

# Indigenous Self-Government in Yukon: Looking for Ways to Pass the Torch

Gabrielle A. Slowey

## IN BRIEF

Yukon has been at the forefront of Indigenous treaty-making for over forty years. Today, 11 of its 14 First Nations have land-claims and self-government agreements, accounting for almost half of the total in Canada. By redefining the relationship between First Nations and non-First Nations people, these agreements have fundamentally altered Yukon society. But the memories and experiences of those who negotiated the agreements are not always passed on to current and future leaders and implementers. This paper outlines the historical context of the Yukon First Nations agreements and discusses some of the challenges faced and lessons learned in planning and implementing them.

## EN BREF

Le Yukon est à l'avant-plan de la conclusion de traités autochtones depuis plus de 40 ans. Aujourd'hui, 11 de ses 14 Premières Nations possèdent des ententes sur des revendications territoriales et des formes d'autonomie gouvernementale, soit près de la moitié de tous les accords conclus au pays. En redéfinissant les relations entre les Premières Nations et les Canadiens non autochtones, ces ententes ont fondamentalement modifié le tissu social yukonnais. Mais la mémoire et l'expérience de leurs négociateurs ne sont pas toujours transmises aux leaders et exécutants actuels ou futurs. Cette étude retrace le contexte historique des ententes conclues par les Premières Nations yukonaises, certaines difficultés qu'elles ont rencontrées et les leçons tirées de l'élaboration et de l'application des traités.



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## YUKON: A SHINING EXAMPLE IN TREATY-MAKING

Yukon has been at the forefront of Indigenous treaty-making in Canada for over 40 years. Thanks to these efforts, 11 of 14 First Nations have achieved land-claims and self-government agreements, accounting for almost half of the total in the whole of Canada.

These agreements are enormously significant. Self-government, for instance, means that a First Nation no longer falls under the jurisdiction of the *Indian Act*. The new agreements redefine the entire relationship between First Nations and non-First Nations people by setting out understandings that guide intergovernmental relationships. In this way, they have fundamentally altered the underpinnings of Yukon society. Today, the Yukon First Nations now come to the table on a government-to-government basis. Since devolution in 2003, the Yukon territorial government has assumed greater province-like powers from the federal government, meaning it must now work more collaboratively with First Nation governments on matters such as education reform, land use planning and crisis management (forest fires and evacuations, for instance).

The 11 treaties that have been signed so far are based on the Umbrella Final Agreement, which was negotiated in 1993, and include terms common to all.<sup>1</sup> Each First Nation has the right to negotiate specific terms for itself, where permitted by the umbrella agreement. It then ratifies its own final agreement and self-government agreement in a manner it determines. To be clear, the umbrella agreement forms the basis for the negotiation of each First Nation's final comprehensive land-claims and self-government agreements. The final agreements are constitutionally protected modern treaties that outline First Nations' rights within their traditional territories. They describe how the federal, territorial and First Nations governments interact with each other and define First Nations ownership of and decision-making powers on settlement land. They also address matters pertaining to heritage, fish, wildlife, natural resources, water, forestry, taxation, financial compensation, economic development and land management. In addition, the self-government agreements define First Nations' self-government powers including law-making, taxation and programs and services.<sup>2</sup>

The Yukon agreements have far-reaching implications not only for all the territory's residents, but for Canada as a whole. One serious shortcoming, however, is that the memories and experiences of those who negotiated the agreements and began setting up the new government structures are not, in many cases, being passed on to current and future leaders and implementers. This creates an important knowledge gap. As time passes and a new generation of leaders takes the helm, it has become a significant concern to elders and retired negotiators and leaders.

<sup>1</sup> See G. Slowey, "Energy Development in the Arctic: A Fine Balance?" paper prepared for the Arctic Energy Summit Technology Conference, 2007, <https://yorku.academia.edu/GabrielleSlowey>. See also G. Slowey, "The Yukon: A New Era of First Nations Governance and Intergovernmental Relations," in *Transforming Provincial Politics: The Political Economy of Canada's Provinces and Territories in the Neoliberal Era*, ed. B. Evans and C. Smith (Toronto: University of Toronto Press, 2015).

<sup>2</sup> Yukon, "Agreements with First Nations," 2021, <https://yukon.ca/en/agreements-first-nations#modern-treaties-comprehensive-land-claims-agreements>.

This paper outlines the historical context of the Yukon First Nations agreements, and discusses some of the challenges faced and lessons learned in planning and implementing them. In particular, I describe at some length a modern treaty simulation exercise that took place in Whitehorse over one and a half days in November 2019. The event was specifically designed to close, at least partly, the gap in knowledge mentioned above. It gave youths from across the territory an opportunity to meet former negotiators and engage in a mock treaty negotiation and implementation exercise. The gathering was an eye-opening experience for all involved, and marked a critical step in the future of the treaty process: namely, sharing knowledge about how First Nations arrived at their new-found status, and educating a new generation of leaders, negotiators and implementers on the opportunities and pitfalls that await them.

## THE GROWTH OF FIRST NATIONS' POLITICAL AWARENESS

Yukon is located in the north western corner of Canada, adjacent to Alaska. It has a storied past, with the history of the Klondike gold rush still capturing the imagination of Canadians, even though few will ever make the journey there. According to the 2016 census, the territory has a population of 35,874, most of whom live in Whitehorse (pop. 25,085). Roughly one-quarter of the total population, numbering 8,195, are Indigenous.

In contrast to many of their counterparts in southern Canada, First Nations communities in the Yukon had no treaties prior to 1993.<sup>3</sup> The first ripples of a self-government movement emerged during the gold rush in the late 1890s as outsiders flocked to the territory to seek their fortune. Recognizing that his people needed protection for their land and hunting grounds, Chief Jim Boss (Kishxóot) of the Ta'an Kwäch'än nation made his first request for land to be aside for his people in 1902. Specifically, he petitioned the commissioner of the Yukon for a 1,600-acre reserve. The commissioner ended up offering just 320 acres, and no treaty.

Not satisfied with this outcome, Chief Boss, with the help of a lawyer, wrote to the superintendent-general of the Department of Indian Affairs in Ottawa demanding compensation for loss of land and the impacts on wildlife of non-Indigenous hunting by the gold diggers and non-Indigenous hunters. His letter contained a famous quote: "Tell the King very hard we want something for our Indians, because they take our land and our game."<sup>4</sup> The only response Chief Boss received was that the police would protect the people and the land. Though the petition may not have achieved the desired results at the time, it later became a powerful instrument to affirm and maintain Indigenous rights in the Yukon.

This and other unsuccessful attempts to negotiate a deal with Ottawa led to a more concerted campaign in the 1950s and 1960s to organize First Nations in the territory. The renewed push was at least partly triggered by Indigenous soldiers who returned from

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<sup>3</sup> Yukon, along with parts of the Northwest Territories (including what is now Nunavut), British Columbia, and northern Quebec and Labrador were the only regions in Canada with no treaty relationship with the Crown.

<sup>4</sup> Ta'an Kwäch'än Council, "A Short History of the Ta'an Kwäch'än," <https://taan.ca/history>.

service in the Second World War to discover that, as a result of joining the military, they had been “enfranchised,” in other words, stripped of their Indian status.<sup>5</sup> This mobilization was a factor in amendments made to the *Indian Act* in 1951, which eliminated provisions that had made it illegal for First Nations to practise their culture. For example, the potlatch, a traditional celebration that includes songs, dancing, a feast and gifts, that was (and is) an important part of Yukon First Nations culture, had been banned by the *Indian Act* in 1927, but became legal again under the 1951 law. The amendments also cleared the way for Indigenous communities to hire outside lawyers who could help pursue their rights.

One Second World War veteran, Elijah Smith, from the small First Nation community of Champagne, became an important leader in the self-government movement and an architect of Yukon land claims. Smith spoke out forcefully during hearings on proposed changes to the *Indian Act* held in Whitehorse in 1968:

*We, the Indians of the Yukon, object to...being treated like squatters in our own country. We accepted the white man in this country, fed him...helped him find gold, helped him build and respected him in his own rights. For this we have received little in return. We...would like the government of Canada to see that we get a fair settlement for the use of the land. There was no treaty signed in this country, and they tell me the land still belongs to the Indians.*<sup>6</sup>

Like many other veterans, Smith resented that he had been viewed as an equal only on the battlefield. Once he returned home, he was not accepted into “white” society, but was also no longer considered an “Indian” by the federal government. He had been stripped of his Indian “status” by virtue of joining the war.

Beyond the veterans, many Yukon First Nations women found themselves also stripped of their “status” as Indians under the terms of the *Indian Act*, by virtue of marrying a non-Indian man. Although theirs was a matrilineal society,<sup>7</sup> there are many stories across the Yukon of federal agents going into Yukon First Nations communities and insisting on speaking with male chiefs while purposefully ignoring the women. Female leaders would end up whispering in the ears of their brothers or uncles, who passed on the messages to the federal official, thereby undermining traditional local governance protocols.

Nine years after the 1951 amendments, which repealed some of the most punitive elements of the *Indian Act*, First Nations people across Canada gained the right to vote. A string of other important political initiatives and judicial decisions followed in the 1960s and 1970s, including the *Calder case*<sup>8</sup> which laid the groundwork for the modern treaty policy and process.

<sup>5</sup> Indigenous Corporate Training Inc., “Indigenous Veterans: Equals on the Battlefields, But Not at Home,” blog, November 2, 2020, <https://www.ictinc.ca/blog/aboriginal-veterans>.

<sup>6</sup> Champagne and Aishik First Nations, “Our History: What Does Self-Government Mean?” <https://cafn.ca/about/history-of-cafn>.

<sup>7</sup> This means that clan membership was decided by the mother’s lineage and women played key roles in governance (for example, leadership selection, transfer of power).

<sup>8</sup> *Calder et al. v. Attorney-General of British Columbia*, 1973, S.C.R. 313.

In 1969, the federal government issued a White Paper on Indian policy.<sup>9</sup> This proposal galvanized Indigenous communities across the country to organize and challenge the proposal, which was ultimately withdrawn. As part of this mobilization, Yukon First Nations, led by Elijah Smith, formed the Yukon National Brotherhood in 1968, followed by the Yukon Association for Non-Status Indians two years later. Meanwhile in neighbouring Alaska, land claim negotiations were wrapping up, with Congress passing the *Alaska Native Claims Settlement Act* in 1971. While the 1951 amendments meant it was no longer illegal for more than three Indians to gather in a group in Yukon, lingering fear of prosecution meant that Yukon First Nations leaders would often travel to neighbouring Alaska to hold their meetings.

The combination of government restrictions and growing political awareness among First Nations organizations culminated in the drafting of *Together Today for Our Children Tomorrow*, a manifesto that laid out the terms identified by Yukon First Nations as necessary for settlement. After years of meetings between the Yukon Native Brotherhood and Yukon First Nations peoples, the document was, in effect, a statement of grievances and recommendations for settlement. To elaborate, the document chronicled the history of relations between Indians and the Whiteman, contemporary challenges and a proposed way forward. It laid out what Yukon First Nations felt would be a “fair and just” settlement for both the First Nations and settlers in the territory. Drafted by Elijah Smith and other First Nations leaders and citizens at the time, it outlined demands for greater inclusion in and say about types of Northern economic development (pipelines proposals, tourism, trapping, prospecting, fishing, ranching, forestry, recreation, agriculture, construction, etc.), greater access to education and proposals for reform, to name a few. In essence, the document was a blueprint for action.<sup>10</sup>

Yukon First Nations leaders presented the document to then-Prime Minister Pierre Trudeau in 1973 in Ottawa, in effect marking the start of land claim negotiations.

The circumstances that led to the signing of the 1993 Umbrella Final Agreement were quite different from similar deals in other parts of Canada. Elsewhere, like in the James Bay region, resource extraction was a strong driver, if not the main driver, for land claim negotiations. In contrast, in Yukon the impetus came from the amalgamation in 1980 of the Yukon Native Brotherhood, the Yukon Association of Non-Status Indians and the Council of Yukon Indians. The latter had been formed in 1973 specifically to push for an agreement in principle on behalf of all Yukon First Nations, both status and non-status.

A preliminary agreement was reached in 1984, but the Council of Yukon Indians general assembly rejected it due to an extinguishment of Aboriginal rights provision and

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<sup>9</sup> In effect, the *White Paper* proposed the abolition of the Department of Indian Affairs, the transferral of all responsibilities for Indians to the provinces and the abolition of Indian status. The proposals were floated and ultimately withdrawn in the face of staunch opposition launched by Indigenous peoples across the country.

<sup>10</sup> Council of Yukon First Nations, *Together Today for Our Children Tomorrow: A Statement of Grievances and an Approach to Settlement by the Yukon Indian People* (Whitehorse: The Council for Yukon Indians, 1977), <https://cyfn.ca/agreements/>.



the lack of terms for self-government. The assembly was also unhappy that the agreement did not fully recognize the right to subsistence hunting, land selections based on need and recognition of non-status Indians.<sup>11</sup>

One consequence of the failure of the 1984 negotiations was a realization among First Nations leaders that they needed to rethink their tactics. As a first priority, they considered pushing for a broad framework agreement that set out universal principles but also gave enough flexibility for individual First Nations to reach separate agreements reflecting their own priorities. This new approach meant that important issues could be separated from one another so that negotiators could set up a process enabling First Nations to be dealt with individually. For instance, a First Nation ready to come to the table immediately – like the Vuntut Gwitchin First Nation of Old Crow – could do so without having to worry about other First Nations that had a myriad of concerns or that needed time to prepare their claim before formally entering the negotiation process. This approach further recognized that some groups needed more time to work out knotty issues relating to land rights and jurisdiction, as was the case with First Nations territory in southern Yukon that stretched into parts of northern British Columbia.

Another crucial milestone came in 1985 with the election in the Territory of an NDP government committed to a social justice agenda and to restarting the stalled claims process. As the former NDP premier Tony Penikett explained to me in an interview:

*Because the settlements that the James Bay and the Inuvialuit (communities) won were driven by the judicial mega-project drivers toward land claims settlement, the state wanted clear indigenous title. The Yukon started the same way, but the Alaska Highway pipeline project had died so that by the time Canada started Yukon land claims negotiations it became a social and economic policy objective in its own right, rather than just a means to an end.<sup>12</sup>*

Together, these changes created the momentum that culminated in the landmark Umbrella Final Agreement signed in Whitehorse on May 29, 1993, by the Council of Yukon Indians (now the Council of Yukon First Nations), the Government of Canada and the Government of the Yukon. Over the next 13 years, 11 subagreements were signed and came into effect, as shown in table 1.

To put the Umbrella Final Agreement into practice, an implementation working group was formed in 1994 comprising representatives from each of the self-governing First Nations, and the territorial and federal governments. The group, which still functions, is a working-level forum for the implementation representatives (or their designates) to monitor and address implementation concerns as they arise.

The individual agreements that took effect in 1995 and the 1997 treaty with the Little Salmon/Carmacks First Nation include a requirement that they be reviewed within

<sup>11</sup> Council of Yukon First Nations, "History of Land Claims," [www.cyfn.ca/history/history-of-land-claims](http://www.cyfn.ca/history/history-of-land-claims).

<sup>12</sup> Slowey, "The Yukon," 372.

**Table 1. Yukon First Nations agreements**

	Date signed	Date implemented
<b>Umbrella Final Agreement</b>	<b>May 29, 1993</b>	<b>February 14, 1995</b>
Champagne and Aishihik First Nations	May 29, 1993	February 14, 1995
First Nation of Na-cho Nyäk Dun	May 29, 1993	February 14, 1995
Teslin Tlingit Council	May 29, 1993	February 14, 1995
Vuntut Gwitchin First Nation	May 29, 1993	February 14, 1995
Little Salmon/Carmacks First Nation	July 21, 1997	October 1, 1997
Selkirk First Nation	July 21, 1997	October 1, 1997
Tr'ondëk Hwëch'in	July 16, 1998	September 15, 1998
Ta'an Kwäch'än Council	January 12, 2002	April 1, 2002
Kluane First Nation	October 18, 2003	February 2, 2004
Kwanlin Dün First Nation	February 19, 2005	April 1, 2005
Carcross/Tagish	October 22, 2005	January 9, 2006

Source: Calculations by the author based on the government of Yukon, "Agreements with First Nations," <https://yukon.ca/en/agreements-first-nations#modern-treaties-comprehensive-land-claims-agreements>.

five years. The Selkirk and Tr'ondëk Hwëch'in deals stipulate reviews within 10 years, unless agreed otherwise.<sup>13</sup> To carry out the reviews, the implementation working group set up an implementation review group in 2003, comprising representatives of Canada, Yukon, the Council of Yukon First Nations and each of the seven First Nations undergoing reviews (the first seven listed in table 1). Apart from the federal government, the parties generally appointed the same people to the working group and the review group. First Nations that had not yet signed their own agreements were invited to attend review group sessions as observers. As of December 2020, the Ta'an Kwäch'än, Kluane, Kwanlin and Carcross/Tagish First Nations had yet to undertake reviews of their agreements, and are therefore not yet formally members of the review group.

The 29 chapters of the final agreements provide for three categories of land settlement:<sup>14</sup>

- Category A lands, where Yukon First Nations possess surface and subsurface rights. These areas make up almost 8% of the Yukon territory.
- Category B lands, where Yukon First Nations have only surface rights related to hunting, gathering and land development.

<sup>13</sup> Canada, "Yukon Land Claims and Self-Government Agreements – Tri-annual Report 2004-2007," <https://www.rcaanc-cirnac.gc.ca/eng/1100100030610/1542809362878>.

<sup>14</sup> All the First Nations use the Umbrella Final Agreement as a template for their agreement, so all of the final agreements are highly similar.

- fee simple lands,<sup>15</sup> where First Nations have the same property rights as those on private property. First Nations have the right to make decisions and laws relating to these areas.

In addition to settlement lands, the agreements also create a category known as traditional territories. First Nations have the right to be involved in the management of these lands, and retain specific rights and benefits such as hunting, fishing, economic development, and co-management of parks and cultural heritage sites.

The final agreements qualify as treaties under section 35(1) of the Canadian constitution. By contrast, the self-government agreements are not treaties, but are enabled under section 91(24) and the *Yukon Act*. The First Nations also retain an inherent right to self-government under section 35(1) of the constitution. Dave Joe, a lawyer and member of the Champagne-Aishihik First Nations who helped negotiate the Yukon agreements, described them as the most progressive integration of management resources and people anywhere in the world based on both traditional and scientific knowledge. “It’s an evolutionary process that grows as understanding, trust and respect grow,” he added.<sup>16</sup>

While the northern Yukon First Nations have negotiated protocols among themselves to address issues stemming from overlap and shared responsibilities, mostly based on their customary tradition of reciprocity, as of December 2020, three Yukon First Nations – the White River First Nation, the Liard First Nation and the Ross River Dena Council – had yet to finalize self-government and land-settlement agreements. Transboundary issues were also still under negotiation by Yukon First Nations in the Northwest Territories and British Columbia.

## IMPLEMENTING THE AGREEMENTS: THE CHALLENGE AHEAD

Implementation of these agreements requires a long-term commitment and participation from all parties. It is a process and a challenge that continues today. As White explains:

*Critically important (to self-government agreements) are the accompanying implementation plans, which set out in extensive detail which parties to the claim are responsible for fulfilling which provisions, funding levels, accountability mechanisms and the like. Most cover the first decade of the claim; re-negotiation is often fraught as the parties try to rectify what they see as shortcomings and problems in the claims or implementation contracts.<sup>17</sup>*

<sup>15</sup> For example, property ownership is fee simple absolute, sometimes called a freehold, which means that the owner or owners can do whatever they like with the property, subject only to encumbrances like liens or local guidelines, such as zoning, taxation or criminal laws.

<sup>16</sup> D. Joe, “History of the Yukon Land Claims Process and the Spirit and Intent of the Agreements,” <http://www.bctreaty.ca/sites/default/files/Dave%20Joe%20-%20Yukon%20Experience.pdf>.

<sup>17</sup> G. White, “Shaping the Northern Political Landscape: Comprehensive Land Claims Agreements,” *Northern Public Affairs* 6, no. 2 (2020), <https://www.northernpublicaffairs.ca/index/volume-6-special-issue-2-special-issue-on-modern-treaty-implementation-research/shaping-the-northern-political-landscape-comprehensive-land-claims-agreements/>

As Yukon First Nations moved from the auspices of the *Indian Act* and the authority of the Department of Indian Affairs (as it then was), the transition from negotiation to implementation demanded new relationships with the territorial and federal governments. “Walking together down the same road” – the vision originally articulated by Yukon First Nations in the 1973 land claims manifesto *Together Today for our Children Tomorrow* – remains a guiding beacon for all Yukoners. In other words, the goal is to participate equitably as partners in the fabric and governance of Yukon society.

The idea that a special “made in Yukon” approach to First Nation-state relations could serve as a model elsewhere in Canada is not new. It has been addressed by a few academics,<sup>18</sup> and is a sentiment often echoed by First Nations leaders. Joe Linklater, former chief of the Vuntut Gwitchin First Nation, described the agreements as “cutting edge” in a 2011 interview. He credited self-government for making Vuntut Gwitchin a healthier community.<sup>19</sup>

Even so, few people – whether in or outside Yukon – know much about the agreements. And even then, interest among academics and the broader public tends to centre on new negotiations rather than the implementation of agreements concluded 20 or 25 years ago. For example, no level of Canadian jurisprudence, either federally or territorially, has adequately addressed ways of avoiding implementation by litigation. While the agreements include a mechanism for resolving disputes, these provisions are rendered largely ineffective by a requirement that the parties must first agree that there is actually a dispute between them.

Litigation turned out to be the only course of action available in a case involving the Peel River watershed – one of the largest and most beautiful natural areas still intact in North America.<sup>20</sup> The watershed covers 68,000 km<sup>2</sup> of rugged mountain and river landscapes and supports thriving wildlife populations. It is the ancestral home of three Yukon First Nations – the Na-cho Nyak Dun, Vuntut Gwitchin and Tr’ondek Hwech’in – as well as the Tetlit Gwich’in of the Northwest Territories.

The regional land-use planning process for the Peel watershed began in 2004. The Peel Planning Commission produced its final recommendations seven years later after extensive public consultations. It proposed a roughly 80-20 split between protection and development, a plan supported by a majority of Yukoners, including the affected First Nations. However, a year later, in 2012, the territorial government filed its own plan for the region, reversing the proportions of land to be set aside for protection and development, in other words, proposing that most of the watershed should be opened up for commercial development. Needless to say, Yukoners were outraged.

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<sup>18</sup> G. Dacks, “Implementing First Nations Self-Government in Yukon: Lessons for Canada,” *Canadian Journal of Political Science / Revue Canadienne de Science Politique*, 37, no. 3 (2004): 671-94; P. Hogg and M. E. Turpel, “Implementing Aboriginal Self-Government: Constitutional and Jurisdictional Issues,” *Canadian Bar Review*, 74, no. 2 (1995): 187-224; L. Linklater, “Yukon First Nations’ ‘Leading Edge’ Self-Government Agreements, 25 Years Later,” CBC North, February 15, 2020, <https://www.cbc.ca/news/canada/north/yukon-land-claims-25-years-1.5464987>.

<sup>19</sup> Linklater, “Yukon First Nations.”

<sup>20</sup> Yukon Conservation Society, “The Peel Watershed,” <http://yukonconservation.org/programs/land-use-planning/the-peel-watershed>.

The three affected First Nations, along with the Yukon chapter of the Canadian Parks and Wilderness Society and the Yukon Conservation Society, filed a lawsuit against the territorial government. Leading the challenge against the territorial government, former judge Tom Berger, who also headed the 1970s Mackenzie Valley pipeline inquiry, directed the case as it made its way through the Yukon courts to the Supreme Court of Canada, which heard it in 2017.<sup>21</sup>

In essence, the case centred on a dispute over the constitutionally mandated process set out by the Yukon land claims agreements. As Justice Berger put it:

*Since 1993, when the Yukon First Nations, Canada and Yukon signed the Umbrella Final Land Claims Agreement, its provisions have formed the basis of land use planning in the Yukon. Those provisions are entrenched in the Constitution; they protect the rights of First Nations and all Yukoners. Yukon Government's plan discards the years of work by the Peel Planning Commission as well as the views of Yukoners.*<sup>22</sup>

The Supreme Court agreed, ruling that the territorial government had contravened the Umbrella Final Agreement.<sup>23</sup>

The Peel watershed case reflects a broader attitude that treats settled agreements like a divorce, where the parties agree upon terms and then go their separate ways. Government all too often appears to take the view that, once an agreement is signed, it has completed the task at hand and can then turn its attention and energy elsewhere. In reality, the finalization of an agreement should be more akin to a marriage than a divorce, requiring constant nurturing and negotiation if it is to succeed.

These differing perspectives are a matter of considerable frustration for Yukon First Nations as they work to ensure the effective implementation of their self-government and land claims agreements, and seek appropriate recognition for their role as governments. After all, treaties are not only about healing the past, but also about working toward a better future. This sentiment was echoed by Justice Ian Binnie in the Supreme Court of Canada's 2010 decision in *Beckman v. Little Salmon/Carmacks First Nation*:

*The modern treaties, including those at issue here, attempt to further the objective of reconciliation not only by addressing grievances over the land claims but by creating the legal basis to foster a positive long-term relationship between Aboriginal and non-Aboriginal communities. Thoughtful administration of the treaty will help manage, even if it fails to eliminate, some of the misunderstandings and grievances that have characterized the past. Still, as the facts of this case show, the treaty will not accomplish its purpose if it is interpreted by territorial officials in an ungenerous manner or as if it were an everyday commercial contract.*

<sup>21</sup> *First Nation of Nacho Nyak Dun v. Yukon*, 2017 SCC 58, [2017] 2 S.C.R. 576.

<sup>22</sup> J. Hong, "Supreme Court Rules Yukon Government Overstepped in Peel Case," *Yukon News*, 2017, <https://www.yukon-news.com/news/supreme-court-rules-yukon-government-overstepped-in-peel-watershed-case>.

<sup>23</sup> *First Nation of Nacho Nyak Dun v. Yukon*, 2017.

*The treaty is as much about building relationships as it is about the settlement of ancient grievances. The future is more important than the past. A canoeist who hopes to make progress faces forwards, not backwards.*<sup>24</sup>

At the heart of the problem is that implementation of the agreements is rooted in education and understanding of the agreements themselves, subject to varying interpretations. Those who were involved in the negotiations and the early days of implementation often note the potential for problems and misunderstandings. In his book *Sovereignty's Entailments*, Paul Nadasdy notes that he worked for the Kluane First Nation during the implementation of its self-government agreement. "Much of the work was necessarily interpretive, as the parties attempted to characterize the intended meaning of specific provisions in the agreements in an effort to determine whether or not those intentions had been fulfilled," Nadasdy writes. Importantly, he adds, "many of those involved in the review – especially on the First Nation and Yukon sides – had also been involved in negotiating the agreements; [therefore] these discussions provided me with a window onto various negotiators' understandings of what it was they thought they had agreed to."<sup>25</sup>

Other Indigenous scholars have argued that self-government normalizes First Nations in government-to-government relations, and that the land claims process deserves much of the credit for this "politics of recognition." The manifesto *Together Today for Our Children Tomorrow* observes: "The objective of the Yukon Indian people is to obtain a settlement in place of a treaty that will help us and our children learn to live in a changing world." It adds: "We want to take part in the development of the Yukon and Canada, not stop it. But we can only participate as Indians. We will not sell our heritage for a quick buck or a temporary job."<sup>26</sup>

As these extracts suggest, the aim of the self-government agreements was – and remains – not only to protect Yukon First Nations and their culture, but also to take back control over decision-making.<sup>27</sup> As one Yukon elder put it to me: "We don't ask anymore."

The truth of that assertion was evident in May 2019 when the Vuntut Gwitchin community of Old Crow declared a state of emergency over the effects of climate change in the North. According to Vuntut Gwitchin Chief Dana Tizya-Tramm, the declaration was designed to empower citizens, and could lay the groundwork for a climate-change accord with Indigenous nations around the world. "It's happening now, and we are at the frontlines," Chief Tizya-Tramm explained. "It's coming for all of Canada and all of the Arctic. We have a very real stake in the international community and our voices need to be heard, that this is not just an inconvenience to your bottom-line, or to economies. This is a climate crisis."<sup>28</sup>

<sup>24</sup> S.L. Jaremko, "The Peel Watershed Case: Implications for Aboriginal Consultation and Land Use Planning in Alberta," CIRL Occasional Paper 56, Canadian Institute of Resources Law, 2017, [https://prism.ucalgary.ca/bitstream/handle/1880/107633/PeelWatershed\\_updatedOP56.pdf?sequence=1&isAllowed=y](https://prism.ucalgary.ca/bitstream/handle/1880/107633/PeelWatershed_updatedOP56.pdf?sequence=1&isAllowed=y).

<sup>25</sup> P. Nadasdy, *Sovereignty's Entailments: First Nation State Formation in the Yukon* (Toronto: University of Toronto Press, 2017), 30-1.

<sup>26</sup> M. Rudyk, "Yukon First Nations Mark 45 Years Since Historic Trip to Ottawa," CBC News, February 18, 2018, <https://www.cbc.ca/news/canada/north/yukon-first-nations-ottawa-land-claim-45-years-1.4539234>.

<sup>27</sup> G. Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition* (Minneapolis, MN: University of Minnesota Press, 2014).

<sup>28</sup> J. Gignac, "Vuntut Gwitchin First Nation Officially Declares Climate Emergency," Yukon News, May 22, 2019, <https://www.yukon-news.com/news/vuntut-gwitchin-first-nation-officially-declares-climate-emergency>.

Those involved in the self-government talks made many sacrifices in their bid to expand First Nations authority over their affairs. But, as Paul Nadasdy has observed, the core of today's disputes is that those who negotiated the agreements and those now responsible for implementing them have markedly different interpretations of what First Nations were trying to achieve two or three decades ago.

## THE WHITEHORSE SIMULATION EXERCISE

"I'm never going to be able to retire" is a refrain I have heard repeatedly over the past three years from former treaty negotiators and current implementers. Why would they feel this way? Grand Chief of the Council of Yukon First Nations Peter Johnston, whose father Sam travelled to Ottawa with Elijah Smith in 1973, and who attended parts of the simulation, noted: "I celebrate it [the agreement] everyday, as his son." He added, "We've already had a generation of kids that have grown up in self-government reality."<sup>29</sup> Thanks to self-government, a generation of Yukon youths has grown up not knowing what it means to live under yoke of the *Indian Act*. However, these youngsters, many already in their 20s and 30s, aren't necessarily familiar with the struggles that their parents, aunts and uncles, and grandparents endured, and that set the stage for the push toward self-government. They didn't grow up running around the tables where leaders and elders were deep in discussion about the issues to be negotiated and the make-up of a future First Nations government. These youngsters were the main target of the Whitehorse simulation exercise, given that the next generation of leaders and implementers would come from their ranks.

The gap between Yukon First Nations youths and those who negotiated and built self-government became apparent to me through my long friendship with Joe Linklater, chief of the Vuntut Gwitchin First Nation of Old Crow. I met Joe for the first time at the inaugural meeting of the Forum of Federations in Mont Tremblant, Quebec, in 1999. I asked him how self-government was working out for his community. His response was: "Why don't you come up and find out?"

Thanks to a Social Sciences and Humanities Research Council grant, I was able to take up his invitation and travelled to Old Crow to learn more about the agreements and how they were working. Joe and I stayed in touch over the years, and I wrote regularly about the Vuntut Gwitchin experience. In November 2017, I flew to Whitehorse for the annual geoscience meetings, and had the good fortune to catch up with him again. During the course of our conversation, he told me: "I am about to hand over millions of dollars in governance to a generation that doesn't understand why we entered into these agreements, and what they mean to our people."

Like Linklater, Kwanlin Dün First Nation Elder Judy Gingell (who served as the former territorial commissioner of Yukon and was one of the original negotiators and signatories to the *Together Today for Our Children Tomorrow* document) was keen to

<sup>29</sup> Rudyk, "Yukon First Nations Mark 45 Years."



hold some kind of conference as a way of fostering a deeper knowledge of the self-government agreements among the younger generation. In the end, it was decided that could best be achieved through a “negotiation and implementation” simulation exercise bringing some of the original negotiators together with young Yukoners and First Nations people from across the territory.

The event was held on November 12 and 13, 2019, at the Kwanlin Dün Cultural Centre in Whitehorse in collaboration with the Walter and Duncan Gordon Foundation and the implementation working group, and with financial support from the Social Sciences and Humanities Research Council. The 24 youths who took part came from each of the self-governing Yukon First Nations, as well as from a First Nation in northern British Columbia, whose leaders were curious to know more about self-government. Also in attendance were five former negotiators (some of whom are still involved in implementation issues), five staff and 12 guests, including Council of Yukon First Nations Grand Chief Peter Johnston and Assembly of First Nations regional chief Kluane Adamek.

The simulation exercise was the first in the country to focus on a specific territory or region.<sup>30</sup> Moreover, the experts representing First Nations, the territorial government and the federal government were all from one of the 11 self-governing Yukon First Nations. For example, Robin Bradasch, who was, in 2019, an employee of Crown-Indigenous Relations and Northern Affairs Canada, had previously served as a lead negotiator for her First Nation, the Kluane First Nation, in their negotiation process. As an expert in negotiations, and more recently implementation, she was able to show the youth participants the benefits of being versed in both worlds, while sitting across the table from members of their own community.

The simulation began with a blessing from Elder Annie Smith and a welcome from Ta’an Chief Kristine Kane. Next, the experts related their experience in treaty negotiations and their current roles. The youth participants were then split into teams, with an expert assigned to each group to help them prepare their positions for the simulation exercise the following morning. They were told that the focus of the mock negotiation would be negotiating and implementing chapter 10 of the Umbrella Final Agreement, which deals with special management areas. Each participant was given a 50-page manual containing mandate letters and background information. Together they read their mandate letters and prepared their team position.

When the mock negotiation started in earnest the next morning, it soon became clear that the nuts and bolts of implementation would take up a good deal of the participants’ attention. This made sense because the agreements could not be implemented effectively without first figuring out the various roles and responsibilities for administration, oversight and maintenance. The focus on implementation also reflected the real-world differences in interpretation between the federal and territorial governments and First Nations.

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<sup>30</sup> S. Campbell, “Engaging the Next Generation of Treaty Negotiators and Implementers,” *Northern Public Affairs* 6, no. 2 (2020), <https://www.northernpublicaffairs.ca/index/volume-6-special-issue-2-special-issue-on-modern-treaty-implementation-research/engaging-the-next-generation-of-treaty-negotiators-and-implementers>.



The day ended with a debriefing where everyone was invited to share impressions of their time together. The main message was a real sense of hope and optimism that the younger generation had learned some important lessons about the agreements, the negotiation process, and the issues emerging around implementation. The participants had some perceptive observations. For example:

- “For young First Nation people, it’s important to understand the agreements their First Nation is in and how they work.”
- “We all have a role in our community and as a whole. It was really cool to understand how everything is the way it is because of self-government.”
- “Work for First Nations will never be done, and youth have to join the fight for our rights.”

As the session wound down, I overheard one former negotiator remark: “Well, I may be able to retire after all!”

On the other hand, not everyone was convinced that a future in negotiation or implementation was for them. One participant commented that she truly disliked the experience, but was hoping to make a career as an accountant so would be happy to pay the salaries of the future negotiators and implementers. By contrast, another said she was immediately hooked and asked how she could get involved in her First Nations government. The common thread was that a pile of information was exchanged over a day and a half, and that the experience was both overwhelming and stimulating in varying degrees.

Just three months after the Whitehorse exercise, in February 2020, several of the aspiring negotiators flew to Ottawa to take part in the second national modern treaty simulation. With the benefit of their experience in Whitehorse, the Yukon youths turned out to be more confident in their skills coming off their Yukon regional experience. As of late 2020, plans were under way to organize simulations focused on specific agreements across Canada. In August 2020, the Gordon Foundation hosted a virtual simulation for British Columbia’s Nisga’a Lisims government and youths. Over the course of three half-day sessions, nine youths from three communities, ranging in age from 15 to their mid-20s, guided by two outside experts, learned about the Nisga’a Lisims self-government agreements and how negotiations could be conducted during the COVID-19 pandemic, namely, mostly online. In addition, more in-person simulations took place in February 2021 involving the James Bay Cree communities of northern Quebec and the Metis Nation of Ontario, as well as a virtual simulation coinciding with the annual leadership meeting of the Land Claims Coalition. Also in 2021 there are plans for the Vuntut Gwitchin First Nation to hold a five-day simulation centred on its own history and agreement. The event is being designed to combine in-class simulations with on-the-land conversations.

There is undoubtedly a growing appetite for simulation exercises that encourage younger generations not only to learn about their communities’ self-government agreements, but also to use these treaties as a tool for addressing broader issues, like climate change and global pandemics.

## TIME TO BUILD ON YUKON'S PIONEERING WORK

The 11 self-government agreements negotiated so far by Yukon First Nations are groundbreaking, with far-reaching implications for all the territory's inhabitants. They not only protect but also enhance First Nations culture, economy and lifestyle. Chief Tizya-Tramm has noted that self-government has given Yukon First Nations the tools to address climate change, among many other issues.

A less obvious threat, but one that also needs to be addressed, is the persistent lack of understanding of the meaning of self-government and how it affects everyday lives in First Nations communities. Yukon may be a leader in self-government, but this means little if the rest of Canada is not aware of its achievements. As Grand Chief Johnston explains: "We are so much further ahead, in regard to not only the advancement of our rights and the protection of our rights – we also have jurisdiction, we have an ability to somewhat create a future for our people." What's more, he adds, "we could definitely be a model for the rest of Canada."<sup>31</sup>

Unfortunately, most of the rest of Canada remains quite unaware of the benefits that self-government brings to First Nations communities. Many Yukon First Nations government leaders have told me of their frustration with the widespread ignorance surrounding their landmark agreements. Many point out that, every time they come to Ottawa, they need to remind officials and even ministers how things have changed – that their communities are no longer subject to the *Indian Act*, but rather are in fact self-governing.

It would be shameful if such ignorance and lack of understanding were allowed to continue. Self-government has been a policy in practice in Yukon for almost 30 years. If Canadians are serious about reconciliation, they need to learn more about First Nations self-government. Lesson one might usefully centre on the lead taken by Yukon and how the territory's experience could – and should – be the precursor of similarly enlightened modern treaties.

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<sup>31</sup> Rudyk, "Yukon First Nations Mark 45 Years."





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