be equal to about a third of the total annual income from the communities annually. The reason that we can make that assumption is because of our collective knowledge about active food fisheries, deer and moose harvest, and plant gatherings, and the kind of exchanges that go on between the rural aboriginal communities and urban native residents. All of these speak loudly to the economic role played by household resource harvests in British Columbia.

From a First Nation's point of view the conflicts between community use of resources and industrial scale resource use -- such things as forestry, commercial fisheries, and including commercial tourism -- is generally ignored by government; that is, the conflicts between the aboriginal community use of the resources from their territory and all of these industrial scale resource uses generally are ignored by government. First Nations' experience is that government officials either did not recognize the conflict or, if they do, they trivialize them. It is very rare that First Nations representatives leave the negotiation table feeling that the people on the other side have even been able to hear these kind of concerns. For many groups the T.U.S. program was seen as an opportunity to communicate exactly this side of the resource conflict: that there is a conflict between logging, mining, and community use of resources. For all of these reasons, the large focus of the mapping done for T.U.S. for many communities, at least at the early stage, focused on natural resources and their use.

The issues of information-sharing under the T.U.S. program has been very contentious, but what are the risks? Speaking broadly, I see two types of risks from transferring this kind of information outside of community control. The first is a risk to the dominant strategy used by First Nations for most of the century to limit competition and resource harvesting. By competition and resource harvesting what I am referring to is that, if you look at a traditional territory, what First Nations do in terms of their own community use of resources is go out onto that territory and fish, gather plants, and hunt. There is no way of stopping non-aboriginal people from doing the same kind of thing. So basically what you have got on traditional territories in terms of First Nations people enjoying their rights that they have under Sparrow; they're involved in a kind of open-access resource harvesting or resource management regime. So the outsiders that come onto their territory, the people from the lower mainland for instance, that go moose hunting in northeastern British Columbia can be regarded technically as competition; they're competing with First Nations for the same resources, and that is the sense that using the term "competition." So the first of the risks is a challenge, a conflict with a particular strategy that First Nations have used during most of the century to control competition in resource harvesting on their traditional territory -- and I'll go into that a bit more. The second risk is possible risks to establishing title to traditional territories according to the tests laid out in Delgamuuk'w, and that kind of concern fits more closely into the theme of this conference.

In a paper that I delivered at a conference put on by the International Association for the Study of Common Property last June, held in Vancouver, I laid out in detail my concern that the loss of control of information about resources and resource harvesting on traditional territories could lead to increased competition for the same resources. And that paper and another paper that I wrote on the use of information for T.U.S., specifically to manage resources, has been published on the Internet on a site, [nativemaps.org](http://nativemaps.org), which is the aboriginal mapping web site that has been organized by Ecotrust-Canada, and those are the addresses for the two papers. Leigh has told me that information is also in your package, one of the last pages in the package that was handed to people. Anyway, the paper that I am talking about is a tough one, "Sharing Information or Captured Heritage." The other paper, "Getting to Use in Traditional Use Studies," was presented a couple of years earlier

and focuses on what is involved in aboriginal land use. Aboriginal land use is a complex of activities, and what I was talking about was how do you protect land use and resource harvesting rights, making use of traditional use information?

So, to get back to the first paper on information-sharing, basically I argued that the control of the flow of information is the primary method that aboriginal harvesters have used to restrict access to resources for most of this century through British Columbia. In most of the province recreational, commercial, and aboriginal food harvesting uses take place in the same locations and in the same resource populations. With the exception of the salmon fisheries, allocation between all of these sectors -- which is recreation, commercial, and aboriginal -- tends to remain informal or is ignored by government management agencies. The problems that are commonly associated with open access resource management regimes which tend to, according to the studies that have been done in common property resource management, those are the formulas for disaster for resources: open access, resource management regimes, and depleting resources because of the classical tragedy of the commons. So problems that are associated with open access resource management regimes are moderated by aboriginal communities, aboriginal users' ability to control their knowledge of the lands, waters, and resources. To date, the transmission of geographic knowledge has followed aboriginal traditions, passing within kin and family and within hunting groups and so on, task groups, according to cultural rules. Limiting the distribution of knowledge about access to resources -- information about habitat, about places where wildlife is found, wintering grounds, trails, access systems, and so on -- limiting the distribution of knowledge was a method that remained untouched by government laws. The remnant system of resource management, I think, is one of the things that are at risk due to the information-sharing requirements of the T.U.S. program. The second risk consists of losing control of a major part of the information required to prove aboriginal title under Delgamuuk'w. I think that the issue is comparable to other legal or financial entities', or organizations', ability to control information critical to their own interests. This is a broadly accepted principle within Canadian society, for financial/legal entities: what information is needed for specific purposes? The party that owns the information provides it, however they retain the rights to shape the information and to present it according to the particular needs of the time. I think that this is a very valuable principle. For administrative purposes, raw information should not be transferred to other parties. The party that owns the information has exclusive rights to shape it and to make it publicly available. I think that's a very important principle and I think that's something that needs to be added to negotiations and information-sharing agreements.

In conclusion I would like to lay out some principles for getting to information-sharing solutions. The T.U.S. program was designed by government as a solution for their earlier and more limited needs. Now that this information has been recognized as an important source of legal information for establishing aboriginal title under Delgamuuk'w, some changes are necessary. First Nations became involved with the T.U.S. program because funding to do this kind of work has been very scarce. There are broad needs to do aboriginal mapping studies: some of the needs is developing the information necessary to establish aboriginal title, some of the needs is for planning, which takes into account aboriginal rights and aboriginal perspectives on conflicts with those rights. The T.U.S.-type information is needed for both purposes.

Funding remains an issue. Funds under the T.U.S. program were limited to research, to develop maps. Funding did not include the administrative costs to First Nations to be able to maintain and make use of the information. The First Nations were seen simply as information providers, who then stepped aside until consulted by government or company planners for additional information. This is not an appropriate scheme. It really does not satisfy anyone's needs and it is fraught with problems of so-called information-sharing, as discussed above. Funding needs to be provided for the development of information and for its administration, administrative, and for its consultative uses by First Nations. Information needs to be shared for specific uses and to ensure that risks are minimized. For example, until there are clear rules for access and allocation for shared fish, animal, plant, and habitat resources, it would clearly be a mistake to make public detailed maps of hunting trails or productive fishing grounds.

At the same time, it's important to share information. The government parties, companies, and the general public need to be educated about the issues as First Nations see them. Maps are vital here. Appropriate presentations are the means through which information can be shared without risking unprotected aboriginal rights. Selective use of map scales is the primary tool for accomplishing both goals, and by that I mean that maps could be provided in a generalized form, rather than in a detailed form, for public information and for agency information. What I am arguing against is the sharing of very detailed maps, such as required by the T.U.S. contracts. That really is a transmission of raw data and I think it's inappropriate for First Nations to do that. I also think that it's really inappropriate for government to require that of First Nations. I think that it hinges on the grey area, I think, in terms of the what government's fiduciary responsibilities are. Anyway, to repeat, selective use of map scales is the primary tool for accomplishing those goals. Providing generalized maps that show issues and concerns, but which cannot be used as road maps into the territory, is the way to accomplish this. These are uses that obviously must be done by First Nations themselves. This is an important area of public education, and it's also an attractive career area for young First Nations people. Dedicated funding or some kind of cost recovery program

would serve multiple purposes: capacity development, meaningful involvement in land and resource management for First Nations, satisfying employment, and so on.

Finally I think quality control has also been an issue in T.U.S. The original program had the feel of each First Nation reinventing the wheel. Each group struggled, not just with information-sharing, but also struggled with design and methodology. It has been very, very little -- except for the two conferences put on by the Sto:lo and Williams Lake -- all of the exchanges about peoples' experience and about methodological development, what worked and what didn't work, has only been shared between aboriginal groups doing T.U.S. on an informal basis. Conferences such as this one and those put on by Sto:lo and Williams Lake are really important steps in building informed consensus about methodological standards - - what works, what doesn't work -- and also about information use. What are First Nations' experience with information-sharing, renegotiations, and what kind of problems have emerged as a consequence of information-sharing? There's a critical need to ensure that a consensus is reached internally within First Nations conducting T.U.S., or at least all First Nations have information about methodological standards that have been developed within the B.C. T.U.S. community, but also elsewhere in Canada. Canada has twenty-five, thirty years of land use and occupancy research. Canada is looked at by many groups around the world as a leader in aboriginal land use study methodological development. It's important for people engaged in the early stage of this kind of research within British Columbia to pay attention to what has been learned elsewhere in Canada.

Finally, there is a need to communicate internally what each First Nation has learned about methods and about using the information. I think that, again, the three forums that I know about that have been put on by First Nations to deal with specifically with T.U.S. methodological and information-sharing issues -- the one hosted by the Sto:lo, Williams Lake, and, finally, this one -- are at the beginning of a very important information-sharing process. Thank you.