REVIEWING AND REDEFINING RELATIONSHIPS: INTERGOVERNMENTAL RELATIONS AND MODERN TREATY IMPLEMENTATION IN YUKON, 1986-2016

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By

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ABSTRACT

Modern treaties are among the most important legal and constitutional documents in Indigenous affairs in Canada. The treaties created transformative societal change across the North and significantly altered the concepts and understanding of governance. However, the approach taken to implement these foundational accords over the past forty-five years has resulted in strained relations between the Indigenous signatories and their government partners. This study examined the experience of negotiating and implementing modern treaties in Yukon between 1986 and 2016. Drawing on the experiences of three Yukon First Nations and insights provided by 43 former and current negotiators, leaders, implementation staff and other key stakeholders from the federal, territorial and Yukon First Nations governments, this study identified four major findings that should inform future land claims implementation and intergovernmental treaty relations in Yukon and across Canada.

First, it was clear that participants cannot underestimate the importance of the implementation process. The negotiation of an agreement is only one step in the overall process; implementation launches a different style and intensity of work. All parties, secondly, need to have a clear understanding of the goals and original intent of the agreements, as well as the historical, political, socio-economic, and cultural contexts that underpin modern treaties as well as those elements that are unique to Yukon.

The third finding emphasizes the importance of recognizing that Indigenous peoples are the co-creators of these agreements. These are government-to-government agreements and this should be foundational to their implementation and the approach taken to addressing these modern treaty intergovernmental relations. Finally, instrumental to the successful negotiation of the agreements were the relationships between the parties and the acknowledgement of a common commitment to honour the spirit and intent of the agreements. Critical to the successful implementation of modern treaties is an understanding that all Parties to the agreement are striving to achieve the same goals. It is understood that different governments will have different objectives, interests and values. However, this does not mean that they cannot work toward common goals and outcomes. As former Yukon Government Chief Negotiator, Barry Stuart asserted, “If we are going to negotiate in good faith it means we have to implement in good faith” (IT27, Stuart 2020).

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DEDICATION

To the women in my family who paved the way
and taught me that I could strive to do anything.

To my daughter, Beata,
may you be passionate, courageous, and bold
and choose to follow any path you want to.
The possibilities are endless, and your future is bright!
I love you.

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AANDC	Aboriginal Affairs and Northern Development Canada
AIP	Agreement in Principle
CAFN	Champagne and Aishihik First Nations
CIRNAC	Crown Indigenous Relations and Northern Affairs Canada
CYFN	Council of Yukon First Nations
CYI	Council for Yukon Indians
DIAND	Department of Indian Affairs and Northern Development
FA	Final Agreement
IFA	Inuvialuit Final Agreement
INAC	Indigenous and Northern Affairs Canada
IP	Implementation Plan
IWG	Implementation Working Group
IPWG	Implementation Plan Working Group
JBNQA	James Bay and Northern Quebec Agreement
LCAC	Land Claims Agreement Coalition
LCOS	Land Claims Obligation System
NEQA	Northeastern Quebec Agreement
NIB	National Indian Brotherhood
ONC	Office of Native Claims
SGA	Self-Government Agreement
TH	Tr'ondëk Hwëch'in
TOMS	Treaty Obligation Management System
UFA	Umbrella Final Agreement
VGFN	Vuntut Gwitchin Final Agreement
VGG	Vuntut Gwitchin Government
YNB	Yukon Native Brotherhood
YANSI	Yukon Association of Non-Status Indians

PROLOGUE: YUKON ELDER SETS THE STAGE

On March 1, 2017 at the Kwanlin Dün Cultural Centre in Whitehorse, Yukon, Elder Judy Gingell, former Commissioner of Yukon and Grand Chief of the Council of Yukon First Nations, gave a powerful speech as part of "The Walrus Talks: Conversations about Canada. We Desire a Better Country".[1] Her speech sets the stage for this research on intergovernmental relations and modern treaty implementation in Yukon. Elder Gingell granted permission for this to be used as an opening to the dissertation.

> Good evening everyone. I am Judy Gingell and I am a citizen of the Kwanlin Dün First Nation. I represent the Elders as their representative. I am honoured to be asked to come here this evening and to speak on "Modern Day Treaties: Importance of Building Partnerships and Strengthening Relationships".
>
> The year 1973 is the most important year for me. I had the honour of travelling to Ottawa with Chief Elijah Smith and Yukon First Nations Chiefs, as part of the Yukon delegation, to deliver the historic document, *Together Today for our Children Tomorrow: A Statement of Grievance*, which became the foundation for the Yukon land claims agreements. That document led to the signing of the Umbrella Final Agreement in 1993 and paved the way for the settlement of 11 out of the 14 Yukon First Nations' Final and Self-Government Agreements over the next decade. The Yukon agreements represent approximately 50% of the modern-day treaties in this country today. While the agreements brought certainty for our people, it also provided us the ability to secure economic prosperity, which I will speak to in a bit. Most importantly for us, the agreements represent a partnership and an understanding among governments: Canada, Yukon and First Nations, about what our relationship is going forward. These agreements are between the governments and are constitutionally protected. These agreements cost First Nations land, rights and money. These agreements are about all of these things and they are agreements between governments; not between a First Nation government and the Aboriginal Affairs department.
>
> The agreements gave all governments direction: how we will manage heritage and wildlife; how we will manage land and resources; and most importantly how we will work together. The agreements, both the treaty itself and the Self-Government Agreements, are based on the principles of sharing and co-management. It is not about us going our separate ways. They are about our shared interests. They provide a map for all of the parties; a way to move forward together. These

[1] "The Walrus Talks" was a national speaker series focused on the future of Canada. The series ran from March 1-June 1, 2017 and featured fifty members of the Order of Canada and fifty youth leaders from across the country.

agreements have positive implications for all Yukoners. This is becoming more evident as we implement them. Ultimately, these agreements can help level the playing field between all governments and help to ensure Canada, Yukon and First Nations work together to meet the shared priorities. At the same time, the treaties and Self-Government Agreements cannot solve relationship problems that might come about.

At our recent Yukon Forum, I spoke the words of a prominent Nisga'a leader who said, "the federal government looks at the treaties as a divorce, and for us, we look at it as a marriage". I say that because Yukon First Nations have always seen our treaties as the basis for a new relationship and indeed the partnership that I mentioned earlier. But we find ourselves having to continuously defend what was negotiated. It is in these circumstances that relationships get strained. Although court is not the first option First Nations look to for resolution, other governments have turned to the courts when we disagree on how to move forward. For them, it is about certainty; what we already thought we had in the treaties. We will defend our agreements; however, we would much prefer to discuss matters collaboratively. Our first priority is to stay engaged, hold meaningful discussions and seek reasonable solutions. If we are going to succeed together as governments, there has to be a willingness to remain open minded, explore all of the options and be prepared to do things differently.

With that said, I will not say that we haven't been successful in the implementation of our agreements. There have certainly been challenges. Building a government and a new relationship between governments is not an easy task. Much of our success has come from our ability to think outside the box and our willingness to work in collaboration. This is what will enable us to realize the full economic, social and political potential of our agreements. Today, due in large parts to our modern-day treaties, First Nations are positioned to be major players in the Yukon economy. The agreements have provided lots of opportunities for partnerships and business ventures; all of which have helped to contribute to economic certainty for the future of our people. Intergovernmental initiatives have been established at all levels of government with Canada, Yukon, municipal and other First Nations in areas such as health, education, justice and infrastructure. Yukon First Nations economic development corporations and Yukon First Nation Chamber of Commerce have been established. A land registry has been completed, opening up the opportunities for Kwanlin Dün and other First Nations, the ability to register land leases [and] with that, possibilities of home ownership are created. And First Nations' investments have been made, and partnerships established in the areas of air transportation, energy, mining, commercial and real-estate development, affordable housing, just to name a few.

Back in 1973, you would have never heard or seen any of this. This is only a sampling of how our agreements, in a relatively short time, have benefitted not just our communities but the Yukon as a whole. Ultimately, I believe together we can achieve the vision of our modern-day treaties, the vision of prosperity of all Yukon people. To me, that is reconciliation. *Gunalchéesh*. Thank you (Gingell 2017).

1. INTRODUCTION

Northern Canada finds itself caught between the achievement of negotiating a series of major comprehensive land claims agreements and the stalled implementation of many elements of these foundational accords. Comprehensive land claims agreements, also known as modern treaties, are negotiated and signed in areas where land and resource rights have not previously been settled (Land Claims Agreements Coalition 2008). These multiparty agreements are signed between an Indigenous group(s), a provincial/territorial government and the Government of Canada. James Saku and Robert Bone (2000) explained, "the bottom up approach involves the transfer of economic power, land ownership and the creation of institutional structures designed to improve the economic wellbeing of Aboriginal people" (268). Modern treaties are one of the most important legal and constitutional documents in Indigenous affairs in Canada. Since 1973, 26 agreements have been successfully negotiated and signed and there are an additional 90 negotiations in progress across the country (Jai 2014, 7). The negotiation of modern treaties signifies an important shift in redefining relations between Indigenous groups and public governments in Canada and symbolizes a long-term commitment to reconciliation. However, the approach to implementation over the past forty-five years resulted in strained relations between Indigenous signatories and their government partners and led to numerous court challenges. All parties have perceived this as a deterrent to future negotiations. It also inhibited Indigenous groups from fully achieving the original intent of these agreements: cultural preservation, self-determination, and protection of lands and resources.

The negotiation of an agreement is only one part of the complex land claims process. Implementation is where the real work begins, and a greater commitment needs to be made to seeing these agreements put into action. The purpose of this study was to answer two main questions:

1. How have the partners in the negotiation of a modern treaty managed the transition from negotiation to implementation?
2. What does this transition reveal about the modern treaty process in Canada?

This study set out to answer these questions by examining the experience of negotiating and implementing modern treaties in Yukon between 1986 to 2016. Treaties in and of themselves are not public policy instruments; they are higher level agreements between governments. However,

we can draw on the public policy implementation literature to understand both the successes and challenges of modern treaty implementation, as well as the barriers and challenges to intergovernmental treaty relationships. This research will contribute to an oft neglected field in public policy.

The year 1986 marked an important turning point for land claims negotiations in Yukon. After a failed Agreement in Principle in 1984, land claims negotiations were put on hold. In 1986, the federal government released an update to its comprehensive land claims policy and for the first time included a requirement for implementation planning as part of the negotiation of a modern treaty. At this same time, all the Parties to the agreements in Yukon—the Government of Canada, Government of Yukon and Yukon First Nations—returned to the negotiation table with a renewed commitment to successfully negotiating a Yukon land claims agreement. 2015 to 2016 was a transitional year across all levels of government in Yukon. At the end of 2015, we saw the election of a majority Liberal government under the leadership of Justin Trudeau; in June 2016, we saw the election of a new Grand Chief of the Council of Yukon First Nations, Peter Johnston; and in October 2016 we saw the election of a new majority Liberal government in Yukon under the leadership of Sandy Silver. In each of these election campaigns, we observed significant prioritization of First Nations-government relations, and commitment to honouring the implementation of land claims agreements and re-establishing intergovernmental treaty relationships. This signaled a fundamental shift in the rhetoric and priorities observed over the previous two decades that created major barriers and challenges to implementing modern treaties, and resulted in a breakdown of intergovernmental treaty relations.

Yukon provides a foundational case study to understanding the experience of modern treaty implementation in Canada. Over a twenty-year period, beginning in 1973, Yukon First Nations, the Government of Yukon and the Government of Canada negotiated and signed the Umbrella Final Agreement (UFA). The UFA is not a modern treaty in and of itself but is the framework document that Yukon First Nations negotiated to be used as the structure for finalizing their individual First Nations Final Agreements. Eleven of the fourteen Yukon First Nations have successfully completed individual Final and Self-Government Agreements. The map of Yukon in Figure 1.1 identifies the traditional territories of the fourteen Yukon First Nations. This study examined the firsthand experiences of negotiating and implementing the

Umbrella Final Agreement, as well as three separate Yukon First Nations Final Agreements: Champagne and Aishihik First Nations, Tr'ondëk Hwëch'in, and Vuntut Gwitchin Government.

Figure 1.1 Yukon First Nations Traditional Territories

(Image Source: Castillo et al. 2020, 8. Modified by Lovell Johns from Yukon Government Map 2017.)

The spirit and intent of the modern treaties fundamentally changed the Yukon by shifting the social, political, economic, and cultural landscape of the territory. After 28 years, substantial portions of the Yukon First Nations agreements remain to be fully implemented. But that should not take away from the significant impacts of these Final and Self-Government Agreements and the implementation successes that occurred to date. As evidenced in the speech by Elder Judy Gingell in the opening of this study, the experience of implementing land claims agreements in Yukon continues, resulting in substantial changes in Yukon affairs.

Specific implementation achievements vary between First Nations but there have been areas of shared priorities across the First Nations governments throughout the first two decades of implementation. These changes occurred predominantly in program and policy areas in health and social, education, economic development, heritage and culture, and lands and resources. After the signing of the agreements, each of the First Nations focused on setting up their own governments and administrations and preparing for program and service delivery. The First Nations focused initially on ensuring the wellbeing of citizens by focusing on housing, health and social services and education, with substantial policy and outcome shifts across Yukon in each area.

Another priority was to establish all of the intergovernmental boards, councils and committees as outlined in the Final and Self-Government Agreements such as the Land Use Planning Council, Yukon Heritage Resources Board, Fish and Wildlife Management Board and the Water Board. Further, several important intergovernmental accords, agreements and plans emerged over the years, including the Porcupine Caribou Management Plan, which creates protection for the Porcupine Caribou calving grounds in North Yukon (IT2, Njootli Sr. 2016), in addition to the Forestry Management Agreements and the Park Management Agreements (IG13, Yukon First Nations government employee 2017).

Preservation and revitalization of heritage and culture remained a key priority for Yukon First Nations. Heritage and Culture departments were set-up within the First Nations governments and delivered programs and services such as language revitalization and management of heritage sites, such as Tr'ondëk Hwëch'in's Forty Mile historic site and Tr'ochëk. Many of the heritage sites around Yukon are now managed cooperatively between the different levels of government.

In 2007, the Parties completed a nine-year review of the UFA Implementation Plan, as well as a review of the first seven Yukon First Nations Final Agreement implementation plans, Self-Government Agreements and Self-Government Agreement implementation plans.[2] The review speaks to the significance of recognizing the implementation activities, even within discussions of the implementation barriers and challenges. The fact that all of the Parties to these

[2] The seven Yukon First Nations included in the review were: Teslin Tlingit Council, the First Nation of Na-cho Nyak Dun; Champagne and Aishihik First Nations, Vuntut Gwitchin Government, Little Salmon Carmacks First Nation, Selkirk First Nation and Tr'ondëk Hwëch'in.

agreements conducted the review of the implementation "can be seen as an indicator of success if one considers that they illustrate how significantly the level of discussion has changed from that which prevailed under the *Indian Act* regime" (Indian Affairs and Northern Development 2007, 14). The report goes on to read: "Self-government will likely require more than a generation to implement fully and effectively" (DIAND 2007, 14).

Implementation, however, is still being neglected, and the barriers and challenges to modern treaty implementation have often overshadowed many of the successes. Although meaningful change occurred in more recent years to the modern treaty implementation approach and rhetoric on paper at the federal and territorial level, substantive action has been incremental at best. From the beginning of negotiations, Yukon First Nations signatories intended these agreements to last seven generations. To the First Nations communities, it is imperative that the commitment across all three levels of government to the implementation of the objectives of the agreements remain a focus point if governments are truly going to live up to honouring the spirit and intent of the compact. One Yukon First Nation government employee shared:

> …As somebody who has lived here for 25 years, I see [the agreement] as a form of social contract. More than that actually, it's a treaty. But underlying the treaty is a kind of broadly speaking, social contract, and the social contract is that these agreements were made with a specific spirit and intent there. The original negotiators, the Elders, the Chiefs, the officials, and all of the other people that were involved all of the way through for 20+ years, had an intent, and we have to honour that. To me, that's what implementation really is, to fulfill that intent (IT11, First Nation government employee 2017).

The existing literature on modern treaties focuses on the impacts of modern treaties. Conversely, little is available on the negotiation processes themselves nor the relationships that underlie these agreements. Research into the implementation processes and intergovernmental relations can inform government implementation strategies and policy development. In addition, research on the unfolding of modern treaty implementation and the identification of best practices could assist in changing the current approach to treaty implementation. This could lead, in time, to a shift in thinking around how implementation planning is prioritized and defined within future land claims agreements.

1.1 Organization of the Dissertation

The remainder of this dissertation is divided into six substantive chapters. Chapter 2 provides a historical background to the Yukon land claims process. It begins by looking at early contact Indigenous-government relations and the historic treaties. This is followed by an introduction to modern treaties in Canada and an overview of the negotiation process and structure. The chapter ends with a detailed summary of the origins and experience of the Yukon land claims process.

Chapter 3 is a summary of the current scholarly literature that has assessed the modern treaty process and experience in Canada. The chapter concludes with an overview of theoretical and conceptual frameworks from the field of public policy and political science that guided this study. As is evidenced from this literature review, there is a growing body of work on modern treaty negotiations, with a specific focus on distinct elements of the agreements, such as co-management and land disputes. However, there is limited research that has centered around modern treaty implementation. The work that does exist is predominantly from the legal field or from outside of academia in grey literature. Due to the narrow scope of research focused on modern treaty implementation, there is limited relevant theory or theoretical debate that exists. Therefore, this study draws on theoretical and conceptual frameworks from the public policy and political science literature—such as top-down and bottom-up theories of implementation (see: Van Meter and Van Horn 1975; Sabatier and Mazmanian 1980; Hjern, Hanf, and Porter 1978), and Chris Alcantara's framework for studying the politics of intergovernmental relations in modern treaty implementation (see: Alcantara 2017)—to gain a clearer understanding of the complexities of implementation and intergovernmental relations.

The research methodology and design for this study is described in detail in Chapter 4. An overview of the three Yukon First Nations who were the focus of this study, are included, along with a description of the research methods that were used to allow for an iterative, adaptive and responsive research process. These included constructivist grounded theory, semi-structured interviews and document analysis.

Drawing on the first-hand experience of current and former negotiators, leaders, and those working within implementation at all three levels of government—Yukon First Nations governments, the Government of Yukon and Government of Canada—Chapter 5 provides a detailed understanding of the process and structure of modern treaty implementation in Canada.

Analysis of how these processes and structures were initially developed and how they have evolved over time reveals how complex these tripartite agreements are. After analyzing all of the calls for change that have been targeted at federal implementation policy, processes and structures, the chapter concludes by arguing that a significant change is needed across all three levels of government in order to honour the spirit and intent of the agreements and to see them fully implemented.

Chapter 6 analyses the intergovernmental relations embedded within the modern treaty context. So often within the study of public policy, it is easy to neglect the human dynamics that are integral to the development and implementation of policy. This chapter focuses on the importance of the people and the relationships that are foundational to the successes and challenges of modern treaty implementation. Many interviewees identified that one of the main reasons the Yukon land claims were successfully negotiated was due to the strong relationships and level of trust that was developed between the individuals on the ground at all three levels of government. These relationships have significantly deteriorated throughout implementation. The chapter explores three broad trends that contributed to the breakdown of these relationships: (1) continuity, capacity and understanding of the agreements; (2) the conflict between the spirit and intent of the agreements versus the letter of the law; and (3) dispute resolution and reliance on the courts. The final chapter, Chapter 7, is a discussion and conclusion of the key findings and importance of this study.

1.2 Qualifications

This study has been cautious about making direct comparisons between agreements or between the experiences of different Nations. Though all eleven Yukon First Nations took part in the negotiation of the Umbrella Final Agreement, there are no uniform experiences in the negotiation and implementation of the individual Yukon First Nation Final and Self-government Agreements. Throughout the research and analysis phase of this study, efforts were made to identify patterns and common themes from within the uniqueness of each land claim agreement.

Yukon is different than other regions. The negotiation of the Umbrella Final Agreement (UFA), which acted as a framework agreement for the individual Yukon First Nations Final Agreements, created a very different experience for negotiating land claims. No other Indigenous groups in Canada have successfully negotiated on behalf of such a large number of individual

First Nations. The federal government indicated that it does not expect to negotiate modern treaties as comprehensive in the future. Though this research intends to share lessons learned for future land claims negotiations, it is important to recognize the distinctiveness of the UFA and the Yukon First Nations Final and Self-Government Agreements.

Yukon First Nations fought hard for the inclusion of self-government within the negotiation of the Yukon land claims. Chapter 24 of the Yukon First Nations Final Agreements lays out the provisions for the negotiation of separate Self-Government Agreements (SGAs). SGAs outline the powers, authorities and responsibilities of each Yukon First Nation government. After the signing of the first four Yukon First Nations Self-Government agreements—Champagne and Aishihik First Nations, the First Nation of Na-cho Nyak Dun, Teslin Tlingit Council, and Vuntut Gwitchin—the negotiation of self-government was included as part of the ongoing federal government land claims negotiation process, beginning in 1995. Although this study is limited to examining the experience of negotiating and implementing the Yukon First Nations Final Agreements, it is important to understand the significance and relevance of the SGAs, and the overlapping experience of negotiating and implementing these agreements.

Finally, this study sought insight into the successes and challenges of modern treaty implementation in Canada. Much more can be learned about how the communities viewed these processes and there are many additional voices and experiences that could have been captured on this theme. The field of public policy implementation and intergovernmental relations really does not provide tools or frameworks for understanding how Indigenous communities and individuals on the ground view these processes. This thesis, by focusing on the specific topic of modern treaty implementation in Yukon, is able to offer one of the first comprehensive studies of modern treaty implementation in Canada. A clear understanding of the success and challenges of treaty implementation and the complexity of intergovernmental relations from firsthand perspectives will aid in the identification of specific policy implications for all levels of government.

2. PUTTING THE YUKON LAND CLAIMS PROCESS IN CONTEXT

Indigenous Scholar Taiaiake Alfred (2009) argued, "without a good understanding of history, it is difficult to grasp how strong Native people have resisted, and how much we have recently recovered" (25). Canada's history of treaty making between Indigenous and non-Indigenous groups dates back to the seventeenth century. In order to appreciate the significance of modern treaties in Canada, it is important to comprehend what preceded them and how Crown-Indigenous relations have changed over time. Anthropologist Michael Asch, one of Canada's leading scholars of Indigenous-government relations, had an important insight into the historic treaty process and the Crown-Indigenous relations that were intended to emerge from these agreements:

> …the relationship established through treaty entails that the Indigenous parties agree to share their lands in perpetuity with those subjects of the British Crown who wish to settle on them by establishing an enduring partnership akin to one that exists between relatives in a family. More specifically, the partnership is based on an equality of political standing between the parties in which the kind of sharing and mutual aid that flows from kindness are foundational principles (Asch 2019, 5).

This chapter begins by examining the evolution of Crown-Indigenous relations and the historical treaties signed between 1764-1921. This is be followed by an overview of the modern-day comprehensive land claims history and negotiation processes. The chapter concludes with an overview of Yukon's land claims history.

2.1 Historical Treaties and early Crown-Indigenous Relations

In northern North America, treaties between newcomers and Indigenous groups date back to the seventeenth century with the signing of commercial trade compacts and treaties of peace, friendship and alliance in the eastern part of the continent (Miller 2009, 4; see also: Royal Commission on Aboriginal Peoples (RCAP) 1996; Coates 1992). When Europeans arrived, the land was occupied by Indigenous groups who adapted over many centuries to living in what the newcomers viewed as a "new world". Both the British and French realized that to survive, and even prosper, they needed to establish cooperative partnerships with the different Indigenous groups in the area (Alcantara 2013; Miller 2009; RCAP 1996; Poelzer and Coates 2015).

The earliest treaties reflected economic and commercial trade partnerships, predominantly through the fur trade. These commercial compacts were generally seen as mutually beneficial and established formal kinship ties between Indigenous and non-Indigenous groups. The newcomers learned to navigate the different protocols and ceremonies of each group, which were integral to traditional Indigenous treaty-making pre-contact (Miller 2009, 5; 2015). A primary example of one of the traditional ceremonial practices that were adopted throughout the east was wampum. Miller (2009) pointed out how remarkable it was that many European newcomers "adapted to the use of wampum" so quickly "and sometimes became masters of it" (43). Wampum belts were constructed with two types of beads: white beads signified positive events and relations, while purple or black represented death or war (Miller 2009, 39). Wampum were often presented as gifts, but they also played an important purpose in negotiations. Wampum strings and belts were used to record "important discussions and agreements between nations, especially in matters of peace and war" (Miller 2009, 49; see also: RCAP 1996).

Peace and friendship treaties, as well as formal military alliances, became increasingly important as the colonial powers competed for territory. The *Report to the Royal Commission on Aboriginal Peoples* (RCAP) explained the importance of these relationships: "Economic and strategic ties with Indian nations became important, for the Europeans needed treaties to justify their competing territorial claims and to garner allies for their struggle" (RCAP 1996, 115; see also: Miller 2009; 2015; Eyford 2015).

In 1763, following defeat in the Seven Years' War, France ceded all of its North American territory to Britain in the Treaty of Paris, and on October 7, 1763, Britain issued a Royal Proclamation, which "remains the Magna Carta of Aboriginal Rights in Canada" (Morse and Hylton 1999, 16). The Proclamation made clear that no land belonging to an Indigenous group was to be allocated to newcomers or settled upon, without having been ceded or purchased, and without having signed a treaty (Morse and Hylton 1999; Poelzer and Coates 2015). More importantly, the Proclamation recognized Indigenous rights for the first time and set out some of the key principles of the treaty-making process that are still applied today. Former Governor General David Johnson, in his address at the 250th anniversary of the Royal Proclamation of 1763 spoke to the significance of this document:

> The Royal Proclamation showed the way forward for the country that would become Canada. Its guiding principles—of peace, fairness, and respect—established the tradition of treaty making, laid the basis for recognition of First Nations rights, and defined the relationship between First Nations peoples and the Crown (Fenge and Aldridge 2015, 7).

This new phase of treaty making began with the signing of the Upper Canadian Treaties between 1764 and 1862 and ended with the signing of the so-called "numbered treaties" (Treaty 1 to Treaty 11) in Western Canada between 1871 and 1921.

After Confederation in 1867, the Crown focused on expanding settlement and determining land concessions and was much less concerned with negotiating agreements that necessarily benefitted both parties. During this time the relationship between Indigenous and non-Indigenous peoples began to deteriorate as it shifted away from a focus on nation-to-nation agreements to a relationship based on marginalization and paternalism (RCAP 1996, 132; Poelzer and Coates 2015, 6; Miller 2009).

In anticipation of the agricultural settlement of the west and expanded resource development in the North, eleven historic numbered treaties were negotiated and signed in what subsequently became Northern Ontario, the three Prairie provinces, and the Northwest Territories. The goal of these treaties, in addition to preparing for agricultural settlement, was to develop and assimilate Indigenous populations into the mainstream non-Indigenous society. The first seven treaties were signed between 1871 and 1877, largely at the instigation of First Nations who resisted the settlement of their lands without an agreement, drawing on treaty-making in the United States for inspiration and motivation. Flanagan (1992) explained that despite the important differences between each of these treaties, there were significant similarities. In each case the First Nations received a cash settlement as well as "annual payments in perpetuity; the promise of educational and agricultural assistance; the right to hunt and fish on crown land until such land was required for other purposes; and land reserves to be owned by the crown in trust for the Indians" (46). In exchange for these treaty rights and benefits, Indigenous groups agreed to "cede, release and surrender" all of their lands to the Crown forever through an explicit extinguishment clause (Eyford 2015; Miller 2009; 2015; RCAP 1996; Senate Standing Committee on Aboriginal Peoples 2008).

The text in the extinguishment clause, found in each of the agreements, signified an important difference in the spirit and intent of these treaties. Hall (2016) explained, "Evidence

from elders suggest that they envisaged a kind of kin relationship with newcomers in which they would be respected and supported as necessary, and would share the resources of the region. Elders believed that the treaty process was about not surrendering their lands, but sharing them" (16). Contrary to this, the Canadian Government believed that the key objective of the treaties "was to acquire full title to the land in preparation for its peaceful occupation by white settlers" (Hall 2016, 3–4; see also: Krasowski 2019). The government was seeking certainty and finality through the treaty relationship.

Miller (2015) explained the approach to negotiating these first seven treaties was reminiscent of the peace and friendship treaties: they followed ceremony, customs, and traditional protocols. However, "in reality, there was more dissonance than harmony in the result of the treaty negotiations in the West" (Miller 2015, 98). Much was lost in the language barriers between the Indigenous groups and European newcomers, and there were conflicting expectations and interpretations of the outcomes of the treaties. Jai (2009) argued, "differences of language, culture, and world view, time constraints and other factors often led to different understandings by the parties as to what had been agreed to" (27). Further, what was agreed upon orally was not always translated into the government's written text (2009). Debates still continue today as to the original meaning and intent of the historic treaties (Jai 2009; Miller 2009; Asch 2014; Krasowski 2019).

Before the Government of Canada completed the negotiation of the numbered treaties, Parliament passed the Indian Act of 1876, thereby giving the federal government constitutional authority over "Indians, and Lands Reserved for Indians" (RCAP 1996, 235). The ultimate policy goal that surrounded the Indian Act was three-fold: "first protection, then civilization, and finally assimilation" (RCAP 1996, 237). The Indian Act controlled almost every aspect of a First Nation person's life from cradle to grave (RCAP 1996, 237; see also: Coates 2008). It played a significant role in defining Indigenous identities and became the dominant institution through which the Canadian government regulated and administered the lives of individual status First Nations and reserve communities across the country. The Indian Act remains entrenched in the federal Indigenous policy system, and was a precursor to many other destructive Indigenous policies and programs, such as the colonial policy of defining who is a status Indian, the creation of residential schools, and the reallocation of people on reserves (RCAP 1996; Coates 2008).

Further evidence of the deteriorating Crown-Indigenous relationship was seen through the negotiation of the final set of numbered treaties. Between 1899 and 1921, the Crown and Indigenous groups signed four more agreements in the northern regions of Western Canada and Ontario, with an objective of gaining access to natural resources by securing land rights and title (Miller 2015, 100). There was much less inclusion of Indigenous ceremony and protocol throughout these negotiations and the discrepancy between what was agreed upon orally and what was contained in the written text of the agreements widened significantly (Miller 2015, 100–101).

With the exception of the Williams Treaties, signed in 1923 between the First Nations of the Chippewa of Lake Simcoe, the Mississauga of the north shore of Lake Ontario, and the governments of Canada and Ontario, the final four numbered treaties concluded the historic period of treaty making between the Crown and Indigenous groups. The Williams Treaties "were intended to repair deficiencies in the early Upper Canadian treaties" (Miller 2009, 224). However, unlike the provisions laid out in many of the historic numbered treaties, the Williams Treaties did not include any guaranteed hunting or fishing rights, nor did they include any reserve land and there was very little negotiation involved (225). The Crown offered the First Nations a one-time lump sum payment in exchange for a very large tract of land (225). After the signing of the Williams Treaties, treaty making in Canada was suspended. In 1927, the Crown made amendments to the Indian Act, including prohibiting Indigenous groups from raising funds for the purpose of political and legal representation in pursuit of land claims and Indigenous rights. Much of the Canadian North, Northern Quebec and most of British Columbia were left "without treaties or the prospect of negotiating them" (Fenge 2015, 107). The treaty process was, in the first instance, designed to ensure that Canada avoided the conflict and warfare that characterised the western expansion of the United States. The historic treaties, which failed in implementation in many ways, did contribute to the peaceful settlement of the prairie west and the development of crucial transportation corridors. The Government of Canada routinely rebuffed attempts to extend the treaty process further North.

2.2 Assimilation Policies and Indigenous Political Mobilization

The assimilationist paradigm became the model for Indigenous-government relations for the first century after Confederation (Cairns 2000; Scholtz 2006; Poelzer and Coates 2015).

Tennant (1990) contended that Canada's Indigenous policy "was rooted in the longstanding small "L" liberal ideological view that individual Indians desired to be and should be assimilated as equals in the larger Canadian society" (139). Between 1923 and the early 1970s, the Crown suspended treaty making, and focused much of its Indigenous policy on assimilation through interventions such as forced relocation, residential schools, and enfranchisement (Scholtz 2006, 5; see also: Miller 2009, 232–33). The long-term goal of the government's Indigenous policies was to "civilize" Indigenous peoples by having them abandon their traditional and cultural ways of knowing and being and "become prepared for the rights and responsibilities of full citizenship" (Scholtz 2006, 41).

Indigenous groups began to mobilize to confront the detrimental impacts of the Indian Act, the poor conditions of life on First Nations reserves, and to bring greater attention to the issue of Indigenous rights (Scholtz 2006, 43). Miller (2009) described, "Aboriginal communities were becoming better organized politically, better equipped, and more willing to assert themselves politically about the continuing disregard of their rights" (Miller 2009, 244). In the 1930s and 1940s, regional-level associations such as the Union of Saskatchewan Indians (later known as the Federation of Saskatchewan Indian Nations) and the Native Brotherhood of British Columbia, began to emerge. This political mobilization marked an important turning point for Indigenous groups across the country as they unified their voices to push back against the assimilationist and colonial government policies.

Alongside these regional associations, a broader Indigenous rights movement began to grow across Canada and the United States throughout the 1960s. In 1967, provincial and territorial organizations, representing status Indians, formed the National Indian Brotherhood (NIB). NIB played a key role in lobbying for changes to federal and provincial policies and would later become the Assembly of First Nations (AFN) in 1982. In 1968, the Canadian Métis Society was formed, to represent Métis interests. The Canadian Métis Society later became the Native Council of Canada (NCC). The NCC was developed to represent both Métis and non-status Indians and was composed of provincial and territorial organizations (Barckwell n.d.). The NCC played a significant role in lobbying government to include the Métis as one of the three groups included in the definition of Aboriginal Peoples of Canada in *The Constitution Act, 1982.* In 1983, the Métis split from the NCC to form the Métis Nation of Canada (Barckwell n.d.).

In 1968, Canada saw a significant shift in Indigenous policy making when Pierre Trudeau was elected Prime Minister under a Liberal majority government. Trudeau's broad policy goals were equal citizenship for all Canadians, and non-recognition of special rights claims. Trudeau argued that special rights ultimately conflicted with formal equality and citizenship. Trudeau appointed Jean Chrétien Minister of the Department of Indian Affairs and Northern Development (DIAND) and tasked him with overseeing the development of a white paper on Indian policy. Chrétien travelled across the country consulting with Indigenous leaders, who continued to unify around the fight for Indigenous rights and title.

In June 1969, "The Statement of the Government of Canada on Indian Policy" (otherwise known as "The White Paper") was introduced. Amongst other things, the paper proposed abolishing the Indian Act, dismantling DIAND, and ending special rights for Indigenous peoples (Indian and Northern Affairs Canada 1969). Despite the extensive consultation with Indigenous leaders, nowhere in the paper was there mention of recognizing Indigenous rights. Within days, there was growing opposition to the report from regional Indigenous associations and groups across the country and, within a short period, they had many journalists and academics on their side. Under the leadership of Harold Cardinal, the Indian Association of Alberta published a response paper entitled, "Citizens Plus" (known today as "The Red Paper"). In the paper they asserted,

> To us who are Treaty Indians there is nothing more important than our Treaties, our lands and the well-being of our future generation. We have studied carefully the contents of the Government's White Paper on Indians and we have concluded that it offers despair instead of hope (Indian Association of Alberta 1970, 189).

Concerted opposition across the country forced the federal Government to abandon the White Paper in June 1970 (Miller 2009; Scholtz 2006).

In the late 1960s in British Columbia, the Nisga'a Nation was fighting their own battle over Indigenous rights and title. The Nisga'a took the Government of British Columbia to court, on the grounds that title to their lands had never been lawfully extinguished. The case was dismissed by the Supreme Court of British Columbia as well as the British Columbia Court of Appeals. On January 21, 1973, the Supreme Court of Canada ruled on the issue of Aboriginal title in the Calder et al. v. Attorney-General of British Columbia, "*The Calder Case"*. Although the Nisga'a lost the case, the Calder Case had important implications: the Supreme Court acknowledged that Indigenous peoples had title to their land before Europeans arrived. This was

the first time that the Supreme Court had recognized the legal existence of Aboriginal title to land (Alcantara 2013; Tom Flanagan 2008; Henderson 2006).

The Calder Case ruling forced the federal government to reassess some of the fundamental components of its land claims policy (RCAP 1996, 533). In August 1973, responding to claims put forward by the Nisga'a, the James Bay Cree and Inuit, and the Yukon Native Brotherhood, the federal government released a policy on comprehensive claims, marking a significant turning point in Crown-Indigenous relations in Canada. Scholtz (2006) explained, by committing to implementing negotiation policies, governments are required to "explicitly recognize the validity of indigenous collective claims to land as well as indigenous communities' equal standing as Parties to an agreement" (14). Yukon First Nations now had an opportunity to place their demand for the negotiation of land claims before the Government of Canada.

2.3 Canada's Comprehensive Land Claims Processes

The year 1973 marked the beginning of the comprehensive land claims process in Canada. After releasing its policy on comprehensive claims, the federal government invited Indigenous groups to submit claims. However, there were restrictions on who could submit. Comprehensive land claims, also known as modern treaties, were only open to Indigenous groups who lived in areas where land and resource rights had not previously been settled. The intent of negotiating a comprehensive land claim agreement was to achieve certainty by granting Indigenous groups a set of defined rights, such as land and resource rights, as well as rights such as hunting, fishing and trapping, in exchange for ceding undefined Indigenous rights.

An additional restriction to negotiating land claims, was that the federal government limited negotiations to only six claimant groups at one time. The first groups to negotiate included the James Bay Cree in Northern Quebec; the Inuvialuit, and the Dene and Metis in the Northwest Territories; the Nisga'a in British Columbia; the Council of Yukon Indians in Yukon; and the Inuit of Nunavut (Alcantara 2013). The table below outlines all of the modern treaties that have been completed to date, along with their signatories. The summary of the treaty process that follows, draws heavily on the work of Chris Alcantara (2013; 2009; 2007b), who is one of the leading scholars on the negotiation of modern treaties in Canada.

Table 2.1 Completed Modern Treaties[3]

Name of the Final Agreement	Year Signed	Signatories to the Agreement
James Bay and Northern Quebec Agreement	1975	The Grand Council of the Crees (of Quebec), the Northern Quebec Inuit Association, the Government of Canada, Government of Quebec, the James Bay Energy Corporation, the James Bay Development Corporation, and Hydro Quebec
Northeastern Quebec Agreement	1978	Naskapi Band of Quebec, the Government of Canada, the Northern Quebec Inuit Association, Government of Quebec, the James Bay Energy Corporation, the James Bay Development Corporation, and Hydro Quebec
Inuvialuit Final Agreement	1984	The Committee of Original Peoples' Entitlement (representing the Inuvialuit) and the Government of Canada
Gwich'in Comprehensive Land Claim Agreement	1992	Gwich'in Tribal Council and the Government of Canada
Nunavut Land Claims Agreement	1993	The Inuit of the Nunavut Settlement Area and the Government of Canada
Champagne and Aishihik First Nations Final Agreement	1995	Champagne and Aishihik First Nations, the Government of Canada, and the Government of Yukon
First Nation of Na-cho Nyak Final Agreement	1995	First Nation of Na-cho Nyak Dun, the Government of Canada, and the Government of Yukon
Teslin Tlingit Council Final Agreements	1995	Teslin Tlingit Council, the Government of Canada, and the Government of Yukon
Vuntut Gwitchin First Nation Final Agreement	1995	Vuntut Gwitchin First Nation, the Government of Canada, and the Government of Yukon
Sahtu Dene and Metis Comprehensive Land Claim Agreement	1994	The Sahtu Tribal Council and the Government of Canada
Selkirk First Nation Final Agreement	1997	Selkirk First Nation, the Government of Canada, and the Government of Yukon
Little Salmon/Carmacks First Nation Final Agreement	1997	Little Salmon/Carmacks First Nation, the Government of Canada, and the Government of Yukon
Tr'ondëk Hwëch'in Final Agreements	1998	Tr'ondëk Hwëch'in First Nation, the Government of Canada, and the Government of Yukon
Nisga'a Final Agreement	2000	The Nisga'a Nation, the Government of Canada, and the Government of British Columbia
Ta'an Kwach'an First Nation Final Agreement	2002	Ta'an Kwach'an First Nation, the Government of Canada, and the Government of Yukon
Kluane First Nation Final Agreement	2004	Kluane First Nation, the Government of Canada, and the Government of Yukon
Kwanlin Dün First Nation Final Agreements	2005	Kwanlin Dün First Nation, the Government of Canada, and the Government of Yukon
Labrador Inuit Land Claim Agreement	2005	The Inuit of Labrador, the Government of Canada, and the Government of Newfoundland and Labrador
Tlicho Agreement	2005	The Tlicho, the Government of Canada, and the Government of the Northwest Territories
Carcross/Tagish First Nation Final Agreement	2006	Carcross/Tagish First Nation, the Government of Canada, and the Government of Yukon
Nunvik Inuit Land Claims Agreement	2008	Nunavik Inuit and the Government of Canada

[3] Note: Table 2.1 includes all of the land claims agreements that have been negotiated and signed in Canada. This does not include stand-alone Self-Government Agreements.

Tsawwassen First Nation Final Agreement	2009	Tsawwassen First Nation, the Government of Canada, and the Government of British Columbia
Maa-nulth First Nations Final Agreement	2011	Huu-ay-aht First Nations, Ka:'yu'k't'h'/Che:k'tles7et'h' First Nations, Toquaht Nation, Uchucklesaht Tribe, Ucluelet First Nation, the Government of Canada, and the Government of British Columbia
Eeyou Marine Region Land Claims Agreement	2011	The Crees of the Eeyou Istchee, the Governmetn of Canada
Yale First Nation Final Agreement	2013	Yale First Nation, the Government of Canada, and the Government of British Columbia
Tla'amin Final Agreement	2014	Tla'amin Nation, the Government of Canada, and the Government of British Columbia

(Source: This table was built using data from Crown-Indigenous Relations and Northern Affairs Canada. 2015. "Fact Sheet: Implementation of Final Agreements." Retrieved from: https://www.rcaanc-cirnac.gc.ca/eng/1100100030580/1542728997938 and from the individual agreements).

The Office of Native Claims (ONC) was established in 1974 to represent the federal government with the purpose of negotiating and settling both comprehensive claims and specific claims.[4] Indigenous groups wishing to pursue comprehensive claims, had to first submit claims to the ONC and to the Department of Justice to analyze "in terms of both their historical accuracy and legal merit" (Indian Affairs and Northern Affairs Canada 1981, 13). The 1973 claims policy did not contain a formal process for negotiating a claim once it had been submitted (Alcantara 2013). In 1981, the federal government released a new policy statement, *In All Fairness,* which outlined a more structured process for negotiation. This policy was significantly amended in 1986 and had multiple minor amendments and changes since. The 1986 policy statement outlined the process for submitting a statement of claim. The following elements had to be met in order for a claim to be accepted:

- a statement that the claimant group has not previously adhered to treaty;
- a documented statement from the claimant group that it has traditionally used and occupied the territory in question and that this use and occupation continues;
- a description of the extent and location of such land use and occupancy, together with a map outlining the approximate boundaries; and
- identification of the claimant group including the names of the bands, tribes and communities on whose behalf the claim is being made, the claimant's linguistic and cultural affiliation, and approximate population figures for the claimant group (Indian Affairs and Northern Affairs Canada 1981).

[4] The 1973 policy statement on land claims also outlined a separate process for dealing with "specific claims" regarding the federal government's failure to live up to the terms of the historic treaties or to fulfill its obligations under the Indian Act. This study only focuses on comprehensive land claims.

Once the ONC and the Department of Justice had reviewed a statement of claim, the claim was sent to the Minister of Indian Affairs and Northern Development for final approval or denial. If a claim was approved, ONC was responsible for initiating negotiations (Indian Affairs and Northern Affairs Canada 1981). The same process and requirements remain in place today.

The negotiation process required identifying the negotiating parties who would be at the table. The Government of Canada was represented by Indigenous and Northern Affairs Canada (INAC)[5] and was led by a Chief federal negotiator(s) "from within or outside of the public service" (CIRNAC 2014). The Chief Negotiator(s) received negotiating mandates from the Minister. The Minister and Deputy Minister also played an important role in working with their counterparts in the other federal departments to get them on side with negotiated elements that would directly affect their departments (Alcantara 2013, p.7).

Representation from the provincial and territorial governments differed in each jurisdiction. At the provincial level, the Indigenous Affairs department usually took the lead on negotiations. It is important to note that until the 1980s, territorial governments had a very limited role in the negotiation of land claims. Agreements that were negotiated with Indigenous groups in the territories, were bilateral. The 1986 Comprehensive Land Claims Policy stated, "in the territories, lands and resources fall under federal jurisdiction. Negotiations in these areas will be bilateral in nature… Territorial governments will participate fully in the application of land claims policy and in negotiations, under the leadership of the federal government" (Indian Affairs and Northern Affairs Canada 1981, 19; see also: Alcantara 2013, 18–19). Table 2.1, found on p.17-18, shows there were four bilateral agreements that were signed between Indigenous groups and the Government of Canada

In Yukon, the territorial government fought hard to have its own seat at the table but was not immediately welcomed as a standalone party. It was not until 1979 that the Yukon government was granted its own seat. In his study of modern treaty negotiations in Yukon and

[5] For consistency throughout this dissertation, INAC will be used to refer to the federal department responsible for Indigenous and Northern affairs. However, when using direct quotes, it may be referred to by different names depending on the time period. The title of the department changed multiple times over the period of 1986-2016. This included: Department of Indian Affairs and Northern Development (DIAND); Aboriginal Affairs and Northern Development Canada (AANDC); Indigenous and Northern Affairs Canada (INAC); and most recently Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC).

Labrador, Alcantara (2013) described the important role that territorial and provincial governments played during the negotiation period: “Several Yukon government officials and others told me that territorial governments are the primary government negotiators in the final stages of negotiations because it is their governments and citizens who will have to live with the aftermath of a Final Agreement” (20).

The Indigenous group(s), made up of individual bands or an umbrella organization formed to represent multiple Indigenous communities or groups, hired negotiators to represent them (Alcantara 2013, 19). For example, in the Sahtu Dene and Metis Comprehensive Land Claim Agreement, the Sahtu Tribal Council represented and negotiated on behalf of seven Dene and Metis Communities in the Northwest Territories. In Yukon, in the beginning, the Council for Yukon Indians (later known as Council of Yukon First Nations) negotiated on behalf of all fourteen Yukon First Nations. Once it was established that each Yukon First Nation would negotiate individual Final and Self-Government Agreements, each Nation was represented by its own negotiator(s). Many Yukon First Nations chose to be represented by the same negotiator(s).

With the negotiating parties in place, the next step was the negotiation of a framework agreement. The claims policy explained that the framework agreement would “determine the scope, process, topics, and parameters for negotiation. Approaches to obtaining certainty with respect to lands and resources” and a timeline of negotiations would also be included (Indian Affairs and Northern Affairs Canada 1981, 24). The federal government approved the framework agreement, and then work on negotiating the agreements-in-principle (AIP) would commence. This was the most comprehensive, challenging and time-consuming part of the negotiation process.

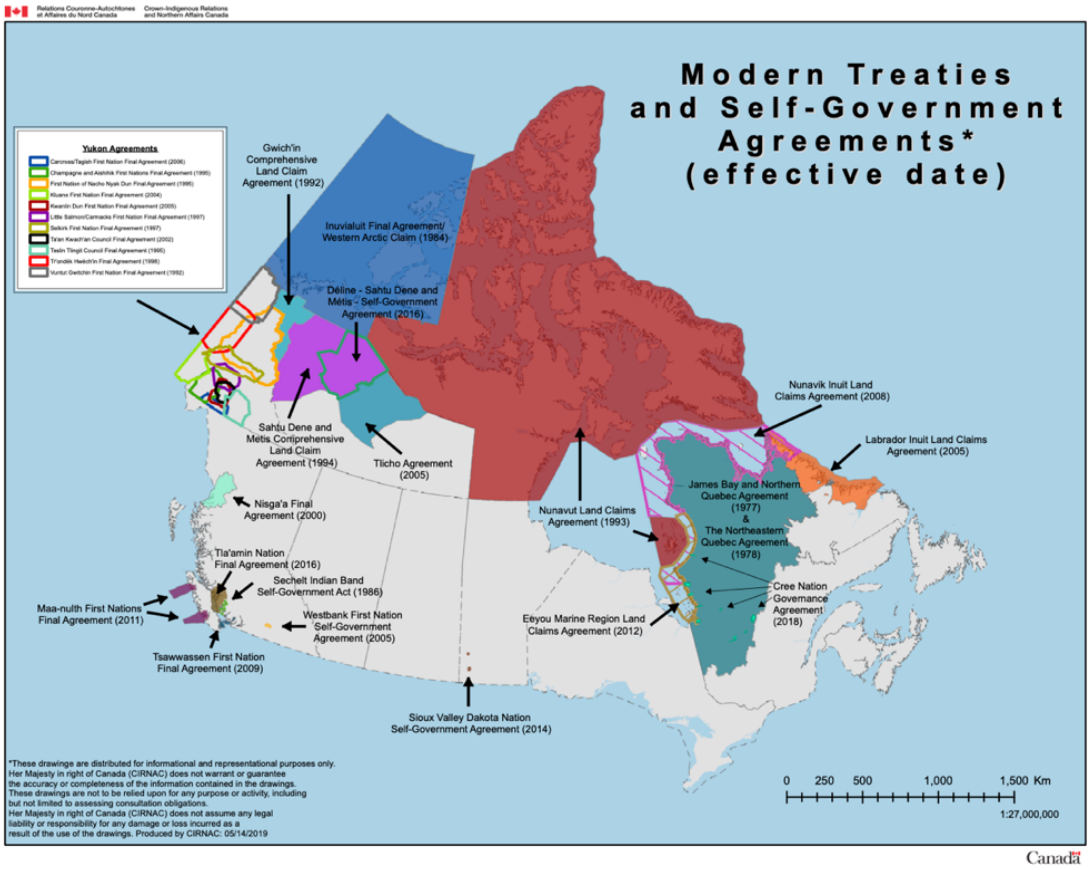
The AIP, which is not legally binding, outlined all of the comprehensive details that would be contained in each chapter of the agreement. This included areas such as eligibility and enrollment, lands, access, expropriation, land use planning, development assessment, heritage, water management, fish and wildlife, forest resources, non-renewable resources, financial compensation, taxation, economic development, resource royalty sharing, dispute resolution, implementation and sometimes self-government (Indian Affairs and Northern Development 1993b; 1998). Not everything was negotiated during the AIP stage. Alcantara (2013) explained, the negotiating parties would usually wait until the Final Agreement negotiations to negotiate the specific parcels of settlement land, and “also tend[ed] to wait until this stage to negotiate the

exact wording of the "cede, release, and surrender" provision, the clause that settles the nature and ownership of all lands subject to the treaty" (16). The federal government required AIPs to be ratified by the Indigenous group(s) before negotiating the Final Agreement. Mandatory ratification of the AIP was not part of the original claims policy; however, there were several instances early on where Final Agreements failed to be ratified, so the federal government made ratification a requirement at the AIP stage (Alcantara 2013, 16). If the AIP received endorsement by the Indigenous group(s), the next stage was negotiation of the Final Agreement.

The negotiation of the Final Agreement formalized everything into a modern treaty. However, the agreement was still not finalized until an implementation plan was negotiated and signed. The requirement for inclusion of implementation plans was added in to the 1986 claims policy. The negotiation of the implementation plans involved a new team of negotiators. This will be described in more detail in Chapter 5.

With the signing of the implementation plan and the Final Agreement, the modern treaty was sent out again for ratification by the Indigenous group(s), the provincial/territorial government and the federal government. Once ratified, legislation was passed, giving effect to the agreement, and the Final Agreement became constitutionally protected under section 35 of the Constitution Act. To date, the Canadian government has signed twenty-six modern treaties with Indigenous groups and provincial and territorial governments in all three of the Northern territories, British Columbia, Quebec and Labrador (see the map below). Eighteen of these agreements include self-government. Approximately ninety additional negotiations are taking place across the country that are either in progress or have been stalled (Alcantara 2013). Most of these are taking place in British Columbia.

Figure 2.1 Map of Modern Treaty and Self-Government Agreements



(Image source: Indigenous and Northern Affairs Canada 2019)

2.4 The Origins and Experience of the Yukon Land Claims Process

Yukon land claims negotiations were part of the national process and reflected the evolution of legal and political systems; though, First Nations in Yukon played a critical role in sparking and shaping the national approach. In January 2020, the "First Principles Project" gathering took place in Whitehorse, Yukon in response to the lack of knowledge and understanding of the main principles and the underlying intent and content of the UFA and Yukon First Nations Final and Self-Government Agreements. It was acknowledged that those involved in the original negotiations have had a limited role in implementation at all levels of government. Tony Penikett, former Premier of Yukon and one of the organizers of the project, observed that "if few Yukoners have ever studied the UFA's detailed text and even fewer understand its core principles, who then will defend the ideas and values it embodies?" (Penikett 2020). One of the main outcomes of this gathering, was a nine-page draft document, "The First Principles Project: 40 @ -40°", which summarizes the key principles that were discussed.

Land claims emerged at a time of major resource expansion, the growth of Yukon's non-Indigenous population and growing tensions within the territory. As the First Principles Project draft document asserted:

> We came together to build a new relationship so that we could speak to each other as equal partners. We came together because we could no longer turn away from the pain and suffering that the laws of the day had created for the Yukon First Nation peoples (First Principles Project 2020, 3).

The discovery of gold in Yukon in 1896, brought thousands of miners, settlers and missionaries to a predominantly unsettled Yukon. Prior to this, Yukon First Nations had little contact with the outside world, with the exception of the odd missionary or fur trader, and their lands remained largely untouched. Due to the influx of people and development that accompanied the gold rush, Yukon First Nations experienced significant loss to their lands and detrimental impacts to subsistence harvesting and their traditional ways of life. Hunde-aelth, otherwise known as Chief Jim Boss, hereditary Chief of the Ta'an Kwäch'än Council, wrote two letters to Yukon Commissioner and Superintendent General of Indian Affairs in Ottawa in 1900 and 1902, urging the government to settle a claim with Yukon First Nations and to provide compensation for their lost lands and hunting grounds (McClellan 1987, 99). In his letter from 1902, Hunde-aelth wrote, "Tell the King very hard we want something for our Indians because they take our land and game" (Neufeld 2002). The federal government was not interested in signing a treaty in Yukon. They did not want to risk giving away reserve land that could potentially have gold, and they believed Yukon First Nations "were 'best left as Indians' – living as nomadic hunter gatherers as far away from settlement as possible" (Coates and Morrison 2005, 115). The government also did not believe that the gold rush and resource development was going to last long in the territory, and therefore, the signing of a treaty was not necessary (Coates and Morrison 2005, 115).

Yukon First Nations did not abandon their pursuit of Indigenous rights and title in Yukon. Joining the rise of Indigenous mobilization taking place across the country in the mid-1960s, Elijah Smith and several Yukon First Nations leaders from across the territory began to organize to address many of the issues facing Yukon First Nations. In January 1960, First Nations chiefs and representatives from Northern British Columbia and Yukon held a meeting in Whitehorse (Coates 1993, 237). At this meeting, it was decided that a territory wide First Nations organization should be formed. Later that year, the Klondike Indian Association was

established with the following objectives: "The settlement of the Yukon land claim, the election of an Indian to the Yukon Territorial Council, the encouragement of economic development, aboriginal culture, and education, and the improvement of social conditions" (Coates 1993, 237).

In 1968, with land claims becoming a central focus for Yukon First Nation leaders, Yukon First Nations separated from the Klondike Indian Association, to form their own organization, the Yukon Indian Brotherhood (later known as Yukon Native Brotherhood) (Coates 1993, 238). Yukon Native Brotherhood (YNB) represented all Status Yukon First Nations. Elijah Smith was elected Chief of YNB and Dave Joe was the executive director. Coates (1993) asserted, "The YNB had an immediate impact on the Yukon… It inundated the DIA [Department of Indian Affairs] with position papers, requests for assistance and project proposals" (238). YNB quickly became a powerful voice for First Nations' rights across the territory.

Demands for settling land claims became more urgent with the increase in oil and gas development in the North. In his book, *Best Left as Indians,* Coates (1993) explained that in 1970, Northern Oil Explorers were granted permission to begin exploration in the Old Crow Flats, an area of significance to Vuntut Gwitchin traditions and economy (236). The Old Crow Band (now known as Vuntut Gwitchin Government) petitioned for an injunction to stop the exploration, asserting in their petition, "…We do not consent to the diversion or tempering [sic] with the waters of the Porcupine River Valley drainage the lands of which we claim as ours by original occupation or possession" (as cited in Coates 1993, 237; see also: Castillo, Schreyer, and Southwick 2020, 97). Although the federal government made some concessions, its legal advisor, Hugh Fischer, argued that no treaty had ever been negotiated or signed with First Nations in Old Crow and therefore the Old Crow Band had no property rights or title, thereby asserting the Crown's sovereignty over the land (Coates 1993, 237).

Although Yukon First Nations viewed this as a setback, they did not back down in their pursuit of a land claims settlement. In 1971, a separate group, the Yukon Association of Non-Status Indians (YANSI), was formed under the leadership of Joe Jacquot, to "represent the interests of First Nations people who fell outside the legal definition of an 'Indian' under the terms of the *Indian Act*" (Coates 1994, 11). The following year, in a display of unity, YANSI and YNB held a three-day conference to discuss land claims. The main focus of the conference was

to educate and inform Yukon First Nations on the land claims process, benefits of land claims, and to gather ideas and input from community members (Whitehorse Star 1972, 8a).

In July 1972, YNB received funding from Lloyd Barber, the Indian Claims Commissioner for Canada, to put together a position paper outlining its grievances. This funding was only allocated to YNB, at the exclusion of YANSI members. With the involvement of all twelve Yukon First Nation bands, YNB spent the next six months outlining and drafting the paper, with lots of time spent consulting with the communities (Whitehorse Star 1973a, 1). On February 14, 1973, Chief Elijah Smith, along with a delegation of Yukon First Nations Chiefs travelled to Ottawa to present Prime Minister Trudeau with a formal claims settlement paper entitled, *Together Today for our Children Tomorrow: A Statement of Grievances and an Approach to Settlement by the Yukon Indian People* (Yukon Native Brotherhood 1973). The paper focused on the past injustices and dispossession that Yukon First Nations had faced, the present-day conditions of inequality, discrimination and suffering that First Nations were enduring, and a vision for a better future that they sought to create for their children. In his speech to the Prime Minister, Elijah Smith stressed the importance of settling land claims with Yukon First Nations:

> Our people have lived in the Yukon many years before the white man came to Canada. This is the first time the leaders of the Yukon Indian people have came to the capital of Canada. We are here to talk about our future. The only way we feel we can have a future is to settle our land claims… The Yukon Indian people are offering the government of Canada, the people of Canada, a plan for our future. This will be a future that will return to us our lost pride, self-respect and economic independence. When we have control over our own land, our own bank account and our own program, then we will be able to really participate. We want land and resources, so we can develop ourselves. We do not want to be developed by Indian Affairs or anyone else. We want the chance to develop programs that will help solve the problems of today and prepare a future for our children ("Elijah Smith Speech" 1973).

Together Today called for a "fair and just" settlement that would recognize Yukon First Nations rights and title to their land. The presentation of this document began the long journey towards modern-day treaties in Yukon. Prime Minister Trudeau accepted the claim and promised to assign a federal team to begin negotiations.

Later that year, negotiations for a Yukon claim began between the Department of Indian Affairs, representing the Crown, and the Council for Yukon Indians (CYI), representing Yukon

First Nations. Although YNB and YANSI continued to exist, CYI was formed to be the negotiating body on behalf of all Yukon First Nations. Negotiations started out bilaterally, though the Government of Yukon was invited to sit at the table with the Government of Canada and provide input. Yukon First Nations leadership decided that a single territory-wide agreement would be negotiated for all Yukon First Nations. The complex explanation for why this decision was made is a matter for historians to deal with.

The Government of Yukon had immediate concerns about the land claims process and the impact it could have on non-Indigenous people in Yukon. In addition, there were concerns that land claims could constrain its own jurisdiction and slow the transfer of administrative power being sought through the establishment of responsible government for Yukon. In October 1974, the Yukon government published an analysis and position paper on "Yukon Indian and Claims". In this paper, the Yukon government demonstrated support for the pursuit of land claims; however, they emphasized that they wanted the claims settlement to result in giving Yukon First Nation peoples, "all rights, privileges and obligations inherent in Canadian citizenship" while also terminating any "legal distinctions based on race" (Yukon Government 1974, 3). Further, the Yukon government wanted to ensure that certainty was obtained, and that the settlement would "clearly extinguish all existing claims, special rights, privileges and obligations of Yukon Indian people" (3). Yukon faced, in fact, two transformative, critical, complicated, and overlapping political processes: the devolution of political authority to the Government of Yukon and the negotiation of land claims with Yukon First Nations.

In 1979, the Government of Yukon was brought to the negotiation table as a separate negotiating party and Willard Phelps was appointed as its Chief Negotiator. Tripartite negotiations began towards the development of an agreement in principle (AIP) for the Yukon claim. In 1980, recognizing the strength a united front would bring, YNB and YANSI amalgamated with CYI to form one umbrella organization that would represent all Yukon First Nations. By 1984, an AIP was completed and was sent out for ratification. Eight out of twelve Yukon First Nations bands rejected the AIP based on numerous concerns. The biggest concern was around the concept of complete extinguishment of *all* Indigenous rights. Ultimately, the AIP was rejected on five main points: "the issue of extinguishment, the need for full recognition and affirmation of subsistence hunting, land selections based on need, control of lands, and recognition of non-status Indians" (Council of Yukon First Nations n.d.; LegendSeekers

Research Inc. 2002, 77). In addition, the First Nation of Na-cho Nyak Dun and a few other Yukon First Nations wanted to see the negotiation of self-government as part of the land claims package. The federal government declared that the AIP had failed, and negotiations were put on hold while the Government of Canada conducted a review of its existing land claims policy.

In 1986, the federal government released the new federal Comprehensive Land Claims Policy with significant additions and amendments to the previous policy. Of important note, the new claims policy did not use the word "extinguishment" in the certainty clause. The policy read, "The federal government has examined this feature and has concluded that alternatives to extinguishment may be considered provided that certainty in respect of lands and resources is established" (Indian Affairs and Northern Development Canada 1986, 12). Rather than prescribing specific language to be used in the certainty clause, the policy stated that "wording will be subject to agreement between parties" during individual negotiations (12). Further, the new policy clarified that rights relinquished through the claims process are only those related to lands and resources; "other Aboriginal rights, as may be defined or recognized by the courts, would not be affected by the terms of the treaty (Eyford 2015, 71).[6] In addition, the new policy included resource revenue sharing, discussion of harvesting rights in offshore areas, environmental management, and a broader range of self-government matters (Indian Affairs and Northern Development Canada 1986), though still no recognition of a distinct right to self-government.

In 1987, negotiations resumed under the new claims policy, and in 1988 the Parties to the agreement signed a Framework Agreement, followed by the signing and successful ratification of a new AIP in 1989. Although the new AIP included less money than the one tabled in 1984, it included slightly more land, First Nations rights would be retained on settlement land, and agreement was made to develop a model of self-government. Shortly after signing the AIP, the Parties to the agreement concluded that individual Final and Self-Government Agreements

[6] The certainty clause has been further clarified and amended over the years to recognize section 35 of the Constitution Act, 1982.

would be completed with each of the fourteen Yukon First Nations.[7] The CYI agreement, "the Umbrella Final Agreement" (UFA), would not be a modern treaty in and of itself but would become the template for each of the individual Final Agreements. Each Yukon First Nation would negotiate separate provisions that would be unique to its individual circumstances (Alcantara 2013, 73). In 1991, a model framework agreement for self-government was reached and negotiations began with four Yukon First Nations to settle the first Yukon Final and Self-Government Agreements.

On May 29, 1993, after twenty years of negotiations, all three negotiating parties signed and ratified the UFA. The agreement guaranteed a total of 41,595.21 km^2 in Settlement Land for all Yukon First Nations. Of this land, up to 25,899.88 km^2 would be Category A Settlement Land and up to 15,695.33 km^2 would be Category B "fee simple" Settlement Land (Council for Yukon First Nations and Yukon Government 1997).[8] The agreement also included a $242.6 million (based on 1989 dollars) cash settlement, as well as specific harvesting rights, guaranteed participation on management boards and committees, and several other guaranteed rights, and social and economic benefits. In addition to the signing of the UFA, Final and Self-Government Agreements were signed with Champagne and Aishihik First Nations, the First Nation of Na-cho Nyak Dun, Teslin Tlingit Council, and Vuntut Gwitchin. Financial Transfer Agreements, Final Agreement Implementation Plans, and Self-Government Agreement Implementation Plans accompanied these agreements. Over the next two years, the federal and territorial governments drafted legislation and the Treasury Board and Cabinet finalized and approved the implementation funding. In 1995, the UFA and first four Yukon First Nation Final and Self-

[7] In the late 1950s, the Department of Indian Affairs decided there were too many Indian bands in the territory and joined six bands into three. This led to the creation of the Whitehorse Indian Band (known today as Kwanlin Dün First Nation) and Kluane Indian Band. When negotiations started in 1973, there were twelve Yukon First Nations Bands: Liard River Band, Champagne and Aishihik Band, Dawson Band, Teslin Band, Old Crow Band, Mayo Band, Kluane Band, Whitehorse Band, Ross River Band, Selkirk Band, Carcross Band, and Carmacks Band. In 1987, Ta'an Kwach'an chose to separate from the Whitehorse Indian Band and re-established themselves as a distinct First Nation (Ta'an Kwäch'än Council n.d.). In 1990, the Kluane Indian Band split its membership into two distinct Nations: the Kluane First Nation and the White River First Nation. This resulted in the negotiation of fourteen separate Yukon First Nations Final and Self-Government Agreements.

[8] Category A Land indicates that the First Nation owns both the surface of the land, as well as the subsurface, including all minerals and oil and gas. Category B Land indicates the First Nation owns only the surface of the land but does not have rights to the subsurface.

Government Agreements came into effect. Over the next 10 years, an additional seven Yukon First Nations Final and Self-Government Agreements were signed. See Appendix A: "Chronology of the Yukon Land Claims History" for the specific year each agreement was signed.

To date, there remain three Yukon First Nations who have not settled land claims agreements: Liard First Nation, Ross River Dena Council and White River First Nation. Little has been officially documented about the negotiation experience of each of these three First Nations; however, we do know that all three had reached a memorandum of understanding on almost all issues; however, during ratification the majority of members in these communities voted against the agreements (Alcantara 2013, 96).[9] Alcantara (2013) conducted a study of the Ross River Dena Council and Liard First Nation (Kaska Nations) experiences with negotiating claims. He explained that Kaska leaders and elders rejected the claim because they did not agree with the provisions that were negotiated in the UFA, and they believed "that the UFA has failed to address the issues that are unique and are of utmost importance to them" (99). In addition, they did not agree with the amount of land quantum that had been negotiated and did not support the "permanent sharing or surrendering of any of their traditional lands" (98). On March 31, 2005 the Federal mandate to negotiate Yukon land claims expired and the Government of Canada decided not to renew its mandate. Today, Liard First Nation, Ross River Dena Council and White River First Nation remain divided on whether they should pursue formal land claims processes. The federal government stated it will not revisit the mandate to negotiate comprehensive land claims in Yukon to the same extent that it did in the past. However, all three of these First Nations groups are currently participating in Recognition of Rights discussion tables with the Crown to advance the recognition of Indigenous self-determination and protection of their rights.[10]

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[9] For a more detailed account of the Liard First Nation and Ross River Dena Council (Kaska Nations) experiences with negotiating their land claims, see Chris Alcantara's book *Negotiating the Deal: Comprehensive Land Claims Agreements in Canada* (2013).

[10] In 2018, the Government of Canada committed to renewing Crown-Indigenous relations based on recognition of rights, including inherent and treaty rights. As part of this renewed relationship, the Government of Canada is participating in 80 separate Recognition of Rights discussion tables with Indigenous groups representing over 390 communities across the country. Discussions can focus on a specific priority area or may cover a diversity of issues (Government of Canada 2020).

Yukon First Nations Final and Self-Government Agreements are seen as a model for Indigenous-government relations in Canada. However, there is still a long way to go to seeing these agreements implemented. "The First Principles Project: 40 @ -40°" document opens with stressing the importance of the UFA and the compact and contract that it formed for all Yukoners:

> [The Umbrella Final Agreement] was negotiated as a living document over many years by hundreds of Yukoners and Canadians. It sets out how a unique and dynamic partnership will work now and in the future between First Nation and non-First Nation Yukoners. It is a key part of the Yukon social contract. All Yukoners are affected by it and are partners in how it works—all Yukoners are treaty people (First Principles Project 2020, 2).

2.5 Conclusion

The negotiation and signing of the land claims agreements across the country, and in particular in Yukon, created transformational societal change. In Yukon, the land claims agreements were foundational to restructuring relationships between Indigenous and non-Indigenous Yukoners, and between Yukon First Nations and the Crown, even before agreements were concluded. During the negotiating period (1973-1993), Yukon experienced a fundamental transformation in cultural, social and political thinking and perspectives, as well as a revolution in the concepts and understanding of governance (Coates and Morrison 2005; Coates and Powell 1989; see also: Duffy 1988; Hamilton 1994). In addition, the signing of Self-Government Agreements brought the eleven Yukon First Nations signatories out from under the Indian Act, meaning the Indian Act, with few exceptions, no longer applied. But it was not just the act of signing the agreements but the process itself that had such significant power. The process that each of the Parties to the agreements and individual negotiators went through over a twenty-year period had remarkable impacts on the majority of Yukoners. The process of finalizing and legalizing the accords further expanded the transformation of social and political relationships. These agreements were not just agreed upon by senior officials and politicians; over twenty intense and impactful years, these negotiations, which often played out in public, engaged all Yukoners in a consideration of the First Nations-newcomer relationships. Furthermore, the

agreements were ratified and endorsed by the First Nations communities themselves, following months of intense discussions.

The negotiation and signing of these agreements, however, has proven to be only one half of making them a reality. Of equal importance is seeing them fully and properly operational. Implementation of the agreements involves ongoing commitment to fulfilling obligations "that require both the separate and joint participation of the parties" (Senate Standing Committee on Aboriginal Peoples 2008, 7). The federal government's 2003 Implementation Handbook stated that, "Implementation is not a passing phase, but rather an enduring one, marking a new relationship among the parties—the federal government, the Aboriginal group and the provincial or territorial government involved" (Indian and Northern Affairs Canada (INAC) 2003). Interestingly, these complex processes that have completely recast the political, legal, and economic structure of the Canadian North have made only a small dent on the scholarly literature.

3. LITERATURE REVIEW AND THEORETICAL FRAMEWORKS

Modern treaty-making emerged as a centrepiece of Indigenous policy in Canada and internationally, spurring greater academic interest in this important field. The collection of scholarly work that focuses on the modern treaty process in Canada is growing, although the scope of the existing work is still limited. Of the work that does exist, the predominant focus is on the negotiation of agreements and more specifically, on distinct elements of the agreements, such as co-management boards, land disputes and impact benefit agreements. The limited work centered around the implementation of modern treaties has mostly derived from the legal field, concentrating on the interpretation of the texts and the role of the courts. In addition to the body of scholarly work, there have been several practitioners and advocacy groups who have made important contributions to the literature on modern treaties (for example, see Land Claims Agreements Coalition 2008; 2006; 2004).

3.1 Assessing the Modern Treaty Negotiation Process in Canada

Modern treaties are negotiated and signed in unceded areas where treaties have not previously been settled. The establishment of modern treaties empowered Indigenous groups and had significant impact on Indigenous-government relations. The Indian and Northern Affairs Canada report, "Resolving Aboriginal Claims: A Practical Guide to Canadian Experiences" explained that the negotiation processes "are intended to fundamentally change the relationship between Aboriginal peoples, the province or territory in question, and Canada, a relationship that has been unsatisfactory for several hundreds of years" (2003, 35). Whether or not this relationship has in fact changed is debated amongst scholars, as is discussed in full below.

Julie Jai wrote about the significance of modern treaties in Canada (Jai 2014; 2009). Jai has held senior-level government positions in Indigenous law in Ontario, Yukon, and with the federal government. During her time with the Government of Yukon, she was involved in several successful land claims and self-government negotiations. Jai (2009) illustrated how the modern treaty negotiation process significantly differs from the historical treaty process. First, the negotiations expanded over a long period of time, lasting years, rather than months (28). She contended the lengthy process allowed the tripartite teams to build relationships and develop trust. Secondly, each of the parties in the negotiation had legal representation and professional

negotiation teams (28). In theory, this allowed each party to enter into the negotiations on more equal footing. In addition, the negotiations usually took place in the home community of the Indigenous group(s), which allowed the government negotiation teams to gain an understanding and appreciation of the Indigenous perspectives and environment (34). Jai explained that the new negotiation "process forced all parties to try and understand each other's different values, cultures, and worldviews, and to take them into account in developing solutions which work for all parties" (33). Jai asserted that modern treaties have empowered Indigenous groups and have played an important role in improving Indigenous-government relations by developing a negotiation process that is mutually beneficial to all those involved.

3.1.1 Why Governments Choose Negotiation

Jai (2009) explained that the decision to implement a negotiation policy is "important because the government consciously and explicitly commits itself to a future long-run strategy over a number of claims and across a number of groups" (35). Christa Scholtz (2006) conducted a comparative study to assess why governments choose to negotiate land claims rather than resolve claims through alternate means. In her book, *Negotiating Claims: The Emergence of Indigenous Land Claim Negotiation Policies in Australia, Canada, New Zealand, and the United States,* Scholtz asserted that the key decision by governments to implement negotiation policies requires them to "explicitly recognize the validity of indigenous collective claims to land as well as indigenous communities' equal standing as Parties to an agreement" (14). Through the use of four international case studies, Scholtz examined the policy options available to governments in each of these countries and the factors involved in whether they chose to implement a negotiation policy.

Of the four case studies Scholtz examined, Canada and New Zealand are the only two countries that have fully implemented negotiation policies nationwide. Scholtz explained that these policies are considered "institutionalized alternatives to litigation" (2006, 4). In New Zealand, governments view "judicial review as fundamentally undemocratic" and therefore "the legitimacy of non-judicial dispute resolution mechanisms is much higher" (Scholtz 2006, 7). Scholtz explained that Australia "represents a case of halted and gradual negotiation" (4). Although the Australian Commonwealth implemented a negotiation policy in 1976, it was exclusive to the Northern Territory in Australia. It was not until 1993 that a limited national negotiation policy was implemented; and only in the past twenty years have efforts been made to

negotiate agreements (5). The United States is the exception in Scholtz's study, as it is the only country that has chosen to rely on litigation and third-party arbitration to resolve claims. Scholtz contended that the reliance on the courts to resolve claims "served assimilationist principles" and is associated with the liberal principal that all citizens should be treated equally (6).

In her assessment, Scholtz determined that in all three of the countries where negotiation policies have been introduced, "indigenous people had mobilized politically before key judicial decisions examining the status of rights under the law were made" (Scholtz 2006, 5). In the United States, the judicial ruling on Indigenous rights took place before groups had a chance to politically mobilize (152). Other scholars have affirmed that one of the key contributing factors that led to the creation of a renewed negotiation policy in Canada was mobilization of Indigenous leaders and groups across the country (Miller 2009; Alcantara 2013; Nadasdy 2003; Coates 1993). Miller (2009) explained that the renewal of treaty-making in Canada revealed "better-organized, more articulate and considerably more aggressive Native-leadership" (278). Scholtz argues that the executive policymakers in Canada, Australia, and New Zealand chose to implement negotiation policies based on the "credible threat that aboriginal peoples could exact future political costs" (Scholtz 2006, 17). This credible threat decreased the utility of court decisions "since legal or arbitrated solutions would not fix the larger political problem" (17). Governments and policymakers in each of these countries wanted to find a solution that would give them certainty and finality.

3.1.2 Original Intent and Motive

In each of the negotiations, the tripartite teams entered into the agreements with different intentions and objectives (Jai 2014; Alcantara 2013; 2007a; Nadasdy 2003; Asch 2014). Chris Alcantara (2013) explained that from the perspective of public governments, modern treaties replace undefined Indigenous rights "with specific, defined treaty rights and title. For Indigenous peoples, by contrast, comprehensive claims agreements are mechanisms to affirm and protect their traditional holdings and territories" (3-4). Alcantara is a political scientist who contributed a pragmatic and realist perspective to the discussion of Indigenous land claims processes and Indigenous-government relations. He made several contributions to the scholarship on land claims negotiations (2013; 2009; 2007b; 2007a) and most recently to the scholarship on land claims implementation (2017). Alcantara demonstrated that each of the negotiating parties has a different stake in signing a modern treaty. The federal government sees the agreements as a way

of benefitting all Canadians, by increasing Indigenous capacity for governance and encouraging economic development (Alcantara 2013, 21; 2009, 332; see also: Papillon 2008; Slowey 2008). Murray Angus (1992) explained, "the government continues to hold the view that the claims are "once and for all" transactions, with fixed and preferably limited costs" (76). The provincial and territorial governments, on the other hand, tended to be more resistant to completing modern treaties because the agreements have a larger impact on their governments (Alcantara 2013, 19). Alcantara explained that the provincial and territorial governments also sought to obtain certainty and finality through these agreements and to "ensure that the treaties did not hinder its future ability to manage its lands and resources" (2013, 28). Indigenous interests are more overarching. Both governments see the benefits of modern treaties as providing control over their traditional lands and territories, providing means for economic development and a source of revenue. The agreements also facilitated the ability for Indigenous peoples to assert their self-determination and jurisdiction over areas such as education, environmental protection, heritage, and hunting, to name a few (Alcantara 2013, 24; 2007a).

In their book, *Getting to Yes: Negotiating Agreement without Giving In*, Fisher, Ury, and Patton (2011) provided a method for negotiating mutually beneficial agreements. Based on the work of the Harvard Negotiation Project, this interest-based method provides a step-by-step negotiation process that can be universally applied. Fisher, Ury, and Patton explained that the "basic problem in negotiation lies not in conflicting positions, but in the conflict between each side's needs, desires, concerns and fears" (Fisher, Ury, and Patton 2011, 42). Each of the negotiating parties enters into the negotiations with a similar position of wanting to complete a modern treaty; however, their desired outcomes and motivations for negotiating in the first instance, are often in conflict, which can hinder the negotiation and implementation process.

After the failed Yukon agreement in principle in 1984, the negotiating parties decided to adopt this interest-based approach to negotiation as opposed to the adversarial approach that was being used. This co-operative approach changed the motivating factor for each negotiator away from "how far can I push for what I want?" to "how can we solve the problem together?" (Council for Yukon First Nations, Department of Indian Affairs and Northern Development, and Yukon Territorial Government 1999). Many of the negotiators on the Yukon claim from all three levels of government have cited this approach as a contributing factor to successful negotiations and the signing of the Yukon land claims agreements.

3.1.3 Bargaining Situations

Land claims negotiations have often been compared to bargaining situations (Scholtz 2006; Coyle 2011; Alcantara 2013; 2007a). Alcantara (2013) explained that at the root of the negotiations are "bargaining situations in which Aboriginal and government participants negotiate to achieve their preferences" (139). Economist Abhinay Muthoo (2000) defined bargaining situations as "a situation in which two or more players have a common interest to co-operate, but have conflicting interests over exactly how to co-operate" (146). Different players will have different sources of bargaining power and different incentives for bargaining. Scholtz (2006) explained there are two possible outcomes of these bargaining situations:

> At best, land claim negotiations are bargaining sites where the state and an indigenous group enter into a good faith effort to address past wrongs and build an enduring basis for a beneficial future. At worst, they make a mockery of good relationship building, where one party is forced by a lack of bargaining strength to accept a bad deal that will taint future prospects for good relations (14).

Scholtz contended, governments that choose to implement a negotiation policy are making a conscious decision to "sit at the bargaining table with indigenous groups", rather than rely on alternative methods of resolution (15). This decision signifies an important shift in relations between Indigenous groups and public governments. As discussed above, this decision gives "indigenous communities' equal standing as Parties to an agreement" (14). What Scholtz did not discuss, however, is the relative bargaining power of each of the negotiating parties, and whether one side has the ability to influence the outcomes of the negotiation process.

Michael Coyle (2011) examined the effects of asymmetric power imbalances within the land claims negotiation process in New Zealand and Canada. Coyle explained that in determining whether or not to participate in negotiation, each party will gauge what alternatives are available to them. Indigenous groups stand to lose the most by not engaging in negotiations. For this reason, the federal governments in each of these countries will usually hold a stronger bargaining position. Coyle claimed, "where such power advantage exists, it will translate into a greater *capacity* on the part of the Crown to influence negotiation outcomes" (608).

Alcantara (2013; 2007a) examined the relationship between preferences, incentives, and relative bargaining power. He contended that although each of the negotiating sides has incentives to negotiate a deal, the public governments hold greater bargaining power than the Indigenous groups. He asserted, public governments "are subject to much stronger incentives to

delay negotiations as much as possible" (Alcantara 2013, 31). For example, if a government can benefit from economic development on Indigenous territory without signing a modern treaty, there is little incentive to negotiate (29). It is in the best interest of Indigenous groups to devise strategies to encourage the government parties to complete the negotiation process (21).

Indigenous groups can employ tactics to increase their bargaining power. Muthoo (2000) explained, "a player's bargaining power is greater the more patient she is relative to the other negotiator" (149). Although governments try to draw out the negotiation process, the Indigenous groups who have been successful in completing agreements have often had to be patient, determined and tenacious. Miller (2009) asserted, "modern treaty making since the *Calder* decision reveals that the game goes, not to the swift, but to the persistent" (280). Alcantara (2007a) pointed out that the existing scholarship on negotiation primarily focused on the role of the provincial, territorial, and federal governments. He argued we "need to pay more attention to the role of aboriginal agency in affecting the CLC [comprehensive land claims] negotiation outcomes" (204). This will be discussed in more detail in the following section.

3.1.4 Factors that Lead to Successful Completion of Treaties

Alcantara (2013; 2007a) provided assessments of why some groups successfully complete modern treaties, while others do not. He determined there are four key factors that contribute to whether an Indigenous group is likely to complete an agreement (Alcantara 2013, 121). The first factor is whether the Indigenous group has compatible goals with the governments with which they are negotiating. Compromises must be made to ensure that the major goal(s) of the negotiations are in line, while satisfying the concerns and interests of each negotiating party (Alcantara 2007a, 195). For example, Alcantara explained that Indigenous groups "must accept some version of the 'cede, release, and surrender' provision" (Alcantara 2013, 123). In one of the most detailed "insider" accounts of a land claims negotiation, *Without Surrender, Without Consent: A History of the Nisga'a Land Claims*, Daniel Raunet (1996) explained that despite the significant improvement in relations between Indigenous groups and public governments in Canada, "the wind of reform that was supposed to be blowing through the Indian Affairs department had failed to shake loose the old concept of surrender" (231). Alcantara (2013) explained that in all four of the cases he examined, the "key determinative factor was the willingness of the Aboriginal groups to move towards the Crown's position on certainty and finality" (123). As was discussed in Chapter 1, Indigenous groups fought hard against the

complete extinguishment of Indigenous rights within the land claims agreements. However, in the UFA and each of Yukon First Nation Final Agreements, there is still the inclusion of the Certainty "cede, release and surrender" clause.[11]

The second contributing factor is minimal confrontation tactics. Alcantara asserted that governments are more willing to work with Indigenous groups that "show commitment to negotiations" than those who are confrontational (Alcantara 2007a, 196; see also: 2013). Confrontational tactics are perceived as a deterrent, and governments tend to react negatively to them. This also relates to the third factor: government perception. Government's perception of Indigenous groups will determine whether they are willing to complete a treaty negotiation. Alcantara posited, "the task of Aboriginal leaders and negotiators, therefore, is to alter how government officials perceive their groups" (Alcantara 2013, 125). He explained that Indigenous groups need to demonstrate a level of acculturation, "financial accountability and capacity for negotiation and self-government" (Alcantara 2007a, 198). With their presentation of *Together Today for Our Children Tomorrow,* Yukon First Nations leaders demonstrated to Prime Minister Trudeau and Minister Chrétien that they had the capacity and motivation to complete a successful negotiation. These initial perceptions contributed to the federal government agreeing to begin negotiations on the Yukon claim.

The final factor that will determine whether an Indigenous group is successful at completing a modern treaty is group cohesion. In his findings about the Inuit in Labrador, Alcantara explained the "federal and provincial interviewees have identified the Inuit's clear and consistent leadership, strong capacity, and relatively few internal problems as key factors for their completed agreements" (Alcantara 2013, 63). In contrast, the Innu in Labrador were burdened by internal divisions and divisive leadership and were not able to complete a modern treaty (Alcantara 2013; 2007a).

The four factors that Alcantara attributed to the successful completion of negotiations focus primarily on actions and behaviours of the Indigenous groups. These findings provide an important piece that has often been overlooked in much of the existing literature. Nevertheless, it is imperative that the role played by federal and provincial/territorial governments be understood. To date, scholars have taken the behaviour of federal and provincial/territorial governments as a

[11] For the full certainty clause, see: Council for Yukon Indians. 1993. "2.5.1 Certainty" in *Umbrella Final Agreement*, p.15-17.

given but have underestimated the impacts that political and administrative people, structures, and processes have had on negotiations and collaborations. The behaviour of public governments is often taken for granted and is seen as a fixed element when, in fact, it is anything but static. It is critical to continue to evaluate the existing institutional frameworks that have created the unequal bargaining situation between Indigenous groups and public governments, and to determine how both groups can contribute to the successful negotiation and the often overlooked and ongoing processes of implementation of agreements.

3.1.5 Unintended Consequences

In his discussion of government perception of Indigenous groups, Alcantara stated that one of the types of perceptions that matter most to governments is acculturation. He stated, "the term refers to the level at which a group is familiar with Western institutions, processes, ideas, culture and languages" (Alcantara 2007a, 199; see also: Nadasdy 2003). According to Alcantara, a group's level of acculturation will determine whether a government is willing to negotiate (2007a, 200).

Paul Nadasdy (2003) referred to this emphasis on acculturation as the "bureaucratization of First Nation's societies" (2). Nadasdy is an anthropologist who wrote about the land claims process and Indigenous-government relations in Yukon (2017; 2012; 2003). He spent years living in the community of Burwash Landing, Yukon, where he observed and participated in the negotiation of the Kluane First Nation's land claim agreement. Nadasdy examined the challenges First Nations face during the negotiation of modern treaties, and the impact the negotiation process has had on their communities. Nadasdy (2003) contended that to participate in land claims negotiations, First Nations have had to learn to use bureaucratic language and discourse and have had to adopt "Euro-Canadian political institutions" (2). Acknowledging that modern treaties have empowered Indigenous peoples in many ways, Nadasdy (2012) argued that this empowerment has come at a cost. He stated,

> Northern First Nation people have had to restructure their societies in dramatic ways just to gain a seat at the negotiating table. To be heard at all, they have had to frame their arguments in a language intelligible to lawyers, politicians, and other agents of the Canadian state (500).

Nadasdy (2003) explained that the learning curve of having to develop this new bureaucratic discourse and behaviour have contributed to the First Nations' inferior bargaining position.

Further, "it also serves to undermine the very way of life they hope to preserve by participating in these processes" (261). Nadasdy argued that the unintended consequences of the negotiation process "will significantly alter how they [First Nations] relate to one another and the land, as indeed, it already has" (262). As Nadasdy and others recognized, negotiating land claims proved to be one major piece of the puzzle. Figuring out how to implement the agreements has been an equally difficult and complicated process.

3.2 Implementing Modern Treaties

Limited research has been conducted on the implementation of modern treaties. Until recently, the scholarly literature has mostly focused on co-management boards and impact benefit agreements (see: Caine and Krogman 2010; White 2009; 2008; 2002; Kulchyski and Bernauer 2014; Natcher et al. 2009), or on legal issues (see: Newman 2011; Jai 2014; 2009).[12] The grey literature includes reports from the Senate Standing Committee on Aboriginal Peoples (2008) and advocacy coalition groups such as the Land Claims Agreements Coalition (2008; 2006; 2004). Recognizing the limitations in the scope of the existing literature, this section will briefly assess the scholarly literature focused on modern treaty implementation.

The implementation process is a significant element in settling modern treaties. In their article, "After the Deal: Talk, Trust Building, and the Implementation of Negotiated Agreements", Mislin, Compagna and Bottom (2011) stressed the importance of the implementation process. They asserted, "the success of negotiated agreements depends on implementation and implications for future exchange between the parties" (55). The successful implementation of modern treaties strengthens the relationships that have been built between the Indigenous signatories and public governments and allows Indigenous groups to realize the objectives that brought them to the negotiations in the first place: increasing capacity for governance and ensuring protection of their culture, traditions, languages, lands and resources. Martin Papillon (2008) examined the impact of the James Bay and Northern Quebec Agreement

[12] In 2014, Dr. Stephanie Irlbacher-Fox and the Land Claims Agreement Coalition were awarded a six-year Social Sciences and Humanities Research Council Partnership Grant to conduct research on modern treaty implementation. "The Modern Treaty Implementation Research Project" is conducting research around five key themes: indigenous relationships to the land; intergovernmental relations and multilevel governance; treaty financing and fiscal relationships; implementation evaluation and socio-economic impacts; and Indigenous and settler legal systems.

(JBNQA) on the Cree Nation of Eeyou Istchee and the Inuit of Nunavik. He asserted, "treaties have re-emerged as an important means for Aboriginal peoples to assert their political agency, define their place in Canada and gain some control over their well-being" (6). He explained that although there have been many challenges throughout the implementation of the JBNQA, the agreement strengthened the political identities of the Crees and Inuit of Northern Quebec and increased their economic governance capacity. Jai (2009) contended, "the lengthy negotiation process, and subsequent implementation and co-management process, have improved relationships and mutual understanding between Aboriginal groups and non-Aboriginal peoples; yet the implementation process has not come without challenges" (55).

The implementation of treaties is at least as difficult a process as the negotiation of the treaties in the first instance (Miller 2009, 263; see also: Alcantara 2017; Eyford 2015; Jai 2009; Fenge 2008). Douglas Eyford (2015) explained, "the challenges of treaty implementation are compounded by the fact that there are unique provisions in each of the 26 modern treaties, establishing a range of obligations that must be fulfilled at different times and in different ways" (77). Some of the most insightful and critical reviews of treaty implementation that have emerged have come from non-academics. This material is examined at length in Chapter 5. The following section examines some of the key interpretation difficulties that have limited the full implementation of treaties, and have highlighted the role played by the courts.

3.2.1 Modern Treaty Interpretation and the Role of the Courts

Implementation strategies, such as the lack of a clear policy or structure, have created barriers, resulting in tensions between Indigenous signatories and public governments. In anticipation of such conflict, most modern treaties include a chapter that outlines dispute resolution processes, including mechanisms for arbitration and mediation (Senate Standing Committee on Aboriginal Peoples 2008, 17). Despite the inclusion of these mechanisms, the Senate Standing Committee found that there has been an almost universal refusal by the federal government to submit to these processes (2008, 17). By refusing to commit to participating in internal mechanisms for resolution, Indigenous groups are left without resolve or are forced to turn to the courts to intervene in the conflict (Alcantara 2017). Eyford observed that "despite the Court's preference that reconciliation be pursued through good faith negotiation, litigation continues to dominate Crown-Aboriginal relations" (2015, 29).

Julie Jai (2009) and Dwight Newman (2011) have contributed to the assessment of modern treaties by providing a legal perspective, focused on modern treaty interpretation. Both scholars provided an assessment of the different principles adopted by the courts for interpreting historic versus modern treaties. One of the key differences is that "the emphasis now is on the text rather than on any external promises that may have been given orally" (Newman 2011, 478; see also: Jai 2009). Dwight Newman is the Canada Research Chair in Indigenous Rights in Constitutional and International Law at the University of Saskatchewan. He examined the evolution of treaty interpretation principles from the historic to modern treaties (2011). Newman began his article by introducing two of the first complex modern treaty cases that ended up in the courts. The first case was *Quebec (Attorney General) v. Moses*, regarding interpretations of the James Bay and Northern Quebec Agreement. The second case was *Beckman v. Little Salmon/Carmacks First Nation*, which considered "whether an ongoing duty to consult applied to the Crown in the context of arguments that the 1997 Little Salmon/Carmacks First Nation Agreement excluded this requirement" (476). Newman explained that although the judgements of these cases differed, in both, the judges were significantly split in their verdicts (477). Despite this split, the judges on both sides adopted "a different attitude to and philosophy of Aboriginal treaty interpretation," placing strong emphasis on the interpretation of the texts of the treaties (477). This focus on textual interpretation was a marked feature of modern treaty interpretation that had not been seen in previous historic interpretations (Newman 2011, 478; see also: Jai 2009).

Another interpretation principle that is no longer relevant to the interpretation of modern treaties is the *Nowegijick* principle "that ambiguities should be resolved in favour of Aboriginal parties" (Jai 2009, 49–50; see also: Newman 2011, 480). Jai (2009) stated that not applying the principle of *Nowegijick,* "demonstrates the desire of all parties to ensure that the terms of the agreement will be interpreted in a normal contractual way without the court applying a special interpretive principle" (50). In her article, Jai discussed the applicability of contractual interpretation principles to modern treaties. She suggested that "textual, contextual and intentional approaches from contract interpretation can be applied to assist in interpreting modern treaties" (59).

Newman disagreed with Jai, arguing that modern treaties signed between Indigenous groups and the Crown should not be seen simply as contracts between two parties. Instead, he

argued, they should be seen as "covenants", explaining that a "covenantal conceptualization of treaties would essentially see them as agreements between political communities expressing the terms of the ongoing evolution of relationships between those communities" (Newman 2011, 486). Newman asserted the importance and unique nature of modern treaties must be seen as "distinct from that of a contract" (488). Modern treaties were intended to build and strengthen relations between Indigenous groups and public governments in Canada, with the long-term goal of reconciliation. In the Standing Senate Committee report on implementation, James Eetoolook, Acting President of Nunavut Tunngavik Incorporated also described the modern treaties as a covenantal relationship:

> [Our Agreement] was the beginning of a new relationship between us and the Government of Canada. This was not a cash-for-land transaction…When we signed, we saw it as a new covenant that would shape our place in Canada for generations to come (2008, 13).

Newman explained that if courts recognized modern treaties as covenants, rather than contracts, they might approach their judicial rulings with a focus on the long-term impacts and goals of reconciliation, rather than simply focusing on the "case before the court" (2011, 487).

In her article, Jai (2009) also outlined the role that courts should perform with regard to modern treaties. She argued that due to the unique and complex nature of modern treaties, courts should attempt to play a limited role, when possible. She contended courts "should exercise restraint in making changes to complex land claims and Self-Government Agreements when it is probably not possible for them to fully understand the context of the agreement" (64). Miller (2009) also warned against reliance on the courts to resolve implementation issues. He argued that there is a "disturbing trend in legal affairs towards increasing complexity, delay, and expense for those who resorted to the courts to deal with their concerns" (281). Eyford (2015) also discouraged the use of litigation, arguing that it is inefficient. He contended, "judicial proceedings are time-consuming and expensive and do not always provide certainty of result" (29). Jai added that the uncertainty of court rulings could have more far-reaching impacts by discouraging governments and Indigenous groups from negotiating agreements in the future (2009, 62).

3.3 Drawing on Theoretical and Conceptual Frameworks

The field of research focused on modern treaty implementation is relatively new, and there is limited relevant theory or theoretical debate that exists within the scholarly literature. However, theoretical and conceptual frameworks from the public policy and intergovernmental relations literature can help us to understand the competing intentions, motivations and interpretations that occur during the negotiation and implementation of modern treaties. Further, these theoretical constructs can help us to understand both the successes, and the barriers and challenges to modern treaty implementation and intergovernmental relations that have been discussed above and that will be examined in the upcoming chapters.

3.3.1 Policy Implementation Research

From the 1970s through to the early 1990s, extensive research was conducted on policy implementation, and many competing theoretical and conceptual frameworks for understanding implementation were developed. This body of scholarly work is often discussed as having three generations. The first generation of implementation research was mostly focused on examining implementation as "one *phase* of the larger policy cycle" (Lindquist and Wanna 2015) and usually concentrated singularly on senior politicians and officials. These studies focused on analyzing single cases and centred around the factors that contributed to policy failures (Barrett 2004). For example, Pressman and Wildavsky's (1973) seminal work, *How Great Expectations in Washington are Dashed in Oakland, or Why it's Amazing that Federal Programs Work at All*, is often recognized as being one of the earliest implementation studies in this first wave. In their book, the authors examined the problems with policy implementation by investigating the case of the Economic Development Administration's Oakland Project.

The second generation of implementation research was "more analytical and comparative in perspective" (Sabatier 1986, 21) and scholars were divided into two main schools of thought: top-down and bottom-up approaches. The top-down theorists continued the work of the first generation by examining how policy decisions at the top were achieved and put into action (Sabatier 1986, 22). These scholars sought to understand why the outcomes of a policy were so different from what was intended during the policy design (Lindquist and Wanna 2015, 212). The main focus was on central authorities and "to better coordinate implementation activities within and across governments" (212). Van Meter and Van Horn are amongst the leading scholars within this school and developed one of the first theoretical frameworks for analyzing

policy implementation (see: Van Meter and Van Horn 1975). The intent of their framework was to explain why there were inconsistencies between policy goals and the real outcomes once a policy was implemented (Menzel 1987, 5). They were concerned that these inconsistencies resulted in "differences between policy promise and performance", which could ultimately lead to policy failure (Menzel 1987, 5). Van Meter and Van Horn (1975) argued, "the ability to implement policies may be hindered by such factors as overworked and poorly trained staffs, insufficient information and financial resources, or impossible time constraints" (480).

Much of the emphasis of the top-down approach centred around rational models under the assumption "that the process of implementation will flow on in a fairly linear fashion" (Schofield 2001, 251). This group of scholars also saw implementation as separate and distinct from policy development. Sabatier and Mazmanian (1980) are central to this approach and argued that policy developers and authorities have the ability to constrain and shape the behaviours of street-level bureaucrats to ensure the intended goals of the policy are met (Sabatier 1986).

Scholars who advocated for the bottom-up approach, also sought to explain why policy outcomes deviated from policy intentions; however, the focus here was studying behaviours of the people on the ground: the "street-level" bureaucrats and organizations, as opposed to the central government. Schofield (2001) argued the bottom-up approach "seeks to describe networks of implementation and in so doing has made an important *methodological* contribution to implementation analysis" (251). Benny Hjern is a leading scholar in this field and along with his colleagues, David Porter and Ken Hanf, developed a detailed methodological approach to studying policy implementation (see: Hjern, Hanf, and Porter 1978). Sabatier (1986) wrote a critical analysis of the top-down and bottom-up approaches. He explained that Hjern et al.'s work "starts by identifying the network of actors involved in service delivery in one or more local areas and asks them about their goals, strategies, activities, and contacts" (Sabatier 1986, 32). They then use these contacts to identify the actors involved at different levels and in different stages of implementation. This approach "provides a mechanism for moving from street-level bureaucrats (the 'bottom') up to the "top" policy-makers in both the public and private sectors" (Sabatier 1986, 32). Hjern et al. concluded that implementation success was a result of the work of implementers at the bottom, as opposed to those in the central government (Sabatier 1986, 32).

The third generation of implementation researchers focused their work on integrative frameworks that combined the top-down and bottom-up approaches. These scholars argued that policy design and implementation should be analyzed through a wider context by understanding "its broader political history and environment, its complexity, and the organizational and broader environment" (Lindquist and Wanna 2015, 216). Elmore (1985) was one of the first scholars to combine the two approaches. He developed an approach that combined some of his earlier bottom-up work called, "backward mapping", with a top-down approach called, "forward mapping" (Matland 1995, 151). The main idea here is that policy makers consider the different policy instruments available to them and lay out clear "criteria by which to judge policy at each stage" (forward mapping) (Matland 1995, 148). In addition, it is critical to examine the behaviours at the ground-level where implementation is taking place (backward mapping).

Sabatier (1986) also moved away from his earlier focus on top-down approaches towards an integrative framework in the mid-1980s. He developed a conceptual framework to conduct analysis of policy change over a longer period of time (Sabatier 1986, 38). Sabatier argued that this shift to examining policy over ten or more years allowed scholars to examine policy change and policy learning, as opposed to just implementation (Sabatier 1986; Matland 1995).

With the rise of New Public Management (NPM) in the 1990s, public policy research shifted away from a focus on implementation (Barrett 2004; Schofield 2001). Barrett (2004) explained, "there was a belief that the 'reforms' in the public service associated with the New Public Management had addressed the key problems of 'implementation failure' which included a lack of clear unambiguous policy objectives, resource availability and control over implementing agencies" (258). Much of the research focused on policy design and evaluation and "less attention to how policy is put into effect" (Schofield 2001, 245).

Since the 1990s, the development of new policy implementation research and theories has been seen to be minimal and predominantly focused on incremental changes to existing theories and frameworks (see: O'Toole 2000; Barrett 2004). On the other hand, some scholars contend that implementation research is occurring "at the margin of the traditional field of study" and in subfields such as institutional analysis and governance (O'Toole 2000).

3.3.2 A Framework for Understanding Modern Treaty Implementation

Most recently, Alcantara (2017) contributed to the field of implementation research by developing "an analytical framework for studying the politics of intergovernmental relations in

the implementation of modern treaties in Canada" (329). This is one of the first studies to combine modern treaty research with implementation theory. Alcantara proposed that the dynamics at the core of modern treaty implementation can be understood by examining two characteristics: 1) actor congruence/incongruence, which "refers to the extent to which the federal, provincial/territorial, and Indigenous government signatories *agree or disagree on the goals and means of a particular treaty provision*" (332); and 2) the coherence/incoherence of treaty provisions, which "refers to the extent to which the *relevant treaty provision is clear or ambiguous in terms of its goals and means*" (332). These characteristics "interact with each other to produce four different types or styles of treaty implementation: 1) administrative implementation; 2) experimental implementation and policy learning; 3) compromised implementation, and; 4) no action or zero-sum implementation" (333). Alcantara explained that these different styles can be analyzed to determine the amount of conflict that could occur between the different Parties to the agreement, what the possible outcome could be, and what factors would contribute to successful implementation (333).

Alcantara (2017) tested this framework and typology by applying it to an analysis of modern treaty implementation in Nunatsiavut and the Inuvialuit Settlement Region. Although this framework has not been empirically tested and applied beyond Alcantara's article, it makes an important contribution to the field of policy implementation and the dynamics of intergovernmental modern treaty relations.

3.4 Conclusion

The existing literature on Indigenous governance and policy does not focus substantially on what is happening on the ground in Indigenous communities, within Indigenous governments, and between Indigenous peoples and regional/national governments. Public administration and policy differ considerably within these communities and ever more substantially between Indigenous and public governments. Most scholarship in the field, as is standard in political science and public administration, focuses on the search for identifiable patterns and discernable structures. Much less attention is paid to the role of key individuals, the nuances of regional politics, and the intricate relationships between treaty makers and implementation teams. That so many of the negotiators, on all sides, became lifelong friends reveals much about the treaty-making process; that there is considerable social distance between federal, territorial and First

Nation implementation team members says a great deal about the inherent tensions and lingering problems with ensuring that the treaties become operational. Further, within the theoretical and methodological schools of thought in political science and public administration, there are culturally bound elements that reflect the values and systems of the nation as a whole, but do not necessarily reflect Indigenous values and ways of knowing and doing. Western scholarship, therefore, has key elements, like the negotiation and implementation processes, that reveal how participants and observers can often work at cross-purposes.

The assumption in the literature is that governments involved in implementation do so from a homogenous starting point and/or on the basis of common cultural assumptions. This is a flaw. In all negotiating environments, context and the characteristics of the partners matters. In the case of Indigenous affairs, there is little understanding of the historical and cultural context that is critical to understanding modern treaty implementation.

4. RESEARCH METHODOLOGY AND DESIGN

A significant gap in understanding the complexity and importance of modern treaty implementation in Canada currently exists; both from public policy and intergovernmental relations perspectives. The purpose of this study was to answer two main questions:

1. How have the partners in the negotiation of a modern treaty managed the transition from negotiation to implementation?
2. What does this transition reveal about the modern treaty process in Canada?

Drawing on the land claims experiences of three Yukon First Nations, this study set out to answer these questions by examining the experience of negotiation and implementation of modern treaties in Yukon between 1986 and 2016.

Though this research was not explicitly developed using an Indigenous research paradigm, some key principles and common themes that emerged from Indigenous research literatures were influential in shaping how I approached and developed the framework. In particular, I was guided by the research protocols and ethical standards that are rooted within Indigenous research (Kovach 2009; Tuhiwai Smith 1999; Wilson 2008). Margaret Kovach is a leading First Nation scholar on Indigenous research methods and methodologies. She contended,

> With respect to research conducted in an Indigenous community, there are specific ethical guidelines that include, but are not limited to, a mutually respectful research relationship; that the research benefit the community; that appropriate permission and informed consent is sought; that the research is non-exploitive and non-extractive; and that there is respect for community ethics and protocol (Kovach 2010, 46).

Indigenous and northern communities have experienced a long and ongoing history of extractive research practices that consistently allowed researchers to reap the benefits of the research to the exclusion of the communities. Tosh Southwick is a Kluane First Nation citizen and Yukon First Nations leader and wrote about her own experience of research in Yukon: “I grew up in the North, a place that has for a long time, seen southern institutions and researchers arrive in our communities, conduct research and then leave, never to be seen again” (Southwick and Silas 2018, 35). In conducting this study, I wanted to ensure that I took a different approach by keeping the individuals and communities I was working with at the centre of the research and committing to sharing the results of my work. This meant ensuring that I identified a research topic that would be

beneficial to Yukon; that I took the time to develop relationships and to build trust with the communities and individuals that I would be working with; and ensuring that I was constantly reflective and reflexive throughout the research process. Charmaz (2017) contends that as researchers, we need to look inwards more and to develop a reflexivity that forces us to examine our own privilege and positions of power. She argues, "Methodological self-consciousness requires scrutinizing our positions, privileges, and priorities and assessing how they affect our steps during the research process and our relationships with research participants" (35). Being reflexive required me to be cognizant of how my own values, position, and ways of knowing had potential to create biases and to inadvertently impact the research that was being conducted. It also required me to be aware of my own assumptions throughout the research process. The next section begins by locating myself within this research and identifying my own positionality. This is followed by an overview of the aim and scope of the research, and finally a thorough discussion of the research approach and methods.

4.1 Self-location and Positionality

One of the first things that I learned about conducting community research is the importance of positioning and locating yourself within the research and being able to identify the privilege that can come with this positionality (Snelgrove, Dhamoon, and Corntassel 2014). Absolon and Willett (2020) contend, "location of self in writing and research is integral to issues of accountability and the location from which we study, write and participate in knowledge creation" (5). I am a daughter, sister, wife, mother and teacher, and of importance to this study, I am also a student and researcher. I was born and raised in Amiskwacîwâskahikan (Edmonton), Alberta on Treaty 6 territory and the homeland of the Métis, and settlement to many other Indigenous peoples who have come to this land, continue to and will in the future. On my mother's side, I am sixth generation Canadian and my ancestors came from Ireland, Scotland and England. My late father was first generation Canadian and was adopted to a Polish family. We have traced his birth family to eastern European roots but beyond that I do not know where my paternal ancestors came from. Since 2010, I have been living on the traditional territory of the Kwanlin Dün First Nation and the Ta'an Kwäch'än Council in Whitehorse, Yukon, with a three-year period where I travelled between Treaty 6 Territory (Saskatoon) and Whitehorse when I was going to school.

When I began my PhD in 2014, I knew that I wanted to focus my research on the North, and in particular in Yukon, the place that I had called home for several years. I wanted to be able to build on existing networks and to foster new relationships that I could continue working with into the future. For this dissertation research, I was a visitor to the traditional territories of Champagne and Aishihik First Nations, Tr'ondëk Hwëch'in, and Vuntut Gwitchin Government in Yukon.[13] I recognized that as a student, researcher and visitor, I was an outsider to these communities, which created both advantages and disadvantages. I had to ensure that I took the time to demonstrate my intentions, to prove that I could be trusted, to learn how I could develop reciprocity through my research, and to maintain continuous accountability and communication with those who chose to participate in this study. This was not always an easy exercise, and I often felt myself forced into uncomfortable situations that required me to reflect on my own positions of power and privilege. I am grateful for the mentorship I received from Tosh Southwick early on in my graduate studies. She taught me how to approach building respectful relationships with First Nations communities in Yukon and how to work with communities in meaningful ways. She taught me the utmost importance of learning to actively listen, and to acknowledge that sometimes, a visit with a participant might only involve sitting and having a cup of tea. That first cup of tea, however, would be integral to developing mutual respect, to demonstrating that I was well intentioned with my approach to this research, and what my intentions were.

When I travelled to Old Crow for the first time in June 2016, I had set up an interview with a highly regarded knowledge holder, Stanley Njootli Sr. Stanley, who self-identifies as an "old guy", is a former Vuntut Gwitchin Deputy Chief and was involved from the early days of land claims as a Councillor and community negotiator (IT2, Njootli Sr. 2020). I was incredibly nervous and at first, he was quite skeptical of meeting with me. The first time we met, we sat on the bank of the Porcupine River and ate bananas while he asked me a series of questions that made me feel like I was under interrogation. It was not until I returned to my room that evening, that I realized that he was rightfully trying to figure out who I was, what I was doing, and why he should share his knowledge and experiences with me. He would later explain that he was tired of meeting with so many researchers (IT2, Njootli Sr. 2020). I was relieved when he contacted me the next day and agreed to a second meeting. The second time we met, we sat and had tea, but I was still not allowed

[13] For an indication of where these First Nations are located, see Figure 1.1: Map of Yukon First Nations Traditional Territories on p.3.

to ask any specific questions related to my research. A day before I was scheduled to fly out of Old Crow, he agreed to a third meeting, at which point we sat for nearly two hours and engaged in an insightful conversation that led to rich contributions to this study. A week later, when I was spending time in Dawson City conducting research, I ran into Stanley, and we ended up spending an afternoon together walking, having a meal, and sharing stories. This experience taught me so much about the value of respecting the time it takes to establish mutual trust and to build relationships and how critical this is to sustaining long-term research relationships and partnerships; a lesson I will carry with me throughout my life and career.

4.2 Aim and scope of the study

During the initial development stage of this research topic, I knew that I wanted to study intergovernmental relations and the experience of modern treaty making in Yukon. I also wanted to ensure that I identified research needs and gaps that would be beneficial to Yukon First Nations and policy and decision makers across all levels of government. Of the twenty-six land claims agreements that have been completed in Canada, eleven are signed with Yukon First Nations. From the presentation to Prime Minister Trudeau of *Together Today for Our Children Tomorrow* in 1973 to the signing of the first four Yukon First Nations Final and Self-Government Agreements in 1993—these being the first Self-Government Agreements to be signed in Canada—Yukon First Nations have been leaders in modern treaty making. Yukon First Nations' experiences with modern treaties produced a broad spectrum of successes and challenges during the transition from negotiation to implementation.

In Fall 2015, I reached out to all eleven Yukon First Nations who have signed Final and Self-Government Agreements, to begin to identify areas of research that would support policy and governance work being done in the territory, and to gage interest in being part of this research. In October 2015, I travelled from Saskatoon to Whitehorse, Yukon to meet with senior administrators and implementation staff from five Yukon First Nations governments, as well as individuals who had been involved in the original negotiation of modern treaties from the federal and territorial governments. These engagements were critical for narrowing down the focus of this research to examining modern treaty implementation issues and identifying those interested in participating in the project. In December 2015, I also travelled to Ottawa to attend the Land Claims Agreements Coalition conference, "Making Treaties Work for Future Generations: Implementation Research

Planning Conference". This conference reaffirmed for me the need for modern treaty implementation research. I was also able to meet with Indigenous community members and scholars working in this field. Through these preliminary discussions in Yukon and Ottawa, it was acknowledged that despite the many successes of modern treaty implementation, significant barriers and challenges have led to a perception that modern treaty implementation failed. All levels of government questioned why this was occurring. From here, I was able to determine the focus of this research and the main research questions I was seeking to answer.

With the research focus identified, the next step was to narrow down the scale and scope of the research. I determined that the scope of the project would examine the experience of implementing the Umbrella Final Agreement (UFA) and two to three individual Yukon First Nations' Final Agreements. In early 2016, further preliminary work was done to confirm the specific First Nations who would be involved in the project, which included an additional trip back to Yukon to gain permission and consent from the three Yukon First Nations governments who had expressed interest in being involved: Champagne and Aishihik First Nations, Tr'ondëk Hwëch'in, and Vuntut Gwitchin Government. This work included completing a traditional knowledge research application for Tr'ondëk Hwëch'in and traveling to Dawson City to present to the Tr'ondëk Hwëch'in Elder's Council; completing a research ethics application for Vuntut Gwitchin Government and acquiring written consent from its Chief and Council; and traveling to Haines Junction to present to Champagne and Aishihik First Nations' Chief and Council to obtain permission and consent to conduct this research. Once consent was granted from all three of these First Nations governments, I set out to obtain a Yukon Scientists and Explorers' License, and to complete the University of Saskatchewan behavioural research ethics approval process; the final steps required to begin the research.

4.3 Research Approach

To gain an understanding of some of the key successes, barriers and challenges to intergovernmental treaty relations and land claims implementation, this qualitative research study was designed to draw on firsthand experiences of modern treaty negotiation and implementation in Yukon. This study explored the process and experience of implementing three different modern treaties in Yukon over a thirty-year period (1986-2016). This particular time period allowed me to examine the evolution of modern treaty implementation from the early experience of mandating

implementation to implementation planning and negotiations, and finally to the direct experience of implementing the agreements and putting them into action.

After lengthy conversations during the preliminary fieldwork, I recognized that I could not conduct a comparative examination of experiences with treaty implementation in Yukon, nor could I assume that there had been a single common experience. Each Yukon First Nation had unique experiences with the negotiation and implementation of its Final and Self-Government Agreements. This is due to its individual experiences with negotiations, the cultural and linguistic diversity of each of these groups, as well as its geographical location, structural capacity, and economic circumstances. The period in which an agreement was negotiated also influenced the implementation process and outcomes. A useful study of the experience of implementing modern treaties, therefore, had to consider more than one experience. However, rather than conduct a direct case comparison, I chose to conduct a thematic comparison (i.e., showing how different First Nations and their government partners responded to specific implementation challenges). Through my preliminary discussions with key respondents from all three levels of government, I identified four themes that were used to frame the initial set of interviews: (1) the pre- and post-effective date implementation processes; (2) capacity building for implementation at all three levels of government; (3) interpretation difficulties; and (4) impact of divergent motivations and expectations of negotiation and signing a modern treaty. In addition, through the data analysis, I decided I would look for common themes and shared experiences to draw conclusions that could be applied more broadly to modern treaty processes in the future. The following section provides a brief introduction to the three Yukon First Nations whose experiences with implementation were examined for this research.

4.3.1 Examining the Experience of Three Yukon First Nations

Yukon is a vast and diverse landscape located in the northwest corner of Canada, bordering British Columbia, Northwest Territories and Alaska. People have resided in Yukon for over 30,000 years and during that time the environment, landscape and people have changed drastically (McClellan 1987, 17). Before 1839, all of the Yukon population was First Nations, with the exception of a number of Inuvialuit living along the Arctic coast (McClellan 1987, 40). The population shifted significantly in the past 150 years. The 2016 Census population in Yukon was 35,874 people with 25% identifying as Aboriginal (First Nation, Métis and Inuk) (Statistics Canada 2016).

All Yukon First Nations follow matrilineal patterns, meaning lineage is passed down through the mother. In Yukon there are eight First Nations language groups including, Gwich'in, Hän, Upper Tanana, Northern Tutchone, Southern Tutchone, Tagish, Kaska and Tłingit (Castillo, Schreyer, and Southwick 2020). The first seven of these languages belong to the Athapaskan family. All three Yukon First Nations who were part for this research are Athapaskan-speaking peoples. Of the 14 Yukon First Nations, 11 have completed Final and Self-Government Agreements. These agreements outline the settlement land and traditional territories of Yukon First Nations, which can be seen in the map in Figure 4.1 and in Figure 1.1 on page 3.

Figure 4.1 Yukon Indigenous Languages

(Image Source: Castillo et al. 2020, 48. Modified by Lovell Johns from Yukon Government Map 2017.)

The *Shadhäla yè Äshèyi Kwädän* (Champagne and Aishihik First Nations) are Southern Tutchone-speaking Nations located in Yukon and northwest British Columbia. The government website explains, "the Champagne and Aishihik people and government are named after two historic settlements: *Shadhäla* (Champagne), located on the Dezadeash River; and *Äshèyi* (Aishihik), at the headwaters of the Alsek River drainage"(Champagne and Aishihik First Nations n.d.). One of the largest Yukon First Nations, Champagne and Aishihik First Nations has over 1200 citizens (Champagne and Aishihik First Nations 2020, 15). All Champagne and Aishihik First Nations peoples "are members of either Ägunda (Wolf) or Käjet (Crow), following the matrilineal system where clan[14] affiliation is inherited from one's mother" (Champagne and Aishihik First Nations 2007, 8). Historically, Champagne and Aishihik First Nations peoples had close relationships with the coastal Tłingit and therefore, many Champagne and Aishihik First Nations citizens identify as both Southern Tutchone and Tłingit (Champagne and Aishihik First Nations 2007, 8). Champagne and Aishihik First Nations also has close ties with its neighbouring First Nations, Kluane First Nation and Ta'an Kwäch'än Council.[15]

Many Champagne and Aishihik First Nations citizens played important leadership roles through the land claims process in Yukon, including the late Chief Elijah Smith who led Yukon First Nations Chiefs to Ottawa to present *Together Today for Our Children Tomorrow*, and Dave Joe, former chief negotiator and lawyer for the UFA and many of the Yukon First Nations agreements. Speaking to the significance of Dave Joe's role in the Yukon land claims, Stanley Njootli Sr. asserted, "these land claims agreements would not have happened without Dave Joe. No Dave Joe, no land claims agreement. That's a fact" (IT2, Stanley Jr. Sr. 2020). Champagne and Aishihik First Nations was one of the first four Yukon First Nations to negotiate and sign its agreements in 1993; though its land claims negotiations concerning its British Columbia territory are still ongoing. Through its Final Agreement, Champagne and Aishihik First Nations settled 1230.24 km^2 of Category A land and 1165.49 km^2 of Category B land (Yukon Bureau of Statistics 2006a).

[14] In the Yukon, what Anthropologists would typically call a moiety has been termed clan by some Yukon First Nations.

[15] For a more detailed account of Champagne and Aishihik First Nations history and traditional lands, Champagne and Aishihik First Nations' (2007) *Dän Kéyi Kwändür (Stories from our country)*, provides a detailed overview and captures a number of oral stories told by Champagne and Aishihik First Nations Elders.

The Van Tat Gwich'in (Vuntut Gwitchin First Nation)[16] was also one of the first four Yukon First Nations to negotiate and sign its Final and Self-Government Agreements in 1993. The Van Tat Gwich'in peoples are one of nineteen communities spread throughout northern Alaska, Yukon and Northwest Territories that make up the Gwich'in Nation. In 1950, the Van Tat Gwich'in peoples moved to Old Crow, situated along the banks of the Porcupine River. Old Crow is the most northern community in Yukon and is only accessible by air or boat. Van Tat Gwich'in has maintained much of its traditional way of living and the "isolation means residents rely on subsistence harvesting for a significant portion of their diet" (Vuntut Gwitchin First Nation 2009, 1). In particular, they greatly rely on the Porcupine Caribou herd.[17] As of August 2020, there were 585 registered Vuntut Gwitchin members, with 261 members residing in Old Crow (Statistics Canada 2020). The negotiators of the Vuntut Gwitchin agreement pride themselves on the fact that all of their negotiated settlement land parcels are Category A land, meaning they have access to both the surface and subsurface, including mines and minerals (IT1, Linklater June 2016; IT3, Josie June 2016). This grants them much greater control over, and protection of their lands. This is the only agreement in Yukon that was successful in doing this. All the other Yukon First Nations' settlement lands are divided up between Category A and Category B lands. Through the terms of the agreement, Vuntut Gwitchin Government settled 7,744.06 km^2 of Category A land (Indian Affairs and Northern Development 1993c).

Of all the Yukon First Nations, Tr'ondëk Hwëch'in has been the most impacted by the arrival of newcomers in Yukon, dating back to the 1880s goldrush. The Tr'ondëk Hwëch'in are Hän-speaking peoples and their approximate 1,100 citizens descend from a mix of families from Gwich'in, Northern Tutchone and other language group speakers (Tr'ondëk Hwëch'in, n.d.). Tr'ondëk Hwëch'in Elder Gerald Isaac (February 1999) explains the roots of the Tr'ondëk Hwëch'in name:

> The name *Tr'ondëk Hwëch'in* tells the story of our ancestral occupation of the ancient site located at the mouth of the present day Klondike River. *Tr'o* means hammer rock used to drive the salmon weir stakes into the mouth of the river, *ndëk*

[16] Vuntut Gwitchin is the legal spelling from the land claim agreement and uses the older Archdeacon Macdonald orthography. The modern Gwich'in orthography uses the spelling Van Tat Gwich'in. Vuntut Gwitchin Government is used when referring to the administrative body.
[17] Vuntut Gwitchin Government has made a concerted effort to document their history by gathering and translating oral stories told by Vuntut Gwitchin Elders. These oral accounts can be found in Vuntut Gwitchin First Nation and Shirleen Smith's (2010) *Peoples of the Lakes*.

> is the "river" part and *Hwëch'in* means "the people." Liberally translated, it means: "the people who lived at the mouth of the Klondike" (Dobrowolsky 2014).

The Hän-speaking peoples' traditional territory is found in Alaska and Yukon. The Tr'ondëk Hwëch'in originally lived at the heart of their traditional territory in a village called, Tr'ochëck, located at the mouth of the Klondike River in Yukon (Dobrowolsky 2014, xii). With the discovery of gold in 1896, and the onslaught of gold seekers arriving in the area, the Tr'ondëk Hwëch'in were displaced from Tr'ochëck and forced to relocate to another traditional site called Moosehide, located 5 km down the Yukon River. At the height of the Klondike Gold Rush, there were 30,000 people living in the Dawson area. It was not until the 1950s that the majority of Tr'ondëk Hwëch'in citizens began to relocate to Dawson City (Dobrowolsky 2014, xiii). Due to the detrimental impacts of the goldrush and residential school, the Tr'ondëk Hwëch'in faced significant loss of language, culture and traditions.

In part due to Hän elders who "preserved their language and culture through oral tradition", the resilience of their people, and the signing of the Final and Self-Government Agreements, Tr'ondëk Hwëch'in saw a resurgence of its language and culture in the past two decades.[18] Tr'ondëk Hwëch'in began negotiating its agreement in 1991 and signed the Final and Self-Government Agreements in 1998. Through the Tr'ondëk Hwëch'in Final Agreement, Forty Mile and Tr'ochëck were both designated as heritage sites, and the Tombstones Territorial Park—another area of significance for Tr'ondëk Hwëch'in —was identified as a Special Management Area (Yukon Bureau of Statistics 2006b). Through the terms of the Final Agreement, Tr'ondëk Hwëch'in was allotted 1,553.99 km^2 of Category A land and 1,036 km^2 of Category B land.

The Umbrella Final Agreement (UFA) is the framework document that Yukon First Nations negotiated to be used as the structure for finalizing their individual First Nation Final Agreements. Each Yukon First Nation negotiated separate Final and Self-Government Agreements, which were also accompanied by a Final Agreement implementation plan, and a Self-Government Agreement implementation plan. The Final Agreement includes all the provisions from the UFA in addition to specific provisions that are unique to that First Nation. Though the UFA itself is not legally binding, each Yukon First Nation Final Agreement is both legally binding and constitutionally protected under section 35 of the Constitution Act, 1982.

[18] For more on the history of the Tr'ondëk Hwëch'in and the preservation of their language and songs, see: Dobrowski, Helene. 2014. *Hammerstones: A History of the Tr'ondëk Hwëch'in*.

The Self-Government Agreements outline the provisions that grant the First Nations self-governing and law-making powers and authorities. They also allow First Nations to come out from under the Indian Act, meaning that with few exceptions, the Indian Act no longer applies. Yukon Self-Government Agreements allow the First Nations "to decide who is a citizen of their Yukon First Nation, pass their own laws, and to design and provide services and programs for their citizens" (Castillo, Schreyer, and Southwick 2020, 110). Unlike the Final Agreements, the Self-Government Agreements are not constitutionally protected. While this research study is only focused on the experience of implementing Final Agreements, both the Final and Self-Government Agreements are very closely connected.

4.4 Research Methods

I wanted to select methods that would allow for a research process that was iterative, adaptive, and responsive. Though I was not intending to put forward a new theory through the outcomes of this research, I chose to use a constructivist grounded theory approach as my main method for the processes through which data collection and analysis were conducted. Constructivist grounded theory (CGT) is derived from grounded theory methodology, which is "characterized by an ongoing systematic process of collecting, coding, analysing and theoretically categorising data using the information that emerges from the data itself, rather than forcing preconceived ideas onto the coding and subsequent analysis" (Lauridsen and Higginbottom 2014, 2). After the initial round of data collection and coding, additional data is collected and compared with the emerging categories. This process continues until saturation is met.

Grounded theory, which can be used as both a research methodology and method, was originated in the seminal work of Barney Glaser and Anselm Strauss (2009) that examined the treatment of dying patients in hospitals and clinics (Lauridsen and Higginbottom 2014, 1). In the 1990s, grounded theory schools of thought were further developed by Glaser (the Glaserian grounded theory) and by Strauss and Corbin (the Strausssian grounded theory). A second generation of grounded theory scholars have developed new schools of thought, such as constructivist grounded theory (see: Charmaz 2017; 2006; 2001) and situational analysis (see: Clarke, Friese, and Washburn 2018).

Constructivist grounded theory, which is largely attributed to the work of Kathy Charmaz beginning in the mid-1990s, challenged the original tenets of grounded theory that assert that

research should be generalizable, that there is only one external reality, and that researchers are objective bystanders "with little influence on the data and analytic process" (Lauridsen and Higginbottom 2014, 3). Charmaz asserts, "The constructivist version [of grounded theory] fosters asking probing questions about the data and scrutinizing the researcher and the research process. Unlike other versions of grounded theory, the constructivist version also locates the research process and product in historical, social, and situational conditions" (Charmaz 2017, 34). Much like the discussion at the start of this chapter, constructivist grounded theory emphasizes the importance of ongoing reflexivity throughout the research process and locating how our positionality as researchers can impact the research process, in particular how we gather and interpret the data (Charmaz 2017; 2006).

Thematic analysis was used as a tool to support the constructivist grounded theory. Chapman, Hadfield and Chapman (2015) drew connections between the use of grounded theory and thematic analysis, arguing that grounded theory "provides a structured and systemic process of analysis that allows themes to emerge from the data" (201). Within thematic analysis, there are two primary ways that themes can be identified from a dataset: "in an inductive or 'bottom up' way" or in a "deductive or 'top down' way" (Braun and Clarke 2006, 83). Paralleling grounded theory, the inductive approach allows themes to be identified directly from the data and not from preconceived ideas of what the data will reveal. Braun and Clarke (2006) contended, "Inductive analysis is therefore a process of coding the data *without* trying to fit it into a pre-existing coding frame, or the researcher's analytic preconceptions" (83). Through preliminary discussions with implementation staff and leadership from Yukon First Nations governments and key stakeholders from the federal and territorial government, initial themes were identified that were used to develop the primary semi-structured interview guides. As interviews were conducted and data analysis commenced, further themes were identified. Findings and themes that emerged from the interview data were then used to inform the proceeding set of interviews. The new raw data gathered from the interviews was then coded again and compared and contrasted against new and existing themes (Chapman, Hadfield, and Chapman 2015, 203).

Charmaz (2006) contends, "grounded theory methods can complement other approaches to qualitative data analysis, rather than stand in opposition to them" (9). To support the constructivist grounded theory method and to address the preliminary research themes, qualitative data was gathered through a semi-structured interview method and analyzed using a document analysis

method. Interviews, whether structured or semi-structured, are one of the most commonly used qualitative research methods. Structured interviews abide by a set of predefined questions and do not allow the researcher to divert away from these. Semi-structured interviews, on the other hand, allow for more flexibility. General topics and themes are determined in advance and are used to facilitate and guide the discussion without restricting the researcher and participant from opening the dialogue to new ideas. Semi-structured interviews add a reflexive component to research by giving participants a chance to provide insight into their own lived experiences (Whiting 2008; Rapley 2004).

To gain first-hand insight into the divergent perspectives and experiences of the different Parties to the agreements, semi-structured interviews were conducted with 43 individual participants. Several participants conducted additional follow-up interviews. The 25 participants representing the Council for Yukon First Nations, Champagne and Aishihik First Nations, Tr'ondëk Hwëch'in and Vuntut Gwitchin Government included past and present Yukon First Nations Chiefs, administrators, negotiators, economic development and implementation staff, as well as Elders and key community stakeholders. The nine participants representing the Government of Yukon included former negotiators, senior officials and political leaders, and former and current implementation staff. The nine participants representing the Government of Canada included former and current negotiators and lawyers, implementation staff, senior officials, and additional key stakeholders. Whenever possible, interviews were conducted face-to-face in Whitehorse, Old Crow, Dawson City and Haines Junction. Due to some participants residing outside of the territory, the timing and availability of some participants, and with travel restrictions due to the Covid-19 pandemic, several interviews were conducted over the telephone or through video conference. A complete list of interviewees, as well as the participant consent form and semi-structured interview guides can be found in Appendix (X).

Due to the limited documentation of the experience of implementing land claims in Canada, the interviewees themselves were the subject matter experts. The ability to gather stories and narratives that people shared about their own experiences provided an invaluable insight into their lived history and experiences. This provided a greater understanding of the direct and indirect impacts and effects of land claims implementation.

When I was first conducting the preliminary research for this study, I was asked by several participants to focus my research on the experience of implementing "Chapter 22: Economic

Development Measures". I decided that this would be the narrow scope through which I conducted my thematic analysis. However, after the first set of interviews that I conducted, I very quickly realized that generally, participants were not interested in speaking to the experiences of implementing this chapter. Rather, they wanted to speak to the overarching experience with implementation and intergovernmental relations. I was grateful that I had chosen to use a constructive grounded theory approach for my data gathering and analysis because this allowed me to be responsive to this sudden shift in focus. I had initially developed an interview guide that I had framed around the comparative themes of the research, with a particular focus on the experience of implementing Chapter 22. After the first set of interviews and coding were completed, I modified the questions and prompts to allow me to dig deeper into the themes that were beginning to emerge from the initial coding. After three rounds of interviews, I continued this process of data gathering, coding and analysis while I began writing. This allowed me to further identify research gaps and to conduct a few key additional interviews.

Document analysis, which entails studying and evaluating printed and electronic texts, was an important part of this study. Bowen (2009) explains that "document analysis requires that data be examined and interpreted in order to elicit meaning, gain understanding, and develop empirical knowledge" (27). Documents can either be primary, secondary, or tertiary. Document analysis is often used in combination with other methodologies, such as interviews, to strengthen or validate the research findings (Bowen 2009; Yin 1994). Throughout the research process, I collected and analyzed archival documents and secondary sources from the Yukon archives, libraries, and from personal collections of research participants. These included implementation plans and reviews; negotiation and implementation policies, guidelines, and handbooks; annual reports; primary documents such as draft agreements, negotiation documents, correspondence, and meeting notes. In addition, personal communications, grey literature, and audit reports were examined.

Similar to the data gathered from the interviews, these documents, reports, and materials were coded and analyzed using the initial set of comparative themes as a framework. One of the important aspects of grounded theory and constructivist grounded theory, as well as thematic analysis is the coding process. Charmaz (2006) explains, "through coding, you define what is happening in the data and begin to grapple with what it means" (46). My initial coding and analysis of the documents and materials gathered assisted me with framing the questions I wanted to ask to interviewees and to identify gaps in my understanding and interpretation of the experiences of

implementation. Once I completed the initial coding of the interview data, I was then able to identify additional documents and materials that I needed to analyze for comparative themes and findings. These materials assisted in providing additional information on the historical, political, and social context of this period and important insight into how implementation processes, policies and structures have evolved. For example, when analyzing the implementation plans, reviews, guidelines, and handbooks the texts of these documents were compared with the firsthand experiences of the interviewees. This allowed me to better understand what was occurring in practice and how implementation policy, processes, and structures both interconnect and disconnect.

4.5 s

The size and scale of the Yukon situation in no way eliminated the complexity of modern treaty making in Yukon. The Yukon complexities included the number of First Nations taking part in negotiations, the changing role of the Yukon government, changing political environments, and the complexity of the legal and political processes involved in the negotiation and implementation of modern treaties. A multi-layered approach was needed for both the research methodology and design of this study to be able to understand the complex nature of this topic.

This research design was both explanatory, descriptive, and exploratory. It set out to explain the cause-and-effect relationships that resulted in barriers and challenges to modern treaty implementation. In addition, the study attempted "to present a complete description of a phenomenon within its context" (Hancock and Algozzine 2006, 33) by describing in depth the evolution of treaty implementation policies, processes and structures across the different levels of government within the context of Yukon. This study can inform future land claims implementation planning pre- and post-effective date, Indigenous-government relations in modern treaty environments, and implementation processes more broadly.

5. PROCESS AND STRUCTURE OF MODERN TREATY IMPLEMENTATION

Treaty implementation began without rules, manuals or significant precedent and continues to evolve as experience is gained and lessons are learned. All major agreements—the North American Free Trade Agreement and successors, union-institutional agreements, international treaties, and armistices—have implementation, oversight, and renewal procedures. Yet the significance of treaty implementation is often overlooked and not seen as important as the negotiation of the agreements (IT28, Armour 2019; IT24, Constable 2016; IT18, Crutchlow 2016; IT7, Gerberding 2016; IT6, First Nation government employee, 2016; IT5, a Tr'ondëk Hwëch'in citizen 2016; IT1, Linklater 2016). The success of any agreement unquestionably rests on the quality and comprehensiveness of treaty implementation, but surprisingly, this vital aspect of the process is often ignored. Even in an area as important as modern governance of Canada-Indigenous treaties, this stage of policymaking attracted comparatively little attention. Thus, to appreciate Yukon's experience of modern treaty implementation from 1986 to 2016, one must first understand what treaty implementation is and what implementation planning entails.

In the years following the signing of the Umbrella Final Agreement (UFA) and the first four Yukon First Nations Final and Self-Government Agreements in 1993, all participants realized that negotiation was only stage one of a complex process. When negotiation was done, the real work was just beginning. To demonstrate how implementation planning processes, structures and policies have evolved over time and have often been overlooked, this chapter provides a structural and process overview of modern treaty implementation in Canada. An assessment of the effectiveness and implications of these processes and structures was conducted by examining what occurred on the ground in Yukon, and broadly speaking, in Ottawa. Although this analysis reveals that all participants—from the First Nations, the Government of Canada and the Government of Yukon— had faith in tri-partite negotiations to handle any problems that emerged, it also indicates that they lacked foresight and understanding of key concepts and terms. These gaps in understanding came to light during collaborations in the early years, with the parties quickly agreeing on a second-stage process, eventually exceeding the treaty negotiations in time, cost and complexity. As implementation planning and negotiation processes were taking place parallel to many other complex processes, interviewees found it difficult to speak to the implementation planning process itself. A few key interviewees, including Tim

Gerberding, former chief negotiator and implementation director for Tr'ondëk Hwëch'in, featured predominantly in these discussions.[19]

5.1 The Early Days of Modern Treaty Implementation Planning

In the early days of modern treaty negotiations, very little forethought went into what would be required to put land claims agreements into action once they had been signed. Implementation planning was not initially part of the negotiation process. For the first three modern treaties signed in Canada, the Parties to the agreements were certainly anticipating considerable post-signing work, but nothing was laid out in detail by way of an implementation plan. Importantly, the parties never agreed to the different roles, responsibilities and obligations for implementation once the agreements had been signed, nor were there any timelines attached (Government of Canada 1986, sec.11.108). As Barrie Robb, former Director of Claims Implementation Planning for the federal government, explained:

> When it came to making these agreements work on the ground, or to implementing them, the clarity wasn't there. It might have been there in the eyes of the negotiators or the drafters of the agreements but when those agreements were handed off to the others, things were less clear (IT19, Robb 2016).

Once the agreements came into effect, this lack of clarity created many barriers and challenges, including several court cases (Indian and Northern Affairs Canada 1989; Miller 2009). Tim Koepke, former Chief Federal Negotiator for Yukon claims asserted that "the Government of Canada learned the hard way by not requiring implementation plans in advance of completion of the agreements for the Cree Naskapi, James Bay Northern Quebec and the Inuvialuit. They're still fighting over implementation of the Inuvialuit Final Agreement" (IT16, Koepke 2016). The same holds for the James Bay agreement, currently the focus of a multi-billion-dollar court case.

To a certain degree, Yukon built on a very thin layer of earlier agreements that had been signed in Canada. The first two land claims agreements in Canada to be negotiated and signed were the James Bay and Northern Quebec Agreement (JBNQA) in 1975 and the Northeastern Quebec Agreement (the Cree Neskapi (NEQA)) in 1978. Neither of these agreements included formalized processes for negotiating and planning for implementation. Immediately after the JBNQA and the NEQA were signed, it became apparent that the roles and responsibilities for the

[19] Restrictions on access to government documents made it difficult to include and assess the detail of the experiences of the territorial government.

parties involved in implementation were not clear. Major problems arose. Reflecting on the implementation challenges facing the JBNQA, Billy Diamond (1986), Chief of the Waskaganish, Quebec Cree, who played an instrumental role in negotiating the agreement noted, "What the Crees and Inuit have learned over the last 11 years is that negotiation of a claim settlement is only half the battle and implementation is the other half" (as cited in Miller 2009, 281).

Right from the beginning of putting the early land claims into action, oversight processes in Canada flagged major problems with the treaty implementation process. The Auditor General's report to the House of Commons in 1986 identified the consequences of the federal government's failure to meet its obligations in implementing the JBNQA. The report reads, "The lack of specificity, the failure to dedicate resources to the obligations, and the fact that obligations were not always assigned to a specific department through an approved implementation plan have caused serious problems in implementing parts of the agreement" (Government of Canada 1986, sec. 11.108). The Auditor General recommended that all future land claims agreements be accompanied by a formal implementation plan (sec. 11.109). That same year, the new federal government claims policy added a mandatory element of implementation: all land claim agreements negotiated after 1986 had to include separate implementation plans (Indian Affairs and Northern Development Canada 1986, 25). After these recommendations were put forward, the federal Cabinet also agreed to a process for fulfilling the Crown's obligations under the JBNQA and the NEQA. In 1990, the JBNQA and the NEQA Implementation Agreements were signed, clarifying the roles and responsibilities for implementation, and outlining processes for monitoring and reporting.

Despite the signing of these implementation agreements, 10 years after the the JBNQA, lessons still had not been learned about the negotiation and implementation process for modern treaties. The third treaty to be signed was the Inuvialuit Final Agreement (IFA) in 1984, and, once again, this agreement included no formal implementation planning. In 1986, the Minister of INAC signed a separate Implementation Agreement with the Inuvialuit, leading to the creation of the Implementation Coordinating Committee. This committee met many times between 1986-1988 and then ceased to meet until 1999, when it was re-established (Government of Canada 2007). Although the implementation agreement was signed in 1986, the IFA faced many implementation challenges. In 2007, the Auditor General of Canada reviewed the federal government's role in meeting its obligations under the IFA, finding that "INAC had neither

formally identified which obligations were Canada's responsibility nor which federal organizations were responsible for their implementation" (Government of Canada 2007, 23). In addition, despite committing to an internal implementation plan, INAC had not developed an approach to this plan (Government of Canada 2007, 23) nor had it taken any measures to monitor any headway in executing the Agreement's principles (3). Ideally, internal implementation plans, as well as mechanisms for monitoring and evaluating progress, would have been part of the implementation planning process at the outset; however, because implementation plans were not required in the land claims package, these evaluations and processes were not built into the treaty-making system.

For those involved in land claims negotiations across the country in the late 1980s, implementation planning was uncharted territory (IT16, Koepke 2016; IT28, Armour 2019). Involved from the early days of land claims, former Vuntut Gwitchin Deputy Chief Stanley Njootli Sr. put it like this: "we were breaking the ground in Yukon. There is no other agreement like we have in our Self-Government Agreement and especially in our Final Agreement" (IT2, Njootli 2016). Although the 1986 *Comprehensive Land Claims Policy* outlined the requirement for implementation plans, it provided very little information on what these entailed and what the overarching goals and objectives of implementation planning were meant to be. The following was the only mention of implementation in the new federal policy:

> Final Agreements must be accompanied by implementation plans. All elements of agreements related to land, title, quantum of resources (where applicable) and financial arrangements will be final. Provisions related to management and decision-making agencies will be subject to review from time to time, as agreed, and subject to legislative amendment where the parties agree that specific provisions are unworkable, obsolete or no longer desirable. The negotiation process will take account of the federal regulatory reform policy and the Citizen's Code of regulatory fairness, and the Final Agreements and implementation plans will provide for regulatory impact assessments (Indian Affairs and Northern Development Canada 1986, 25).

As Koepke explained, "We had to design a lot as we went because this was the first time that this amount of detail was required as part of a settlement" (IT16, Koepke 2016).

As time passed, the Government of Canada soon realized that it needed to develop a more formalized structure for federal implementers to follow. In 1989, INAC developed a set of guidelines to support the new requirement for implementation planning. These guidelines were developed internally within government, drawing on lessons learned from the experience of

implementing the IFA as well as from piloting the development of a sub-agreement on the implementation of the Dene/Métis Agreement in Principle (Indian and Northern Affairs Canada 1989, 1). INAC supplemented the documentary evidence from these two experiences with information and analysis gathered from 45 interviews with officials from federal and territorial government departments and agencies, as well as 18 interviews with senior federal officials (Indian and Northern Affairs Canada 1989, 1). The 1989 guidelines and supporting documentation reveal no mention of consulting with or drawing on the direct implementation experience of Indigenous negotiators or signatories. Once again, the process was dictated by the federal government without consulting Indigenous groups or eliciting their input. The power to decide what the implementation planning process was going to look like was directly in the federal government's hands. Implementation quickly became yet another bureaucratic process that Indigenous groups had to learn, alongside everything else that they had before them. Talking about the challenges of learning these processes and structures, Gerberding asserted, "You've got to be able to operate successfully within that culture, and it takes training and experience" (IT7, Gerberding 2016). This steep learning curve for the Indigenous groups at the table placed further power in the hands of the federal and territorial governments, who were accustomed to the culture and imperatives of the bureaucratic systems.

As this was a brand-new process for everyone at all levels of government, the 1989 guidelines were intended to inform the other negotiating parties—territorial/provincial governments and Indigenous groups—of the implementation planning process and its overall goals and objectives (Indian and Northern Affairs Canada 1989, sec. 6.2). Catherine Constable began working as the Director of Land Claims and Implementation for the Government of Yukon in 1992 and remained in this role until 2009. Speaking to the approach to implementation negotiations in the early years, she explained that "following the tabling of the federal financial offer in November 1992, the direction for the implementation negotiations was the agreements [themselves] and the federal policy" (IT24, Constable 2016). The federal government expected that the Indigenous groups and provincial/territorial governments involved in land claims would follow these guidelines and policy closely.

An examination of the multiple roles, levels of decision making, and detailed consultations required within the federal government illustrates the complexity and time-consuming nature of this new implementation planning process. The guidelines began by

outlining, in a detailed table, the alignment of implementation planning roles and responsibilities across the federal government for three stages of the land claims process: the Agreement in Principle (AIP) stage, the Final Agreement stage and the operations stage post-effective date (Indian and Northern Affairs Canada 1989, 4). The alignment table (see Appendix C) identified four key departments and teams that were integral to the implementation planning process: the Claims Negotiating Team; the Program Development and Implementation Directorate; the DIAND regional offices; and the Policy and Legislation Directorates. The Program Development and Implementation Directorate were instrumental in developing the implementation sub-agreements and plans and acted as a liaison between the other negotiating parties, DIAND and other federal government departments (3). The Directorate also worked closely with the main table negotiating team. For claims negotiated in the Territories, the regional offices, located in Whitehorse and Yellowknife, advised on the organization and implementation of claims provisions, so they could align with other departmental activities (4). The regional offices were central to understanding the politics, relationships and Indigenous contexts that were unique to Yukon. These were less understood by the federal bureaucrats and politicians working in Ottawa.

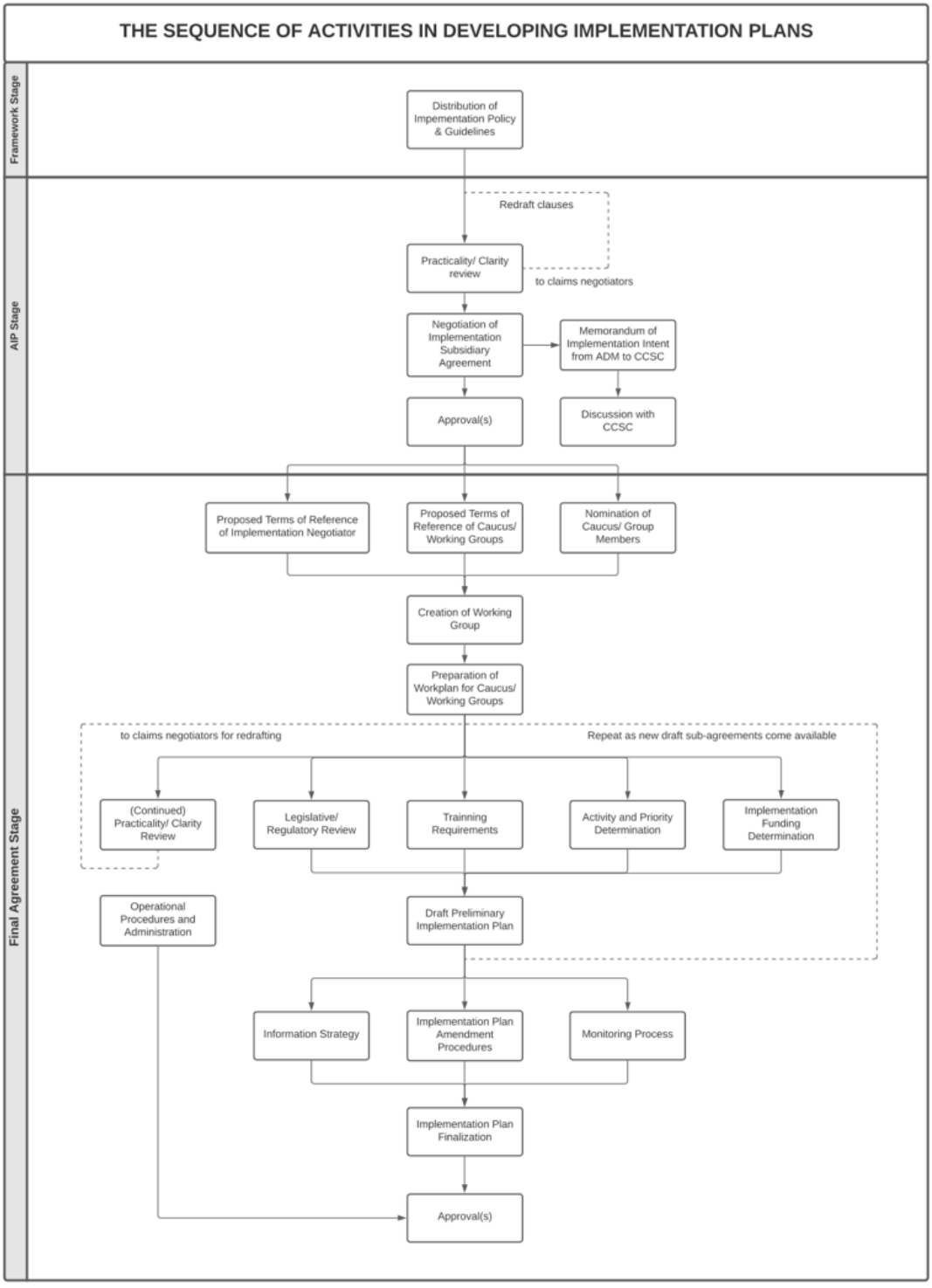
This new implementation planning process, of course, was not taking place within a vacuum. Other processes and negotiations were taking place concurrently. When the AIP for the Yukon claim was signed in 1989, a new set of negotiations were initiated to develop the UFA implementation plan. Once it was determined that individual Final Agreements would be negotiated in addition to the UFA, the components required for the implementation package became much more complex. The UFA negotiations were immediately followed by the negotiation of individual Final Agreements with four Yukon First Nations (Champagne and Aishihik First Nations, First Nation of Na-Cho Nyäk Dun, Teslin Tlingit Council and Vuntut Gwitchin First Nation). In addition, individual Self-Government Agreements (SGAs) were being negotiated for these four First Nations, representing another new process in Canada. Each of these separate agreements—the Final Agreements and the Self-Government Agreements—had to be accompanied by separate implementation plans. The SGAs also had to be accompanied by financial transfer agreements and the first program and service transfer agreements (IT7, Gerberding 2016; IT12, Joe 2017; IT28, Armour 2019). Many of these negotiations involved different teams, processes and structures and were taking place after 17 years had already been spent negotiating the Yukon claim. Describing Tr'ondëk Hwëch'in's (TH) experience—whose

agreement was not signed until 1998, five years after the UFA and the first four Yukon First Nations agreements—Gerberding explained:

> It took TH seven years of intensive negotiations to negotiate the Final and Self-Government Agreements, and that had been preceded by a lot of agreement in principles. Way back in 1973, Percy Henry was one of the Chiefs that went to Ottawa with *Together Today*, and so, the people had been at this for literally 25 years when the TH Final Agreement was finally signed. Going through that process, symbolically blood was let… So, you go through all of that, and the First Nation was literally exhausted when the negotiators memorandum was eventually signed. But then, hold on, you're not finished yet because there are several more important documents that still had to be negotiated (IT7, Gerberding 2016).

The sequence of activities required to develop implementation plans injected new teams and new bureaucratic structures into an already complex process for land claims negotiations. Karyn Armour was the former Chief Negotiator and Assistant Deputy Minister for Yukon Government from 2001 to 2014. She spoke about the rigidity and complexity of this evolving process: "Canada was always trying to fit our claim into specific boxes…They had such a rigid mandating system within the federal government" (IT28, Armour 2019). This is demonstrated by the complex and formalized structure laid out in Figure 5.1.

Figure 5.1 The Sequence of Activities in Developing Implementation Plans



(Source: modified from Canada 1989, 30)

The federal and provincial/territorial implementation planners and negotiators often had little prior knowledge and understanding of land claims and Indigenous issues and were entering into a process that had already been going on for several years. Involved from the Agreement in Principle stage onwards, the implementation teams had two main responsibilities: preparing for bilateral and/or trilateral implementation sub-agreements and advising claims negotiators on the feasibility and clarity of clauses for implementation that were contained within the Agreement in Principle (Indian and Northern Affairs Canada 1989, 5). The process evolved over time, as participants on all sides learned about each other and the process. Lesley McCullough (2017) who was legal counsel for the Government of Yukon on several Final and Self-Government Agreements and Director of Policy for the Land Claims Secretariat and Deputy Minister of Justice described what implementation looked like in the early days:

> Implementation was definitely being anticipated but it was not a fully integrated process at all… We did discuss with line departments as we went along [about] the practicality of the provisions that were being presented to us and that we wanted to present (IT25, McCullough 2017).

Implementation sub-agreements committed the negotiating parties to develop an implementation plan and were used to identify the agreed-upon processes that would be used during implementation negotiations (Indian and Northern Affairs Canada 1989, 19). Sub-agreements, which had to be approved by the negotiating parties, formed part of the Agreement in Principle (Indian and Northern Affairs Canada 1989, guideline 4.1.5).

Developed between the Agreement in Principle stage and the signing of the Final Agreement, implementation plans became the guiding template and structure for putting the modern treaties into action. During this stage, work continued on advising claims negotiators on the feasibility and clarity of clauses for implementation. Dave Joe, former chief negotiator and lawyer for the UFA and many of the Yukon First Nations agreements, explained, “We had another technical team that worked on the [implementation] plans. So, while we were engaged in the Final Agreements and the Self-Government Agreements, we also had a technical team of negotiators who were doing the actual plans” (IT12, Joe 2017). When asked how closely the main table negotiators worked with the implementation team, he responded, “They worked very closely with us…We needed the plans for the First Nations to ratify the Final Agreements and because the plans would inform the amount of money that would be paid for the boards and so on” (IT12, Joe 2017). Clarity around the costing of the different components of the Final

Agreements was of utmost importance in the implementation plans because the financial aspects of the plan were the contractually binding pieces that would ultimately result in a transfer of funds to the First Nations (IT12, Joe 2017).

Throughout the process of negotiating the implementation plans, the federal and territorial governments conducted internal consultations with government departments that might be impacted by implementation of the agreements (Indian and Northern Affairs Canada 1989, 10; IT19, Robb 2016; IT24, Constable 2016; IT28, Armour 2019). Robb explained that all affected federal government departments had to be consulted and had to "agree on what was recommended in what is called an MC—Memorandum to Cabinet" (IT19, Robb 2016). To be at all meaningful, however, consultation with federal departments required civil servants to have some understanding of both Yukon context and the complexities of the agreement. It was here that federal efforts slowed to a crawl. Although efforts had to be made to consult the departments, there was not enough time to clearly educate and explain the Government of Canada's obligations to departments nor to explain how it was going to implement its responsibilities. As Wayne Crutchlow, former federal implementation negotiator for the Yukon land claims, explained,

> We sought their consensus but in terms of sitting down with them and saying, "Well, do you understand this? Do you understand that? Could you please tell us what you're going to do to invoke this provision? How many people will be involved? What are your costs? How many years will it take you, etc.?" That type of discussion that would require some form of in-depth analysis and a work plan budget, that was never done because the departments didn't have the resources in most cases (IT18, Crutchlow 2016).

This was an early, but in no way singular example, of where the carefully constructed flow diagrams and formal processes suffered from a severe absence of clear and precise information.

Yukon First Nations had no capacity to conduct comparable consultations, one of the many asymmetries between the federal, territorial and First Nations governments. Internally within the First Nations and CYFN, there was limited capacity to consult. When asked what was taking place for Tr'ondëk Hwëch'in, Gerberding explained, "We had very limited technical capacity or expertise at the time" to consult internally (IT7, Gerberding 2020). As the negotiator recalled, the main structure of the band government at the time included the Chief and Council, a small division for health and social programs, and a community education liaison (IT7, Gerberding 2020). The small land claims department that was set up in the early 1990s included

a band resource officer and the land claims coordinator (IT7, Gerberding 2020). This one First Nation, with limited support from the Council of Yukon First Nations, was matched against the literally hundreds of federal employees and dozens of territorial officials operating in complex administrative units.

As part of the negotiation and development of the implementation plans, each party nominated a representative to participate in an implementation planning working group (IPWG), which became the main negotiating table for the implementation plans and the pre-effective date planning. For the UFA and the first four Yukon First Nations Final Agreements, the First Nations decided to negotiate their IPWGs collectively, with one representative negotiating for them at the table. However, there was a caucus of First Nations representatives that the negotiator consulted with. For the subsequent Final Agreements, each First Nation was represented by their own negotiator at the implementation negotiation tables (IT24, Constable 2016).

In the UFA and each Yukon First Nation Final Agreement, "Chapter 28: Implementation and Training for Settlement Implementation" indicated that the federal and Yukon governments were each allowed to nominate one representative to the IPWG; Yukon First Nations were allowed to nominate two (Indian Affairs and Northern Development 1993b, 287). For the individual Yukon First Nation Final Agreement implementation plans, only one of the First Nation representatives could overlap with the UFA IPWG (DIAND 1993b, 287). This posed a constraint on the First Nations, as organizational human resource capacity was often limited. In each First Nation, the government competed with the school, health unit, business operations, federal and territorial governments, and the private sector for motivated and talented people. While the land claims unit could offer employees a chance to work at the centre of the nation-building process, it also offered long hours, an overwhelming amount of work and less impressive pay and benefits than its federal and territorial counterparts. Outside of the IPWG, additional technical expertise could also be sought throughout the process, although, as already mentioned for the First Nations, access and time to seek out technical expertise was limited (IT7, Gerberding 2019). In addition to the IPWG, a separate working group, made up of representatives from the main negotiation table, was established to deliberate on detailed implementation matters and liaise with the IPWGs (Indian and Northern Affairs Canada 1989, 26).

Once the UFA and the first four agreements were signed, the Parties to the agreements saw value in continuing to maintain a working group that would monitor and assess the implementation of the agreements. In 1994, an informal Implementation Working Group (IWG) was formed with representatives from CYFN, each Yukon First Nation that had signed an agreement, the Government of Yukon and the Government of Canada. Constable explained the importance of the IWG this way:

> There definitely needed to be an ongoing joint-party process and implementation committee because so much of the success of implementation was going to rest on relationships and the relationships needed to transition out of the negotiating phase into an implementation phase. If you didn't have a venue to talk to one another, how were you ever going to do that? (IT24, Constable 2016)

Although it has never had a formal mandate and, until 2015, had no terms of reference to guide its roles and responsibilities, the IWG had varying degrees of influence and success over the years. In some of the more recent modern treaties signed across Canada, the requirement for implementation committees is written directly into the agreement, with specific details outlining their responsibilities. However, this requirement was not included in the Yukon agreements. For many years, the purpose and responsibilities of the IWG were vague, and limited its ability to generate much authority. With the new terms of reference in place, many hoped that the IWG would have the status to more effectively drive implementation outcomes.

Appended to each of the Final Agreements, the implementation plan was not considered to be an integral part of the agreement and therefore was not constitutionally protected (Indian and Northern Affairs Canada 1989, guideline 4.1.7). The plans were meant to be specific, time-limited and detailed, yet flexible and not too prescriptive, allowing for, as the 1989 INAC Guidelines set out, amendments at three-year intervals: "Final implementation plans are not 'set in stone' but, on the other hand, should be rigid enough to hold various parties accountable" (Indian and Northern Affairs Canada 1989, 18). Intended to outline all of the commitments identified in a Final Agreement, the implementation plans established the obligations, institutional responsibilities, timelines, and the funding required to implement the agreement (Indian and Northern Affairs Canada 1989, guidelines 3.1).

Yukon First Nations Final Agreement implementation plans all began with a few key provisions: interpretation of the plan; legal status of the plan; contents of the plan; implementation funding; implementation plan monitoring; implementation plan review; and

details on how to make amendments to the plan. Each implementation plan included specific provisions identified under implementation funding, which were the only elements that were contractually binding (DIAND 1993d, sec. 8). The remainder of the implementation plan, containing five Annexes (Activity Plans/Sheets; Commissions, Councils and Committees; Information Strategy; Economic Planning; and Coordination of Final and Self-Government Agreement Implementation) added up to about 400 pages of material, which was not contractually binding (DIAND 1993d).

The bulk of the implementation plan was contained within Annex A: Activity Plans (or Activity Sheets), which described the implementation of selected provisions for each Final Agreement (DIAND 1993a, 13). Covering extensive detail from the Final Agreements, these check-box task sheets identified the following details for each activity: a specific project, the responsible party (or parties) for that project, the relevant participant/liaison, obligations being addressed, Final Agreement clauses referenced and/or a cross-reference, and finally, inclusion of a table breaking down specific activities, responsibilities and respective timelines. A sample activity sheet can be found in Appendix D.

Interviewees from each level of government—Yukon First Nation, Federal and Yukon—acknowledged the ineffectiveness of this "check-box" approach to implementation (IT17, former federal government employee 2016; IT18, Crutchlow 2016; IT7, Gerberding 2016; IT9, First Nation government employee 2017; IT24, Constable 2016; IT28, Armour 2019). Crutchlow maintained:

> These task sheets often didn't really say much of substance. They often repeated what was in the Final Agreements and broke it down or parsed it out into: the First Nation will do this, Canada will do that, Yukon will do this. But they didn't add any detail (IT18, Crutchlow 2016).

As Karyn Armour asserted, the focus was much more on, "check, we've done that" rather than focusing on "how have we done that?" (IT28, Armour 2019). A Yukon First Nation government representative concurred:

> Canada has an implementation plan where they have a box that you, tick, tick, tick, 'okay, that's done'. In my experience, I thought that implementation was more about the spirit and intent of the agreements, and the agreements based on *Together Today for Our Children Tomorrow*… The other governments, they just want to check off the boxes, say it has been implemented, and move on to the next thing (IT9, First Nation government employee 2017).

Despite these concerns about the value of the "checkbox approach" several interviewees acknowledged the importance of the activity sheets for conducting implementation reviews. These reviews will be discussed later in this chapter.

Major challenges affected the early implementation planning process, including the time constraints and pressures to complete agreements, and securing funding for implementation. Implementation planning was driven by a collective determination to complete the plans quickly. Many interviewees reflected on the low priority given to implementation planning, with efforts focused on completing the main table negotiations (IT18, Crutchlow 2016; IT19, Robb 2016; IT24, Constable 2016; IT28, Armour 2019; IT5, a Tr'ondëk Hwëch'in citizen 2016; IT7, Gerberding 2016; IT6, First Nation government employee 2016). Crutchlow argued, "There was no priority [given to implementation]. The only focus that we had, and I believe the focus of the government at the same time, was to develop a plan that the three parties could sign off on in order to meet our commitment" (IT18, Crutchlow 2016). He further contended that the negotiators of the implementation plans were constrained by what they were allowed to include in the plans (IT18, Crutchlow 2016). Robb suggested one reason for limiting the scope of the plans was to avoid being too prescriptive:

> We were in the era where Indian Affairs and the Government of Canada didn't really want to be prescriptive Indian agents anymore for communities. Probably as much as the communities didn't want to have somebody telling them from Indian Affairs what to do and when to do it (IT19, Robb 2016).

Both the Yukon government and the federal government were negotiating implementation plans looking five years ahead (IT8, Crutchlow 2016). As Crutchlow contended, the focus of the implementation plans was not on "forecasting or foreseeing some of the issues down the road" (IT18, Crutchlow 2016). Many things were left to be dealt with in the future, for better or for worse. Crutchlow asserted,

> "I don't think we fully understood what these agreements would look like ten years down the road… What our focus was always: what do we need to do to get the agreement? How far do we have to go in order to make sure that we get a signed agreement?" (IT18, Crutchlow 2016).

Yukon First Nations, on the other hand, consistent with First Nations approaches to the 19th century numbered treaties, were looking at implementation through a long-term lens. From the First Nations perspective, these agreements were meant to last seven generations, a key

consideration for implementation. The time constraints and pressures to sign and ratify the agreements, however, hindered the ability to focus on long-term implications and on long-term planning for implementation of the agreements (IT5, a Tr'ondëk Hwëch'in citizen 2016; IT18, Crutchlow 2016; IT7, Gerberding 2019).

Because all parties attached great importance to the agreements, it is only natural that they felt pressure to complete the implementation planning and negotiations. First Nations were eager to put the negotiations behind them and to focus on self-government. Yukon and federal representatives, likewise, wanted to build on the foundation of the land claims agreements and to launch the new North. Speaking about the main table negotiators who had spent nearly twenty years on the Yukon claim and had "pride of penmanship", Robb maintained that they were subject to "all sorts of pressures" and that "everybody wanted it approved as quickly as it could be" (IT19, Robb 2016).

Reflecting on the implementation process and thinking back to the early years of negotiation and implementation planning in Yukon, Gerberding suggested, "there was a somewhat naïve belief that these commitments would just automatically be delivered…In retrospect, that seems very naïve but I think it was genuine… there were solemn promises made in these agreements and people simply expected those things to happen" (IT7, Gerberding 2019). He went on to explain that in hindsight, "agreements don't just implement themselves" (IT7, Gerberding 2019). He argued, as did many other interviewees, that much more time and attention should have been given to implementation planning in those earlier years (IT7, Gerberding 2019; IT12, Joe 2017; IT5, a Tr'ondëk Hwëch'in citizen 2016; IT18, Crutchlow 2016; IT19, Robb 2016; IT24, Constable 2016).

Funding for implementation and implementation planning was of major concern for Yukon First Nations and the Government of Yukon. This was a remarkably complex issue connected to the broader issues of funding for land claims negotiations, monies advanced to the First Nations, and collective worry about mounting costs of completing a multi-decade agreement. Yukoners shared the concern. More than a few community members, most of whom knew little about the legal, financial and administrative stakes, complained about the expenses of the land claims "industry," as shown in the large number of consultants and civil servants involved in an opaque process that few understood. A former federal government employee involved in the negotiations pointed out that there was implementation funding that was

specifically identified, in addition to the funding allocated for each Final Agreement. However, he added, "No doubt there were great issues about the adequacy of that money" (IT17, former federal government employee 2016). In April 1994, in the Yukon legislature, Tony Penikett, MLA for Whitehorse West and former Premier, asserted the following:

> I believe that legislation is not enough…It is the funding that gives life to these agreements. If we do not push enough resources behind these agreements, if we do not live up to our commitments and respect the promises that we make, the vehicle may stall. We will not build success, but further frustration and disappointment at a cost to all of us (Yukon 1994, 2314).

Yukon First Nations had very little money and resources for implementation planning and negotiations (IT7, Gerberding 2016; IT18, Crutchlow 2016). Discussing Tr'ondëk Hwëch'in's experience, Gerberding stated, "We were very poorly resourced to conduct those negotiations. We didn't have a full-time lawyer at the table. We had money to hire a lawyer for certain provisions, but we couldn't afford to keep a lawyer at the table… It was totally under-resourced and under-appreciated" (IT7, Gerberding 2016). Constable pointed out that the Yukon government's approach "was to have the implementation plan stick as absolutely closely to the letter of the clause as we could, without adding bells and whistles. The fewer bells and whistles, the better because the bells and whistles were where the costs were" (IT24, Constable 2016). The Yukon government was so concerned with the cost and limited funding available for implementation that financial constraints had a significant impact on its approach to the negotiation of the implementation plans.

Another constraint placed on the implementation planning process came in the form of a unilateral offer from the federal government in the spring of 1992 as a federal election approached. The Conservative government of Prime Minister Brian Mulroney imposed a hard date by which all those negotiating claims in both Yukon and Northwest Territories had to reach an agreement or the federal government would walk away. As Constable pointed out, the Government of Canada "had put an ultimatum on the table: either you take this deal, or we can't promise you there's going to be another one… So, there were a bunch of things that made it a

very sped up process at the very end" (IT24, Constable 2016).[20] She went on to explain that for the Yukon government, "a lot of previous planning in terms of implementation activities had to just get thrown out the window" (IT24, Constable 2016).

Each Yukon First Nation approached the implementation process differently. Having had the benefit of entering the negotiations after the first four Yukon First Nations had signed off on their agreements, Tr'ondëk Hwëch'in had a slightly different experience with implementation planning. By the time Tr'ondëk Hwëch'in's agreements had been completed, six Yukon First Nations Final and Self-Government Agreements had been signed, in addition to the UFA. When asked what it was like working with new teams at the federal and territorial level, Gerberding offered these details:

> We ended up hiring Steven Mills to help us on the Tr'ondek Hwech'in side. Steven had worked on the Vuntut Gwichin agreement and he was becoming a consultant at the time. Al Jones was on the territorial side, Chris LaFleur and a few others were on the federal side. It was a lot less confrontational and it was pretty collegial, if I can describe it in that way (IT7, Gerberding 2019).

Despite having the experience of negotiating several implementation plans ahead of Tr'ondëk Hwëch'in's agreements, the implementation negotiators were still under very tight timelines to complete the Tr'ondëk Hwëch'in Implementation Plan. Once again, there was no time to look five to ten years down the road and consider what the longer-term impacts or implications might be. Gerberding indicated that, unlike the protracted negotiation of the Final Agreement, the implementation negotiations from start to finish were completed within one year (IT7, Gerberding 2019). Gerberding also acknowledged that everyone from all sides recognized that this was all new and that the process would evolve as it grew.

The signatories to these agreements derived confidence from knowing that there would be opportunities to review and assess how well they were being implemented. As part of the implementation plans, the UFA and each Yukon First Nations Final Agreements were scheduled to be reviewed in the fifth and ninth years following their effective dates. Other later reviews

[20] The same federal tactic was repeated in 2002, when the last six Yukon First Nations agreements were being negotiated. An "end of mandate" date was set for Carcross/Tagish, Kluane, Kwanlin Dün, Liard, Ross River and White River First Nations. Kluane First Nation signed off on their agreement in 2003, followed by Carcross/Tagish and Kwanlin Dün First Nations in 2005. Liard First Nation, Ross River Dena Council and White River First Nation did not ratify their agreements before the mandate had expired.

would be conducted when the parties agreed to them (DIAND 1993d). The reviews were conducted by the Implementation Review Group (IRG), which had members delegated from the Implementation Working Group.

Completed in 2000, the first five-year review assessed the UFA Implementation Plan and the first four Yukon First Nations Final Agreement implementation plans. This review assessed whether numerous obligations had been fulfilled: approximately 170 common obligations contained within each of the agreements, hundreds of specific obligations that were unique to each agreement, and approximately 80 obligations specific to the UFA (DIAND 2000, 7). The review found that in the first five years, substantial progress had been made in implementing these complicated and wide-ranging Final Agreements, identified positive changes across Yukon as a result of the agreements, and identified several successes (DIAND 2000, 5). Progress included establishing several key public boards, councils and committees; advancing renewable resource management and heritage program initiatives; and developing intergovernmental accords and protocols (DIAND 2000, 3). The review also identified implementation problems, including the ongoing challenge of inadequate implementation funding and unclear consultation protocols and policies (DIAND 2000). To ensure consistency with the recently negotiated Tr'ondëk Hwëch'in Implementation Plan, the reviewers proposed 56 amendments for the first four Final Agreement Implementation Plans. As the 2007 Review explained, because the Tr'ondëk Hwëch'in Implementation Plan was completed after the first four, they benefited from the learning experiences of the other Yukon First Nations (DIAND 2007, 32). At the time of the 2007 Review, none of the 56 proposed amendments had been acted upon or implemented.

At the time of the five-year review, all parties agreed to postpone the review of the Self-Government Agreements to "coincide with the nine-year review of the Final Agreements" (DIAND 2000, 11). Little Salmon Carmacks First Nation and Selkirk First Nation, which had signed their agreements in 1997, and Tr'ondëk Hwëch'in which had signed in 1998, agreed to consolidate their five-year and nine-year reviews to coincide with the nine-year reviews of the first four Yukon First Nations (DIAND 2007, 9), allowing for "a single, coordinated review process" (DIAND 2007, 9). The 2007 Review, therefore, encompassed the nine-year review of the UFA Implementation Plan, as well as the review of the seven Yukon First Nations Final Agreement implementation plans, Self-Government Agreements and Self-Government

Agreement implementation plans. Concurrently, a review of the Financial Transfer Agreement was also being conducted.

At the time of the 2007 Review, the implementation plans of the Yukon First Nation Final Agreements were the only ones in Canada required to determine if the plan's provisions and implementation funding were adequate (DIAND 2007, 13). Although some land claim agreements signed in other parts of Canada stipulated that reviews were to be conducted by third party independent reviewers, the Yukon reviews were a collaborative undertaking carried out by the party representatives (DIAND 2007, 3).

The 2007 Review process began in May 2003; however, due in large part to the federal government's refusal to include the Self-Government Agreements, the review got off to a poor start. The first two years saw little progress made. Elizabeth Hanson, the former Regional Director General of INAC Yukon Region and former Director of Claims and Self-Government, Yukon Region, contended that there were often challenges from the federal government perspective in coordinating and aligning implementation of the Self-Government Agreements and the Final Agreements (IT21, Hanson 2020). Gerberding argued, "a review isn't going to be meaningful if it doesn't include a review of implementation of the Self-Government Agreements. The two agreements weave together the structure of implementation in Yukon" (IT7, Gerberding 2020). Eventually the federal government agreed to include the Self-Government Agreements and their implementation plans as part of the review.

From the beginning, each of the parties understood and approached the review process differently. Allan MacDonald, Director General, Implementation Branch, INAC, indicated, "The reviews were not well thought out" (IT22, MacDonald 2020). At each level of government, "no one really approached them with the same objective that everybody else did" and this led to conflicts and delay (IT22, MacDonald 2020). The 2007 Review explained the differences this way: "From the perspective of the YFN and Yukon representatives, Canada's representatives seemed to have little latitude to consider recommendations that would entail change from status quo implementation arrangements, particularly in respect of financial matters" (DIAND 2007, 12). As discussed, when teams were finalizing the UFA and first four Final Agreements, funding levels were a serious concern for Yukon First Nations and the Government of Yukon. These parties believed that the funding being agreed to by the federal government did not accurately reflect the cost of implementing the agreements. Jim Harper has been working as a negotiator

and lawyer for CYFN and several Yukon First Nations since 1986. He maintained that when the federal government made its "take it or leave it" offer, Yukon First Nations had to choose whether to move ahead and acknowledge that the review process could inform the future or whether "to hold the line and cause a confrontation" (IT32, Harper 2020). As Harper explained it, they chose to move forward (IT22, Harper 2020). Thus, the Yukon government and Yukon First Nations accepted the offer with the understanding that the funding would be reviewed once they had experience implementing the agreements (DIAND 2007, 10).

When it came time to beginning the review process, the federal government came at it with a different—and conflicting—approach. According to Constable, the federal government failed to honour the principles "under which the whole business had been set up in the first place", arguing that the mandates being given to new federal government employees were not in line with what Yukon government was expecting (IT24, Constable 2016). In February 2005, at an Intergovernmental Forum, Yukon First Nations Chiefs, CYFN Grand Chief, Yukon Premier and the Minister of INAC finally agreed to commit to a more meaningful review process that included the review of funding adequacy (DIAND 2007, 12).

Published on October 3, 2007, the review identified several key successes in the first ten years, finding that progress had been "extraordinary" (DIAND 2007, 8). On the other hand, the reviewers also called this progress "frustratingly slow", indicating that many of the implementation problems had arisen because provisions were not being followed and obligations not being fulfilled. Two major concerns were inadequate funding, and federal policies and practices inconsistent with the agreements. All Parties to the agreements acknowledged that for the agreements to be fully implemented, federal government policies needed to be changed across the board (IT15, Strand 2017). It took the federal government nine years to respond to the need to review its fiscal policies, which it did by establishing the fiscal policy table in 2016. This new collaborative fiscal policy process brought together representatives from self-governing Indigenous governments and the federal government to redevelop the federal fiscal policy for how self-government is financed. However late in coming, the decision to develop a collaborative fiscal policy process is now being cited as a successful example of a renewed government-to-government relationship and of the federal government's commitment to implementing the agreements (Nicol et al. 2019). As of January 2019, the *Collaborative Federal Fiscal Policy for Self-Government* was released, and federal negotiators are using the policy to

guide their work in negotiating new fiscal agreements and transfers of funds (Nicol et al. 2019, 34). The policy reads: "Canada recognizes that implementing this new fiscal relationship requires systemic change within the federal government and the way it works with Indigenous Governments. This renewed fiscal relationship represents an important step in that direction" (Government of Canada 2019, para. 17). The details are still being worked out between the parties, so the overall results and impact of this new fiscal process remain to be seen.

Although it was fraught with tension, the 2007 Review concluded that there were reasons to support future reviews to ensure efficiency, effectiveness and accountability (DIAND 2007, 35). Yukon First Nations representatives indicated that future reviews would reveal if the recommendations to address many of the issues identified in the 2007 review had been followed and if they were effective (DIAND 2007, 35). To date, no other reviews have been completed in Yukon, and there does not seem to be much appetite to begin the process again (IT7, Gerberding 2020; IT20, Bradasch 2020). Further, there is some debate on the effectiveness of these reviews. As Eyford (2015) posited, "The periodic review process provides a forum for the parties to discuss the Final Agreement but does not compel them to re-negotiate existing terms or negotiate new provisions" (Eyford 2015, 74). Hanson pointed out that because no baseline data was established when these agreements were first negotiated, the reviewers have limited ability to review the effectiveness and impacts of the reviews (IT21, Hanson 2020). Although the reviewers can evaluate obligations attached to specific timelines and objectives in the check-box activity sheets, they have more difficulty determining if these agreements have improved the lives of residents from these Yukon First Nations communities.

The implementation of modern treaties in Yukon and across the country has been plagued by many barriers and challenges, overshadowing these foundational accords' many successes. Although the requirement for implementation planning in 1986 was well intentioned, there was little time to determine what success would look like in terms of process and structure. The federal government made an effort to develop guidelines for implementation in 1989, but as emphasized in this chapter, these guidelines produced a complex, rigid and formalized structure that did not necessarily reflect the realities of what was taking place on the ground in Yukon.

5.2 Calls for Change: Federal Implementation Policy, Structure and Process

Apart from minor amendments made in 1993, the *Federal Comprehensive Land Claims Policy* (1986) went unchanged for a period of almost thirty years. Within this time, the federal government made mostly incremental changes to its approach to treaty implementation, with a few punctuations of larger shifts in process and structure. Over the past two decades, groups such as the Land Claims Agreements Coalition and the Senate Standing Committee on Aboriginal Peoples published several reports and discussion papers that evaluated and assessed the modern treaty process, and that called on governments to make changes to its land claims policy and approaches to treaty implementation (for example, see Senate Standing Committee on Indigenous and Northern Affairs 2018; Eyford 2015; Senate Standing Committee on Aboriginal Peoples 2008; Government of Canada 2007; Land Claims Agreements Coalition 2008). To gain a better understanding of how the government's implementation structures and processes have evolved, it is useful to evaluate its direct and indirect responses to these calls for change. Table 5.1 provides an overview of some of these key reports and papers, outlines their main focus and findings, and identifies the actions taken by the federal government to alter its approach to implementing modern treaties. The final column of the table provides a brief assessment of how effective these actions were.

Table 5.1 Assessing the Federal Government's Approach to Modern Treaty Implementation

Reports and Papers Calling for Change	Key Focus/Findings	Direct Government Actions	Effectiveness of the Government Actions
1986- Report of the Auditor General	Recognized the government's failure to meet its obligations in implementing the JBNQA and recommended all land claims be accompanied by implementation plans.	1986- Development of the *Federal Comprehensive Land Claims Policy (1986)* which mandated the requirement of separate negotiated implementation plans 1989- Development of federal guidelines for implementation (n.d.) Development of the Land Claims Obligation System (LCOS)- an in-house federal implementation management tool for tracking progress and status on projects and activities	Effective as a first step but needed more details. Needed a clearer understanding of goals and objectives, and more reflective of the realities on the ground. Early management tool that proved to be ineffective in the long term.
1998- Report of the Auditor General	Highly critical of the federal government's role in modern treaty implementation. Identified ineffectiveness of the Land Claims Obligation System (LCOS) management tool.	No direct related actions taken	Exemplifies the absence of government interest in bringing a resolution to Indigenous modern treaty implementation issues.
2003- Report of the Auditor General	Examined the implementation of the Gwich'in and Nunavut agreements. Key findings: - INAC's role in overseeing federal responsibility needs to improve - INAC's focus is on fulfilling the letter of the land claim and not the spirit - Implementation committees and arbitration panels are not effective - LCOS needs to be amended to track results	2003- Development and release of the "Implementation of Comprehensive Land Claim and Self-Government Agreements: A Handbook for the use of federal officials"	Marked change from how implementation had been broadly viewed and defined by the Government of Canada. Significant shift in focusing on the treaty relationship.
2004- LCAC discussion paper, *A New Land Claims*	Proposed development of a new land claims implementation policy that must include: - Recognition that agreements were signed with the Crown, not INAC	No direct related actions tied to this report.	Effectiveness not monitored by the government and was eventually replaced with a new system.

Implementation Policy	- Canada must commit to meeting the objectives and obligations of the treaties - Implementation should be dealt with by senior-level officials across government - There must be an independent implementation review body that reports to Parliament	2004/2005- Finalized the new Federal Implementation Obligation Monitoring System to replace the LCOS	
2006- LCAC *"Four-Ten" Declaration of Dedication and Commitment*	LCAC released a document outlining '4 Points' for a renewed relationship with the federal government and '10 Fundamental Principles' that should make up a new federal land claims implementation policy.	No direct related actions taken.	Exemplifies the absence of government interest in bringing a resolution to Indigenous modern treaty implementation issues.
2007- Report of the Auditor General	Examined the implementation of the Inuvialuit Final Agreement. Found that INAC had not: - followed through on developing an implementation plan, which they had agreed to do. - identified which obligations Canada was responsible for - developed mechanisms for monitoring progress	No direct related actions taken.	Exemplifies the absence of government interest in bringing a resolution to Indigenous modern treaty implementation issues.
2008- Standing Senate Committee on Aboriginal Peoples. *Honouring the Spirit of Modern Treaties: Closing the Loopholes*. Interim Report.	A special study on the implementation of modern treaties in Canada. Four key recommendations made: - Canada should develop a modern treaty implementation policy based on the "Four-Ten" - Canada should establish an independent commission to manage implementation - Canada should develop a working group of senior officials to review and establish guidelines for coordination of federal obligations and to establish mechanisms for reporting and monitoring on implementation - Canada should work with LCAC to appoint a chief federal negotiator to negotiate implementation funding	2010- Development of the Treaty Obligation Management System (TOMS) to capture what Canada's obligations were across all of government, who was responsible and the status of obligations (launched March 1, 2010) 2011- Instituted a Federal Framework for the Management of Modern Treaties to improve coordination and decision-making between departments.	A much more sophisticated management system that still had many limitations, including no defined process for ongoing updates and management of TOMS. This limited the effectives of the tool. Demonstrated a new commitment to implementation; however, it was still more of the same emphasis on the bureaucratic machinery of government. No direct change in the behaviour of government and approach to treaty relationship.

2008- LCAC *Honour, Spirit and Intent: A Model Canadian Policy on the Full Implementation of Modern Treaties Between Aboriginal Peoples and the Crown*	LCAC developed and endorsed a model modern treaty implementation policy. The model policy emphasized the importance of recognizing the spirit and intent of the agreements and the need for cooperation and commitment towards modern treaty implementation.	2011- New set of Implementation Guidelines	Demonstrated a new commitment to implementation and managing and coordinating responsibilities. However, the government was only committing to updating the machinery of government and did not demonstrate a commitment to changing what was happening on the ground within the provinces and territories and within Indigenous communities.
2013- INAC *Internal Audit Report: Audit of the Implementation of Modern Treaty Obligations* prepared by the Audit and Assurance Services Branch	Reviewed the role of INAC in coordinating federal modern treaty obligations. Found they had taken significant steps forward in managing and coordinating federal responsibilities. Recommendations included: - Formally defining roles and responsibilities for proactive monitoring of obligations - Developing structures for regular updates to TOMS - Develop orientation materials for the different caucuses and committees formed under the Implementation Management Framework	2013- Canada agreed to participate in a working group with LCAC to examine common principles and to explore options for a "whole of government approach" to modern treaty implementation	Demonstrated a shift towards committing to government-to-government relationships, working collaboratively with modern treaty holders.
		2014- Appointment of Douglas Eyford, Ministerial Special Representative on Renewing the Comprehensive Land Claims Policy 2014- Interim policy released: *Renewing the Comprehensive Land Claims Policy: Towards a Framework for Addressing Section 35 Aboriginal Rights*	This was the first significant step towards the government's commitment to renewing the land claims policy. First time the comprehensive land claims policy had been revised since 1986. Though, the policy development process was unilateral and did not demonstrate a commitment to co-development or working in partnership with Indigenous modern treaty holders. In addition, the commitment to developing a full policy beyond the interim policy was shallow and not further acted upon.

2015- Douglas Eyford's report: *A New Direction: Advancing Aboriginal and Treaty Rights*	First step towards renewing Canada's land claims policy. Found that federal government needs to: - Address the institutional barriers to making progress on treaty negotiations - Create a rights-informed approach to treaty-making - Offer alternative reconciliation arrangements for those interested in pursuing something other than land claims - Improve federal implementation of agreements with Indigenous groups	2015- Announcement of new "whole of government approach" to treaty implementation 2015/2016- *Cabinet Directive on the Federal Approach to Modern Treaty Implementation* is issued, accompanied by a *Statement of Federal Principles on Modern Treaty Implementation*. This led to the establishment of: 1. The Deputy Minister's Oversight Committee 2. Modern Treaty Implementation Office (May 2016) The *Directive* also called for an update to the TOMS to include more qualitative data. This led to a decision to develop a brand-new system: The Modern Treaty Management Environment.	These actions, taken together, demonstrated a significant shift away from emphasis on the role of INAC as the sole department responsible for implementing and overseeing land claims implementation. Acknowledged the "whole of government" responsibility to implementing the objectives of the agreements. Demonstrated that government was committed to implementation and repairing relationships. However, though there were bold promises made, they were weak on delivery. These direct actions have not necessarily resolved the bigger implementation challenges on the ground.
2015- *Report of the Auditor General examining the Labrador Inuit Land Claims Agreement*	Found that progress is being made in implementing the Labrador Agreement; however, there are still barriers that remain: - Conflicting interpretations of the obligations - Inadequate use of the government's system for tracking federal obligations		

Within the timeframe of this research (1986-2016), the Auditor General of Canada released five reports that critically assessed the federal government's approach to modern treaty implementation (2015; 2007; 2003; 1998; 1986). The 1998 report represented the first time the Auditor General reviewed the government's role in modern treaty implementation since it became a required component of the land claims negotiation process. This report was highly critical of the government's role and commitment to meeting its treaty obligations (Government of Canada 1998). The 2003 report, on the Nunavut and Gwich'in land claims agreements, was the first to examine the experience of implementing northern land claims agreements. One of the key issues identified was how INAC defined successful implementation. The report criticized INAC for measuring success by holding events, activities and meetings rather than by evaluating results (Government of Canada 2003, 2). In its official response to the report, INAC "fundamentally disagree[d]" with the Auditor General's view, (Government of Canada 2003, 2), arguing that success was defined "as fulfilling the specific obligations as set out in the agreements and plans" and not by measuring the outcomes (Government of Canada 2003, 2). In blatantly disregarding the bigger picture, long-term results, and the spirit and intent of these agreements, INAC demonstrated its inability to look beyond the letter-by-letter wording.

Mounting concerns from Indigenous modern treaty holders across the country surrounding the federal government's failure to implement land claims, led to the formation of the Land Claims Agreements Coalition (LCAC) in 2003. LCAC defined its role as ensuring "that comprehensive land claims (modern treaties) and associated Self-Government Agreements are respected, honoured and fully implemented" (Land Claims Agreements Coalition, n.d.). In November 2003, 350 people, including leaders representing all Indigenous groups who had signed modern treaties, policy makers and politicians, gathered in Ottawa for a two-day conference entitled, *Redefining Relationships: Learning from a Decade of Land Claims Implementation*. Following the gathering, participants delivered a joint statement calling on the federal government to co-develop a new land claims implementation policy in consultation with Indigenous governments and organizations. In 2004, LCAC released a discussion paper, "A New Land Claims Implementation Policy", which outlined four key elements that they argued should be included in the new policy. These included: (1) recognition that the agreements were signed with the Crown in right of Canada, and not with INAC; (2) a commitment by Canada to achieve the broad objectives of the agreements as opposed to "mere technical compliance with narrowly

defined objectives"; (3) commitment to ensuring senior-level representatives in government would manage implementation; and (4) the establishment of an "independent implementation audit and review body" that is separate from INAC (Land Claims Agreements Coalition 2004, 2–3).

Arguably the most significant point was the first element LCAC identified in the discussion paper: the importance of recognizing that the agreements are "between Aboriginal peoples and the Crown" (Land Claims Agreements Coalition 2004, 3). The paper explained that although this point had been clearly laid out in each agreement, the federal government treated the agreements "as though they were merely contracts with the Department of Indian Affairs and Northern Development, or with other departments in respect of particular matters" (Land Claims Agreements Coalition 2004, 3). These concerns were reinforced in several other reports (for example, see Government of Canada 2007; Senate Standing Committee on Aboriginal Peoples 2008; Eyford 2015). INAC has always overseen the implementation of the agreements and managed the federal responsibilities by coordinating the actions of different government departments. However, without a clear, coordinated implementation strategy, it was challenging to manage each of the government departments involved in implementation to ensure they were informed of their responsibilities, and were being held accountable to their treaty obligations (Eyford 2015; Senate Standing Committee on Aboriginal Peoples 2008). Many government departments wrongly assumed that INAC was solely responsible for implementing the agreements (Senate Standing Committee on Aboriginal Peoples 2008, 21; Campbell, Fenge, and Hanson 2011). In addition, INAC did not hold sufficient authority to dictate responsibilities to other departments. As scholars Campbell, Fenge and Hanson (2011) argued, "modern treaties are between Aboriginal peoples and the Crown, not the Department of Indian Affairs and Northern Development—a "line department" with little authority in relation to, or leverage over, other government departments" (49). Before 2015, no centralized authority or governing body was in place to ensure government departments were engaging with the implementation process and fulfilling their departmental obligations.

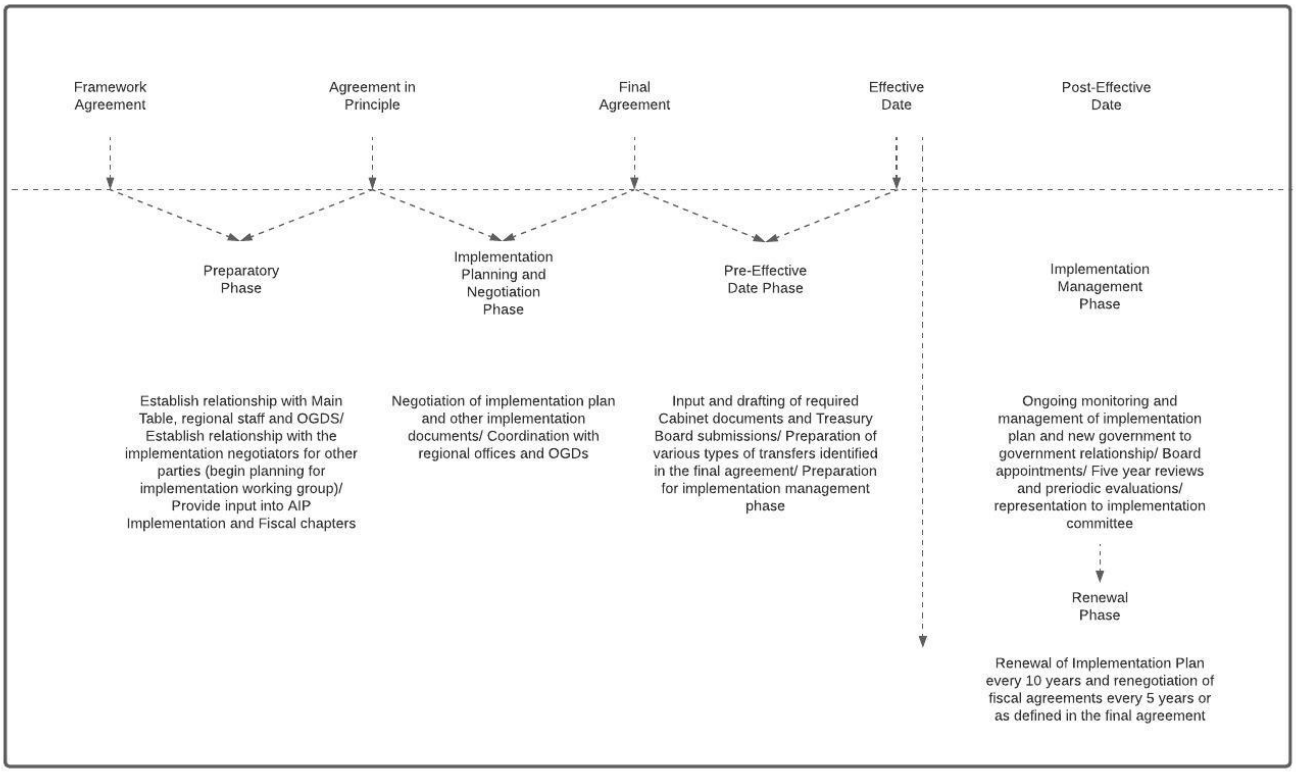
Regarding the second element, LCAC asserted that the broader objectives of the agreements—including social well-being, economic development, environmental sustainability, and protection of language and culture—aligned with the broader policy goals of the Canadian government. LCAC asserted that modern treaties should be seen as mechanisms for achieving

these policy goals (Land Claims Agreements Coalition 2004, 13). To this end, LCAC recommended that the government develop and implement an evaluative framework to measure the success of the agreements against these broader objectives. LCAC suggested the data gathered using this framework could be used to measure and assess the implementation progress and could also be used to analyze the socio-economic impact of the existing agreements (Land Claims Agreements Coalition 2004, 17). This type of evaluation would provide more valuable information than the current implementation review processes explored earlier in this chapter. As the existing reviews had indicated, there was no understanding of the overarching impacts and outcomes that modern treaties have had on Indigenous communities and the regions in which they are signed. In 2008, LCAC released a policy document that revisited the importance of this element, highlighting the substantial overlap between the successful implementation of modern treaties and the federal government's broader policy objectives (Land Claims Agreements Coalition 2008, 10). The coalition recommended that the government work with the Indigenous signatories to determine how to coordinate broader public policy processes with modern treaty implementation (Land Claims Agreements Coalition 2008, 10).

Over fifteen years after the development of the federal implementation guidelines, in 2003 the federal government released a handbook for federal officials called, "Implementation of Comprehensive Land Claim and Self-Government Agreements". Intended to be used alongside the 1989 Guidelines, the new handbook captured the lessons learned and key principles and phases of implementation of Land Claims and Self-Government Agreements (Indian and Northern Affairs Canada (INAC) 2003, I.I). The introduction to the handbook stated that federal implementation practitioners should not use it as a prescriptive or rigid template but rather as a flexible set of guidelines to provide information and direction.

The handbook demonstrated some significant lessons learned by the Government of Canada and was divided into five phases of implementation planning: (1) preparatory phase; (2) implementation planning and negotiation phase; (3) pre-effective date planning; (4) implementation management (post-effective date); and (5) renewal of implementation plans and other implementation documents (INAC 2003, 13). The flow and sequencing of these phases is demonstrated in Figure 5.2.

Figure 5.2 Internal Federal Government Phases of Implementation



(Source: Canada 2003, 14).

The handbook included details on expected interactions with the main table negotiators at the different preparatory, planning and negotiation phases. In addition, it included some minor details on periodic reviews and annual reports and evaluations—a level of clarity not seen in the original implementation guidelines.

The fourth "implementation management phase" was a significant addition from the 1989 Guidelines, whose focus on the post-effective date implementation was limited to the obligation to complete what was identified in the activity sheets. This new implementation management phase shifted away from the narrow scope of the previous guidelines and emphasized the importance of developing and maintaining the new relationship that emerged from signing modern treaties. Nowhere did the 1989 Guidelines speak to this new relationship. In fact, in the whole 50-page document, there was no reference to committing to, building, or maintaining relationships. This clearly affirms the criticisms and concerns from the LCAC and the Auditor General around neglect for the spirit and intent of the agreements. The new 2003 handbook on the other hand, demonstrated a marked change: the federal government finally recognized the

importance of grounding implementation in these new treaty relationships. The challenge now was going to be fulfilling what they had identified as important in the pages of this handbook.

Over the next few years, LCAC continued to advocate for change to the federal government's overarching approach to modern treaty implementation. In 2006, the coalition further developed the four elements outlined in its 2004 discussion paper, and created an additional ten fundamental principles that they believed should make up a new land claims implementation policy (see Appendix F) (Land Claims Agreements Coalition 2006). Elaborating upon these principles, in 2008 LCAC released a "Model Canadian Policy on the Full Implementation of Modern Treaties." This model implementation policy emphasized the importance of recognizing the spirit and intent of the agreements and accepting that implementation "takes forethought, cooperation, and above all, ongoing attention and commitment" (Land Claims Agreements Coalition 2008, 3). The platform gained traction, and in the interim report, "Honouring the Spirit of Modern Treaties: Closing the Loopholes", the Senate Standing Committee on Aboriginal Peoples (2008) asserted that the Government of Canada should co-develop a modern treaty implementation policy based on the work already developed by LCAC.

Between 2010 and 2011 we began to see a shift in the government's approach to, and overall intentions toward, treaty implementation, at least in their internal processes and policy documents. The Treaty Obligation Management System (TOMS) was launched in 2010, and although it would later come under criticism, this system was more sophisticated than earlier versions that had existed to track the federal government's modern treaty obligations. In 2011, the federal government released, a "Federal Framework for the Management of Modern Treaties (Implementation Management Framework)". This framework clearly indicated that the Government of Canada had heard some of the calls for change from LCAC, the Senate Standing Committee, and the Auditor General. In particular, the Framework document highlighted that "the federal Crown as a whole is accountable for fulfilling Canada's obligations under modern treaties" (DIAND 2011, 4), one of the main points identified by LCAC (2004). The framework also identified a new senior-level steering committee, a direct response to a recommendation from the 2008 Senate Standing Committee report.

In the same year, 2011, the federal government released a new set of implementation guidelines, which had not been redeveloped since 1989. The guidelines expressed the new

intentions of the government towards implementing the agreements: “the task for Canada is to implement agreements in a way that respects the overall goals and specific nature of these agreements. This means finding an approach to fulfilling Crown obligations that goes beyond doing the minimum required” (INAC 2011, 11). Although the Implementation Management Framework and the new set of implementation guidelines were an important step forward for the federal government, they still fell short of a specific implementation policy, and remained rooted in a bureaucratic process that further added layers of complexity to the implementation structures and processes.

Demonstrating further openness to changing its approach to treaty implementation, in 2013 INAC agreed to participate in a working group with LCAC to examine common principles and to explore options for a “whole of government approach” to modern treaty implementation. In July 2014, former INAC Minister Valcourt appointed Douglas Eyford as a Ministerial Special Representative on reviewing comprehensive land claims. This was intended to be a first step towards the government’s renewal of its comprehensive claims policy. That same year, INAC (2014) released an interim policy, “Renewing the Comprehensive Land Claims Policy: Towards a Framework for Addressing Section 35 Aboriginal Rights”. This interim policy was meant to be a starting point for renewing and redeveloping the land claims policy through consultations with Indigenous groups and key stakeholders. As previously mentioned, this policy had not been significantly amended since it was redeveloped in 1986.

Over a six-month period, Eyford set out to review and evaluate the existing land claims policy and experience with implementation. His work included consulting with representatives from 14 of the 26 Indigenous groups who had signed modern treaties and reviewing written submissions from LCAC. The interim policy was also open for comments and feedback through an online portal. In April 2015, Eyford’s report, “A New Direction: Advancing Aboriginal and Treaty Rights” presented a thorough and critical assessment of modern treaties in Canada over the previous forty years, including several sets of recommendations. In the implementation section of the report, Eyford reaffirmed many of the recommendations made by the LCAC. He also asserted the importance of recognizing the spirit and intent of the agreements and forming an approach that can “adapt to new developments and changing circumstances” (Eyford 2015, 5).

A significant difference between LCAC’s recommendations and Eyford’s concerns was whether the government should “adopt a stand-alone modern treaty implementation policy”

(Eyford 2015, 77). Eyford argued the unique nature of each of the treaties, and the range of obligations within each agreement, would complicate the ability to create a policy that "would be an effective mechanism to address the acknowledged difficulties with treaty implementation" (Eyford 2015, 77). Eyford suggested a more effective approach would create strategies and frameworks to manage and coordinate the internal departmental implementation activities (Eyford 2015, 78). Eyford provided several other recommendations focused on strengthening the government's approach to implementing the agreements, including accountability measures, developing strategies for better management and coordination of internal departmental treaty obligations, and continued collaboration with LCAC.[21] However, many of these recommendations further entrenched a complex bureaucratic system and did not get to the root of the implementation problems and concerns that LCAC, the Auditor General and the Senate standing committee had identified.

The new interim policy and the process that was put in place to develop a new comprehensive claims policy was flawed in a few critical ways. First, the lead-in to the interim policy stressed that this policy was meant only to be a starting point to have "constructive dialogue" and to determine how to "work in partnership to renew the relationship between Aboriginals and non-Aboriginal Canadians" (Aboriginal Affairs and Northern Development Canada (AANDC) 2014, opening section). Although Eyford engaged with over 100 communities, the federal government created a unilateral process by asking for comments and feedback and stating that these would be "taken into consideration". This approach immediately

[21] Eyford outlined six recommendations for improving implementation. These included:

1. Canada should increase awareness, oversight, and accountability across departments about modern treaty obligations and improve internal structures for co-ordinating and fulfilling implementation activities.
2. Canada should centralize responsibility for the coordination and oversight of modern treaty implementation in a central agency.
3. Canada should continue to collaborate with the Land Claims Agreements Coalition to advance the parties' shared objectives.
4. Canada should ensure treaty provisions are interpreted and given effect in the manner intended by negotiators.
5. Canada should develop a training program for federal officials whose responsibilities involve treaty implementation.
6. Canada should, through the central agency responsible for the coordination and oversight of treaty implementation, file and annual report in Parliament about treaty implementation activities (Eyford 2015, 78).

limited the ability for dialogue and ongoing co-development of the new claims policy and certainly did not demonstrate the federal government's commitment to work in partnership with Indigenous peoples.

Second, the new interim policy failed to respond to how much things had changed over the thirty-year period since the 1986 policy had been developed. During this time, there had been significant changes within government, within the tripartite relationships among the treaty signatories, and there had been important precedent setting court cases. In particular, there was no recognition of the most recent *Tsilhqot'in* case, which affirmed and established Indigenous land title. The new interim policy, much like the 1986 policy, was premised under the flawed conjecture that the crown has sovereignty and title, and that the pursuit for land claims starts with "an assumption that no rights exist at the beginning of the process" (Senate Standing Committee on Indigenous and Northern Affairs 2018, 17). This assumption not only contradicted the *Tsilhqot'in* ruling but also immediately defined the treaty relationship through a colonial lens that assumes Indigenous peoples did not have sovereignty and rights prior to the arrival of settlers.

Finally, and of central importance to this discussion, after all of the calls for change, the section of the interim policy that focused on implementation was barely altered. Below is the section in its entirety from the interim policy:

> Final Agreements must be accompanied by implementation plans that set out the understanding of how obligations contained in the agreements will be fulfilled. The implementation plans are intended to ensure efficient and timely implementation of the various elements of settlement agreements. The Inherent Right Policy (1995) addresses requirements for implementation plans and financial arrangements where self-government is included in comprehensive land claim agreements (AANDC 2014, 20).

This section does not go beyond what was included in the 1986 policy. This was a missed opportunity for the Government of Canada on several fronts: first, to indicate that it was changing its approach to implementation, second, to refer to the importance of building the new government-to-government relationship highlighted in the 2003 handbook, third, to clarify its goals and objectives for implementation, and, finally, to establish its commitment to going beyond fulfilling the letter-for-letter obligations contained within the agreements.

Once again, what could have been an opportunity to demonstrate a significant shift in both the overarching land claims policy and the Government of Canada's approach to implementation resulted in a relatively incremental shift. However, on July 13, 2015, in response

to Eyford's report and the momentous work and lobbying done by LCAC, INAC announced that the federal government was shifting its approach to implementing land claims and Self-Government Agreements by developing a "whole of government approach to treaty implementation" (AANDC 2015). Amongst the new measures, the government announced it would be adopting were the establishment of a Deputy Minister's Oversight Committee to review the federal government's treaty obligations and implementation progress; the creation of a Modern Treaty Implementation Office (MTO) within the department; "adoption of a Cabinet Directive on the Federal Approach to Modern Treaty Implementation to define roles and responsibilities of federal departments"[22]; and the development of new tools and training for federal employees to assist them with meeting their obligations and responsibilities (AANDC 2015). In its press release, INAC recognized that the work of LCAC and Douglas Eyford were influential in shaping the government's new approach (AANDC 2015).

The Government of Canada's announcement in 2015 of its "whole of government approach" demonstrated a significant change in its view of the treaty relationship. No longer only between Indigenous peoples and INAC, the relationship was now between Indigenous peoples and the Crown. This new approach signified that the Government of Canada had listened to and, at least in part, responded to the calls for change. That said, all these new changes further entrenched implementation within the complex and intricate bureaucratic machinery of government, and, arguably, the government still had more power than Indigenous peoples to decide how implementation would be approached.

In the book, *Finding Dashaa,* Stephanie Irlbacher-Fox (2010) drew on her own experience as a land claims negotiator in NWT, to critically examine self-government and Indigenous policymaking in Canada. She asked an important question: "Is it Indigenous peoples who need to change? Or might something else need to change?" (Irlbacher-Fox 2010, 1). She argues that, "agreements are not working well in part because Canada embarked on them without a clear policy guiding implementation, including no attention at all to preparing land claim members for taking on the technical and professional roles implementation required" (Irlbacher-Fox 2010, 164–65). Reflecting on both the federal and territorial governments' changing approach to treaty implementation, Gerberding asserted, "there was never a proper appreciation

[22] See Appendix E for the full "Cabinet Directive of the Federal Approach to Modern Treaty Implementation".

for how much internal change is required: a paradigm shift to implement [the agreements]" (IT7, Gerberding 2019). He argued that the "systemic change that is necessary to make these agreements work" still has yet to occur (IT7, Gerberding 2020). On the other hand, he stressed the importance of recognizing that "we've made incremental gains and we're moving in the right direction," adding, "this isn't a bad news story. It's a good news story in a way but the pace of change has been frustrating" (IT7, Gerberding 2020).

5.3 More than a bystander: Yukon government and the modern treaty process

From the beginning, the Government of Yukon pushed to have a seat at the land claims negotiation table (Whitehorse Star 1973b, 2). In 1979, a memorandum of understanding was signed between the federal and territorial governments, committing the Government of Canada to involving the Yukon government as a full party to the land claims negotiations (Cameron, Smyth, and Gomme 1991, 58). The process of Yukon inclusion unfolded slowly.

Initially, the Yukon government was not accepted as an equal party at the table, despite being present at the discussions. Yukon First Nations had concerns about the Government of Yukon's motivations and intentions and argued that the agreements should have remained bilateral between Yukon First Nations and the Crown. Former Tr'ondëk Hwëch'in Chief and Elder Angie Joseph-Rear explained why:

> Our negotiation was between the Government of Canada and us because it was the Queen that was supposed to take care of our land on our behalf but she took all the trees away. The talk was between the two [parties]: our people and the Government of Canada (IT4, Joseph-Rear 2016).

Eventually, as their positions shifted, the Yukon First Nations and the Government of Yukon started working more closely together. As a former Yukon First Nations' negotiator, Victor Mitander, explained in a 1986 interview with the Whitehorse Star: "CYI [Council for Yukon Indians] and the Yukon government had reached an agreement to assist each other in getting their priority issues settled and sidelining non-land issues" (Padgham 1986, 6). Much of the impetus for territorial engagement came from former Premier Tony Penikett, for whom reconciliation with First Nations was a central administrative and political priority. Premier Penikett, who worked hard to position Yukon within Confederation and fought for the right to aspire to provincial status and for constitutional equality, had excellent personal relationships with First Nations and shared their aspirations for a resolution of Indigenous rights (Penikett 2006). Former

Yukon Premier and long-time MLA, Piers McDonald, pointed out that until the 1980s, the Yukon government was perceived as "a drag on negotiations," adding that subsequently "they were seen as more of an ally" of both the process and First Nations' aspirations. For the most part, this revised relationship lasted through to implementation (IT30, McDondald 2020).

Parallel to Yukon First Nations' pursuit of land claims, the Government of Yukon was engaged in a long fight towards achieving two significant goals in pursuit of its own land claim: responsible government and the devolution of key Government of Canada powers to the territory. By the time that nine of the fourteen Yukon First Nations negotiated and signed their Final and Self-Government Agreements, Yukon had developed party politics (1978), been granted full (but less than secure) responsible government (1979) and had completed significant devolution processes (2003). In 2001, and coming into effect in 2003, Yukon *Northern Affairs Program Devolution Transfer Agreement* was signed, transferring responsibility for lands, water, forests, and minerals to the Government of Yukon (Crown-Indigenous Relations and Northern Affairs Canada, n.d.). Ten years after the signing of the Umbrella Final Agreement, on 1 April 2003, the new *Yukon Act* came into effect, giving the Government of Yukon a range of province-like responsibilities and powers. The completion of devolution created substantial internal changes and complexities inside the Yukon administration, including adding 240 federal government employees who transferred to the Government of Yukon (*CBC News* 2003).

Behind these macro-transitions, lay an extensive process of consultation, collaboration and, on occasion, contestation. Right from the pre-effective date planning stage, the Government of Yukon took the initiative to install implementation processes and structures. Key to this work was Duncan Sinclair, who was involved in land claims in many different roles throughout his career with the Government of Yukon. From 1993-1996, he was the Assistant Deputy Minister of Implementation and First Nations Relations. In this role, he was responsible for setting up the infrastructure and resources needed to meet the obligations laid out in the Final and Self-Government Agreements (personal com., Sinclair 2020). He explained that the Land Claims Secretariat, located centrally within the Executive Council Office (ECO), oversaw and coordinated implementation. It was critical that the department was housed centrally within the ECO because it meant that the Premier was the minister responsible for modern treaties (IT29, Sinclair 2020).

After the signing of the UFA and the first four Yukon First Nations Final and Self-Government Agreements, there was a two-year period before the agreements came into effect during which legislation was developed. This was an important period for internal capacity building for the Yukon government (IT24, Constable 2016; IT29, Sinclair 2020). The Land Claims Secretariat used this time to prepare the Yukon government departments to meet the necessary objectives and outcomes outlined within the implementation plans (IT24, Constable 2016). The preparation included training for each Yukon government department and developing templates for Departmental Implementation Plans (DIP). Each department was required to complete a DIP, which involved identifying individual roles and responsibilities for implementation (IT29, Sinclair 2020; IT24, Constable 2016).

The momentum for ensuring systems were in place to meet the requirements for implementation carried on through the early post-effective date period. During this time, an interdepartmental implementation committee was formed, which met monthly to discuss implementation matters. In addition, a database system was developed to keep track of the DIPs. Another system that was brought in had to do with Cabinet submissions. Any submission that related at all to the agreements or to Yukon First Nations more broadly had to be reviewed and signed-off on by the Land Claims Secretariat. In addition, internal training and education, such as a "Land Claims 101" workshop, was developed to ensure that new employees understood the land claims agreements. The training only provided a basic introduction and was infrequently updated (IT24, Constable 2016). Sinclair explained that because many of these systems and structures put in place in the early days were eventually neglected or collapsed, "some things got lost in terms of the rigor of the process" (IT29, Sinclair 2020). According to Sinclair, they collapsed because "focusing at such a level of detail just became non-productive" (IT29, Sinclair 2020). As political mandates and focus began to change within the Government of Yukon, the early processes that ensured implementation was seen as central to the land claims agreements began to shift.

The Yukon Land Claims Secretariat faced many of the same coordination and oversight challenges as INAC but with a much smaller staff complement, internal overlap and administrative complexity. In Sinclair's words, in the beginning, "there was a very strong culture of respecting each other interdepartmentally but also understanding that while it was being collaborative, ECO was in charge in a way" (IT29, Sinclair 2020). This culture was a hold-over

from the Premiership of Tony Penikett, who took personal responsibility for the file, and was carried on by his successor, Premier Piers McDonald. This level of commitment did not continue under the Yukon Party, an organization formed from the remnants of the Progressive Conservative Party of Canada, elected in 1992, the year before the first four Final Agreements were signed. Premier John Ostashek, a rural, pro-business conservative, maintained the Yukon presence in the negotiations and implementation processes, but he did so with significantly less enthusiasm and concern about the empowerment of First Nations.

After the first few years of implementation, partly because of the shift from the NDP government back to the Yukon Party, the land claims department endured substantial staff turnover. With the departure of some key people went the institutional memory and foundational understanding of the agreements. In addition, though they continued to have direct access to the Premier, whose enthusiasm was less than his predecessors, they had little authority to hold other departments accountable for implementing the agreements. Slowly, the role of the Land Claims Secretariat diminished, largely for territorial political reasons (IT29, Sinclair 2020). On one hand, this was troubling, as there were still certain departments that relied on the Land Claims Secretariat because they did not necessarily have the expertise (IT31, Hale 2020). On the other hand, "there were departments who thought they were subject matter experts and they had different internal departmental mandates towards [specific] chapters" that sometimes conflicted with the Land Claims Secretariat's mandates (IT31, Hale 2020). Michael Hale, former Director of Implementation for the Government of Yukon, maintained that "most of the time, the land claims secretariat spent its time policing the other departments" (IT31, Hale 2020), which was an ineffective use of time and resources and led to many internal coordination challenges and conflicts.

The internal challenges facing the Yukon government carried over into its relationship with the Government of Canada. Hale explained that while it was positive that the Government of Yukon had aligned so well with Yukon First Nations' perspectives, they consistently caucused with the First Nations on almost all issues (IT31, Hale 2020). The symmetry of interests in Yukon contrasted with the First Nations-federal relationship, which was more fraught and adversarial with both the First Nations and Yukon Government. Hale asserted the "biggest problems with that were the feds had zero time for the Yukon government's point of view because as far as they were concerned, we didn't have a point of view. We enforced the First

Nation point of view" (IT31, Hale 2020). In 2003, shortly after devolution was completed, there was a significant attitude shift internally. Hale argued that for the Yukon government, "devolution became the reason to take a bigger step in but also to challenge its own assumptions" (IT31, Hale 2020). For the Government of Yukon, devolution became a higher administrative priority than treaty implementation. Although the shift in its engagement caused a controversial reaction both internally and from Yukon First Nations, Hale and his team led the development of a mandate focused on specific Yukon government implementation issues, including coordination with devolution. At first, this focus on implementation negatively affected the relationship with First Nations, and it did not have an immediate impact on how the federal government perceived the Government of Yukon (IT31, Hale 2020). Hale maintained that it took two or three years to begin to see a real shift within the culture and mentality of departments and staff within the Yukon government, and also for the First Nations and federal governments to realize that the "Yukon government had a legitimate voice" (IT31, Hale 2020). He suggested that it took roughly from 2000-2009, when the Yukon Party was in power, save for a short-term Liberal interregnum in 2000-2002, for the Government of Yukon to begin to stand on its own two feet but they were finally being perceived as a real government, a substantial presence within Confederation, and an equal player within implementation.

The overlap of two crucial territorial processes – the settlement and implementation of land clams and the devolution of federal powers to the Government of Yukon – made a difficult process more complicated, as did the transition from the pro-treaty New Democratic government to Yukon Party Premier John Ostashek. After the short-lived Liberal government, the selection of former NDP member Dennis Fentie, personally supportive of Indigenous rights, as Yukon Party leader in 2002, produced a shift in emphasis to the practicalities of land claims implementation.

5.4 Conclusion

When devolution was completed in Yukon, the Government of Yukon assumed many responsibilities that they struggled to manage in the initial transition period. In many ways, the Government of Yukon was navigating similar challenges to the newly formed Yukon First Nations' governments. With the completion of the devolution agreements and the signing of the Yukon First Nations Final and Self-Government Agreements, the federal government sensed that its major work in Yukon had been completed. Transitioning from negotiation to implementation,

the Government of Canada viewed its role as limited to providing funding. Reflecting on this period, Hale argued:

> The federal representatives looked North, saw a devolved authority and self-governing First Nations, and with that in place, they wiped their hands a few times and declared Yukon "done". When the primary funder of a treaty takes that approach, implementation will necessarily fail. It left the Yukon government and First Nations trying to anchor to a federal government that was frantically paddling away from shore (IT31, Hale 2020).

The federal government left the main responsibilities for implementing modern treaties to Yukon First Nations and the Government of Yukon. This abdication of responsibility presented a serious challenge, particularly given the First Nations' firm belief in the "honour of the Crown" as the foundation for the modern treaty. When one of the parties in a multiparty agreement steps away from its full responsibility for implementing an agreement, the very concept of the accord is thrown in doubt. Throughout the experience of implementing the agreements in the Yukon from 1986-2016, this attitude and approach created significant barriers and challenges.

After a generation of calls for action and change from LCAC, the Auditor General and the Senate Standing Committee, amongst others, much work remains to be done to bind the Government of Canada to fulfilling and honouring the spirit and intent of the agreements. The federal government's announcement in 2015 indicated it was ready to make a greater commitment to the modern treaty relationship. However, to date, the policy that would replace the 1986 comprehensive land claims policy remains incomplete. Both the Yukon government's transition under devolution and issues of implementation are parts of a large and complex relationship puzzle, the nuances of which shaped land claims implementation in the territory.

In the opinion of people on all sides of the treaty process, a fundamental shift is needed in the federal government's approach to modern treaty implementation. The effort must begin at the political level and move beyond bureaucracy and the growing asymmetry of capacity between federal, territorial and Indigenous governments. All three levels of government need to acknowledge the commitment required to implement these agreements. The federal and territorial governments' rhetoric, as well as overarching approach to modern treaty implementation, has changed on paper. However, as Elizabeth Hanson questioned, are governments "prepared to go underneath and ask what that systematically means in terms of change?" (IT21, Hanson 2020). The federal and territorial governments need to affirm that government-government partnerships are at the core of treaty implementation. New approaches, policies and administrative

action should be co-developed to better reflect the realities on the ground within Indigenous communities. More than two decades after the signing of the agreements, the federal government has still not moved from its assumption of supremacy.

6. NAVIGATING INTERGOVERNMENTAL RELATIONS UNDER A MODERN TREATY

In Yukon and across the country, there have been many modern treaty implementation success stories that have resulted in protection and preservation of Indigenous lands, languages, cultures and traditions. Land claims agreements have improved social well-being, economic development and environmental sustainability, not only in Indigenous communities but across the regions within which the agreements were signed. On the other hand, barriers and challenges have blocked implementation, often overshadowing the successes and positive benefits of these monumental agreements. At the root of many of these difficulties in Yukon are intergovernmental relations between the federal, territorial and Yukon First Nations governments. If land claims are to be implemented, good relations among the three levels of government are essential.

The people and the relationships that are foundational to policy, decision-making and politics are often overlooked. In the study of public policy and intergovernmental relations, scholars tend to focus on policies, processes and structures, ignoring the human dimensions. A key element that led to the successful negotiation of the Yukon land claims agreements were relationships built on trust developed among individuals representing all three parties. However, overtime, throughout implementation, these relationships broke down. As this study shows, these developments resulted from changing governments, changing policies and changing priorities.

Modern treaties were intended to redefine, strengthen and reaffirm Indigenous-government relations at both the federal and provincial/territorial levels. Judy Gingell, former Commissioner of Yukon and former Grand Chief of the Council of Yukon First Nations, argued that "for us, the agreements represent a partnership and an understanding among governments—Canada, Yukon and First Nations—about what our relationship is going forward" (Gingell 2017). "The First Principles Project: 40 @ -40°" also emphasized the importance and centrality of relationships to the land claims agreements:

> The Umbrella Final Agreement [UFA] is about relationships. The first Yukon relationship was of Yukon First Nations' people with the land and water. As new peoples arrived, relationships diminished. The land claims process was intended to provide security for all Yukoners by affirming expectations and obligations of the relationship between people, and people with the land. It began a transformational journey for those involved in the negotiations that birthed the spirit of the UFA,

> one where people worked together in respect, humour, and commitment. The road was mountainous with deep challenges and peak aspirations. Negotiating was hard. But the outcomes could not have been achieved without a struggle to overcome conflict and create a shared vision of inspiration and possibility (First Principles Project 2020, 8).

The relationships built and trust established among the individuals on the ground were foundational to the successful negotiation of the Yukon land claims. When the Government of Canada, the Government of Yukon and Yukon First Nations returned to the negotiation table after the failed Agreement in Principle in 1984, they renewed their commitment to successfully negotiate an agreement. Barry Stuart, a former Chief Judge of the Territorial Court of Yukon and the Chief Negotiator for the Government of Yukon for the Umbrella Final Agreement, maintained that when the parties reconvened in 1987, they knew they had to build relationships founded on respect and trust: "We had to be able to understand each other. We had to negotiate as if this was a collaborative effort that could take us into a different future than the one we lived in" (IT27, Stuart 2020). Former Chief Federal Negotiator, Tim Koepke concurred, "We were talking about repairing a damaged relationship, starting fresh, working as partners, working collaboratively, working cooperatively [and] solving problems together" (IT16, Koepke 2016). Before the new set of negotiations began, representatives from the three parties gathered at Dezdeash Lake, two hours outside of Whitehorse, Yukon, for training from the Harvard Negotiation Project. This interest-based negotiation style was centered on taking a principled, mutually beneficial approach (Fisher, Ury, and Patton 2011) and on separating the people from the problems, a challenge in a small place like Yukon. This was another reason that establishing respectful relationships between the individuals at the table was critical to the success of the agreements. Former Premier Piers McDonald commented, "I think the relationship between the governments and First Nation communities needed to be strong in order for the UFA to be negotiated" (IT30, McDonald 2020). The new approach to negotiations included meeting face-to-face in Yukon as often as possible and prioritizing spending time in the communities. As Stuart explained, "The relationships we built after were significantly different than they were before the failed AIP…We started working together in a way that we had never worked together before" (IT27, Stuart 2020).

Modern treaty implementation is often compared to two contrasting arrangements: a marriage and a divorce. McDonald explained that like a marriage, to be successful,

implementation of the land claims agreements requires commitment and continuous focus and work (IT30, McDonald 2020). It is often argued that both the Yukon and federal governments viewed the land claims agreements as a divorce settlement, rather than as a marriage. Seen through this lens, the relationships that were developed deteriorated. Many interviewees contended that between approximately 2003 to 2016, the intergovernmental treaty relationships in Yukon among all three levels of government broke down, significantly impeding implementation. Three broad trends, described below, contributed to the breakdown of these relationships: (1) continuity, capacity and understanding of the agreements; (2) the conflict between the spirit and intent of the agreements versus the letter of the law; and (3) dispute resolution and reliance on the courts. The following section provides an example of the breakdown of intergovernmental treaty relationships in Yukon that reveals these trends. The remainder of the chapter explores each of these trends and the impacts they have had on intergovernmental relations in a modern treaty context.

6.1 Intergovernmental Collaborative Processes: The Peel Watershed Case

Yukon First Nation Final Agreements contain a unique intergovernmental process for land use planning that is both collaborative and consultative. This process with the Yukon First Nations and the territorial government allows for significant contributions from First Nations, public governments, industry and the public. To date, only two regional land use plans have been completed in Yukon: the North Yukon Regional Land Use Plan and the Peel Watershed Regional Land Use Plan. The latter was a contentious process with significant implications for the relationship between the Government of Yukon and Yukon First Nations governments.

The Peel watershed is an area of pristine wilderness covering 14% of Yukon. The area is of significance to several Yukon First Nations-- Tr'ondëk Hwëch'in, the First Nation of Na-Cho Nyäk Dun and Vuntut Gwitchin—as well as the Tetlit Gwich'in from the Northwest Territories, who also have traditional territory in Yukon. The area also has great potential for oil and gas, and, as of 2011, there were nearly 8,500 active mining claims in the watershed area (Bergner, Kruger, and Olynyk 2014). "Chapter 11: Land Use Planning" of the UFA and the Yukon First Nations Final Agreements contains provisions for establishing a consultative process for developing regional land use plans. (See Appendix H for the objectives of Chapter 11 and the approval process for regional land use planning.) The nature of the language used in these

agreements helps in understanding the complexity of the situation that arose with the Peel Watershed Regional Land Use Plan.

To develop the regional land use plan for the Yukon portion of the Peel, the Peel Watershed Regional Planning Commission (the Peel Planning Commission) was established under the Tr'ondëk Hwëch'in, the First Nation of Na-Cho Nyäk Dun and Vuntut Gwitchin's Final Agreements (Bergner, Kruger, and Olynyk 2014). In 2004, planning began for the Peel region, and after seven years of consultation with First Nations, government, industry and the public, the Peel Planning Commission submitted a Final Recommended Plan to the Yukon government in 2011. The plan recommended 80% of the area protected from development and 20% open for mineral exploration.

The Yukon Party, which held a majority in government, was known for being pro-mining and pro-resource development and was vocal in its opposition to the Final Recommended Plan for the Peel watershed and the process through which it was developed (Loeks 2013). The same year the Final Recommended Plan was submitted, 2011, Darrell Pasloski was elected Premier under a second Yukon Party majority. A key part of the Yukon Party's election platform included finding a more balanced outcome for the Peel watershed plan that better supported all sectors of the economy. In 2012, the Government of Yukon announced they would be making modifications to the Final Recommended Plan and "unilaterally embarked on a second series of consultations and related activities" (Staples et al. 2013, 144). In September 2013, significant changes were made to the land designations and maps proposed in the Final Recommended Plan, based on a new set of guiding principles and management scenarios developed by the Yukon government (Jaremko 2017; Staples et al. 2013). These new designations and guiding principles were developed without consultation or input from the affected First Nations nor the Peel Planning Commission (Staples et al. 2013, 153). On October 23, 2013, the Yukon government announced it would be conducting public consultation on these new plans for up to four months, followed by consultation with Yukon First Nations. As this consultation process was taking place over the Christmas holidays, little time was left for public input.

In January 2014, the Government of Yukon released a Peel Watershed Regional Land Use Plan (the Peel Land Use Plan) containing substantial modifications to the Final Recommended Plan presented by the Peel Planning Commission. In the Peel Land Use Plan, only 29% of the region was to be protected from development (Unrau 2014). This new plan disregarded the multi-

year consultation process conducted by the Peel Planning Commission and demonstrated that the government was prioritizing economic and resource development. Further, in its interpretation of Chapter 11 of the Final Agreements, the Pasloski government neglected the significance of the modern treaty relationship. Rather than demonstrating commitment to government-to-government relationships and the spirit and intent of the agreements, the Government of Yukon asserted its power to accept, reject or modify the Final Recommended Plan by interpreting the treaty based on its own interests and priorities. This assertion of power and unilateral approach to interpreting the agreements was the most significant action taken by any Yukon government to undermine the spirit and intent of the modern treaties.

In the same week that the Peel Land Use Plan was released, Tr'ondëk Hwëch'in and the First Nation of Na-Cho Nyäk Dun, along with two environmental groups—Canadian Parks and Wilderness Society and Yukon Conservation Society—announced they were taking the Government of Yukon to court for neglecting to follow the regional land use planning process set out in Chapter 11 of the Yukon First Nations' Final Agreements. The Gwich'in Tribal Council, representing the Tetlit Gwich'in, intervened to support Yukon First Nations. In December 2014, the Yukon Supreme Court ruled that the Government of Yukon had violated the land use planning process and had "failed to honour the letter and spirit of its treaty obligations" (as cited in Jaremko 2017, 2). The ruling stated that although the territorial government had the final right to approve the land use plan, meaningful consultation with the affected First Nations was required and only minor modifications can be made to the Final Recommended Plan provided by the Peel Planning Commission (Jaremko 2017, 2). The Government of Yukon appealed the decision at the Yukon Court of Appeal. Although the ruling favoured the respondents, the judgement ruled that the Government of Yukon did not have to return as far as the initial Final Recommended Plan. Dissatisfied with the ruling, the First Nations and environmental groups filed to have the case heard by the Supreme Court of Canada (Joannou 2019). Knowing that there were more regional land use plans to be developed in Yukon, the First Nations were looking for greater certainty in the outcome of this court case.

In 2016, a new Liberal Government was elected in Yukon under the leadership of Sandy Silver. Key to its election platform was a promise to fully implement the Final Recommended Plan, that guaranteed 80% protection of the Peel Watershed. The Supreme Court heard the Peel case in March 2017 and in December 2017, ruled in favour of the First Nations. In August 2019,

the final Peel Plan, outlining protection for 83% of the region, was signed by Premier Silver and Tr'ondëk Hwëch'in, First Nation of Na-Cho Nyäk Dun, Vuntut Gwitchin Government and the Gwich'in Tribal Council (Joannou 2019).

The Peel Watershed case exemplifies the importance of intergovernmental relationships for honouring the spirit and intent of the agreements and seeing them successfully implemented. Tr'ondëk Hwëch'in Chief Roberta Joseph, who has been involved in land claims in different capacities since the 1980s asserted,

> We just really want to be able to have our agreements followed, adhered to, honoured; to be able to move forward collectively, rather than separately. Using a unilateral approach doesn't really accomplish the benefits that the agreements could bring to the Yukon and to the Yukon First Nations (IT14, Joseph 2017).

Critical to the success of these agreements and to modern treaty relationships in Yukon is understanding that all three levels of government are striving to achieve the same goals for Yukon as a whole. Barry Stuart asserted, "If we are going to negotiate in good faith it means we have to implement in good faith" (IT27, Stuart 2020). It is natural that the different governments will have different objectives, interests and values. However, this does not mean that they cannot work together to strive for common goals and outcomes.

6.2 Continuity, Capacity and Understanding of the Agreements

All three levels of government were faced with a steep learning curve from the beginning of implementation, as this was brand new for everyone involved. The first three land claims agreements negotiated and signed in Canada did not require implementation planning nor did they include self-government. Although three other land claims agreements came into effect prior to the Yukon land claims—the Gwich'in Comprehensive Land Claim Agreement, Nunavut Land Claims Agreement, and the Sahtu Dene and Metis Comprehensive Land Claim Agreement—none of these included standalone Self-Government Agreements. To a certain extent, after the signing of the UFA and the first four agreements, the Government of Canada, the Government of Yukon and Yukon First Nations governments all faced challenges with capacity and continuity, as well as training and understanding of the modern treaties.

The loss of institutional memory and understanding of the agreements created an ongoing challenge for the federal and territorial governments, and to a lesser extent for the First Nations governments (IT6, a First Nation government employee 2016; IT8, Joe 2017; IT21, Hanson

2020; IT03, Josie 2016; IT14, Joseph 2017; IT17, former federal government employee 2016; IT29, Sinclair 2020). Several issues contributed to this challenge. Shortly after the agreements were signed, new teams were assigned to oversee implementation. With these new teams, continuity was often lost, as there was little overlap between the original negotiators, senior administrators and the civil servants who worked on the files post-effective date. These new implementation teams often had little knowledge of the cultural, historical, political and/or economic contexts of the agreements, nor did they understand the intent behind the chapters. As Duncan Sinclair contended, "What was important in there was that there be continuity of understanding about what the claim was about and why things were negotiated… because you can never write everything down perfectly" (IT29, Sinclair 2020). Over time, there had been constant turn-over of staff at both INAC and the Yukon government department charged with overseeing land claims.[23] As Tr'ondëk Hwëch'in Chief Roberta Joseph pointed out, "There is too much of a narrow view by other governments because of the high turnovers, and their employees aren't there long enough to be able to fulfill some of the issues" (IT14, Joseph 2017). Another concern that compounded this challenge was that the multiple federal and territorial departments tasked with meeting the agreements' obligations all needed to be educated and trained on the history of the agreements and their responsibility for implementing them. This did not always happen, resulting in a significant lack of understanding and knowledge of the main principles that underlie the intent and context of the UFA and the Final and Self-Government Agreements.

All three levels of government have wrestled constantly with adapting to their new responsibilities and to the new administrative capacities needed for implementation. Each level of government has unique challenges that have created barriers to maintaining continuity, building capacity and training employees on the context and content of the agreements. On the other hand, each has strengths in overcoming some of these barriers. The following sections provide examples of some of the strengths and barriers with regards to continuity, capacity and training that each level of government faced throughout implementation.

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[23] The Land Claims Secretariat was created in 1973 and in 1995 (the effective date of the first four agreements) it was housed within the Executive Council Office, with the Premier as Minister. In 2000/01, the Secretariat was renamed the Land Claims and Implementation Secretariat. In 2005/06, the Secretariat expanded its scope and became the Land Claims and Implementation Secretariat/First Nations Relations. Most recently, in 2013, the Land Claims and Implementation Secretariat/First Nations Relations merged with Governance Liaison and Capacity Development to form the Aboriginal Relations department that exists today.

6.2.1 From Indian Act Band to Self-Governing First Nation

Yukon First Nations faced unprecedented challenges with administrative capacity and development. Prior to becoming self-governing under a Self-Government Agreement, Yukon First Nations were Indian Act bands predominantly governed by INAC. With limited responsibilities for administering their own programs and services, they had very little authority to make modifications or changes. Overnight, on the effective date of their Self-Government Agreements, Yukon First Nations ceased to be Indian Act bands and became self-governing Yukon First Nations with many of the same authorities and responsibilities as the territorial government. Howard Linklater (2016), has held several different political and administrative roles for the Vuntut Gwitchin Government since the 1980s, including being on Chief and Council and working as Director of Government Services. He spoke to the steep learning curve in transitioning from a "DIA government" (Indian Act band) to a self-governing First Nation. He explained that it took Vuntut Gwitchin Government at least ten years to make that transition "from the old DIA regime where we were institutionalized, and everyone was doing everything for us" (IT1, Linklater 2016). One of the major challenges, he argued, was overcoming the "institutionalized syndrome" that came with being a DIA government and the long history of residential and mission schools. The intergenerational impacts of the residential and mission schools are still very much being felt by Yukon First Nations communities. The work required to rebuild and regain trust with the federal government, in particular, after a long history of detrimental assimilationist policies, is still ongoing (IT1, Linklater 2016; IT15, Strand 2017; IT10, Chambers 2017; IT7, Gerberding 2017).

Each Yukon First Nation government was effectively being built from the ground up and had immediate challenges coping with the new responsibilities. Most Yukon First Nation governments were modelled after the structure of western public governments, which required the creation and staffing of government departments to oversee the administration of lands and resources, education, health and social, housing, etc. and one of the biggest challenges here was human capacity. Each of these new departments needed to be staffed, and there was an ongoing challenge of recruiting and retaining employees to work within the First Nations governments, particularly those located in the more rural and remote communities. Following the guidance of its Elders, the Vuntut Gwitchin Government realized that right away it needed to focus on

education for its citizens and building capacity (IT1, Linklater 2016). The same key priorities were identified for both Champagne and Aishihik First Nations (IT8, Joe 2017) and Tr'ondëk Hwëch'in (IT5, a Tr'ondëk Hwëch'in citizen 2016). To build up their governments, each First Nation required "staff with expertise and skills needed to enable them to succeed" (Dacks 2004, 678). Filling these positions within the First Nations governments required certain levels of technical and professional expertise. In addition, those elected to Chief and Council had a steep learning curve in many cases, to develop the western bureaucratic and political skills and understanding to work with the other levels of government, and to understand the intricacies of these intergovernmental relationships (Dacks 2004).

Although Yukon First Nations governments have struggled with retaining and attracting citizens to work within their own governments, one of their major strengths has been the continuity of some key players who have been working with the First Nations governments for many years, some since the negotiation period. These individuals have an in-depth knowledge and understanding of the agreements and the intricacies of the bureaucratic processes and structures. They also know how to navigate evolving intergovernmental relations with the federal and territorial governments. Lawrence Joe, for example, is a Champagne and Aishihik First Nations citizen and former Director of Heritage, Lands and Resources for the Champagne and Aishihik First Nations government. He began working in land claims in 1989 and worked for his government until 2017. Joe explained that several Champagne and Aishihik First Nations citizens were involved from the negotiations straight through to implementation of the Final and Self-Government Agreements (IT8, Joe 2017). This experience gave them institutional memory and understanding of the agreements. With few exceptions, this same long-term involvement did not occur at the other two levels of government. Joe argued, "We ended up with a group of people in the Yukon government and federal government that were responsible for implementing the treaty that didn't understand the spirit and intent and what was meant by these agreements" (IT8, Joe 2017). Many First Nations interviewees agreed that they were constantly faced with having to educate civil servants on the history, context and intent of the agreements.

6.2.2 Government Capacity and Continuity Challenges

Parallel to the land claims agreements being signed, the Government of Yukon was navigating a rapid transfer of responsibility through the devolution process. Therefore, it was not surprising that from early on, the Land Claims Secretariat in the Yukon government faced

capacity challenges. Constable (2016) explained that the department "probably only had twenty people as their staff. The implementation staff was no more than four people. There was no way that those four people could be fully responsible for all of the obligations in those agreements" (IT24, Constable 2016). The Yukon government prioritized two significant pieces early on that contributed to building capacity and training. First, during the two-year period before the first four Yukon First Nations agreements came into effect, the Land Claims Secretariat was dedicated to working with all of the Government of Yukon departments to outline their roles and responsibilities for meeting the agreements' objectives. Second, the Government of Yukon recognized that it needed to develop ongoing education materials for new employees to teach them about land claims (IT24, Constable 2016). A high-level land claims orientation package was put together, and the Staff Training Branch of the Public Service Commission developed a "Land Claims 101" workshop for new employees. When the workshop was first developed, it was an eight-day detailed overview of the land claims context, history and contents and was mandatory as part of the civil servant onboarding for all Government of Yukon employees (IT31, Hale 2020; IT24, Constable 2016). However, overtime, the workshop was shortened to a one-day training session that was no longer mandatory.

Over the past two decades, concern has been raised that Yukon and federal government employees do not understand the core agreements. This concern was identified by several First Nations representatives and those in attendance at the First Principles Project gathering in 2020. These concerns were not commenting on the competency of these individuals but rather the lack of training and education around the history of the land claims and the departmental responsibilities for implementing the individual objectives. Understanding the intent behind each of the chapters is critical to avoiding misinterpretation. Hale asserted the importance of having a clear understanding of the intent of the treaties: "Yukon government staff don't truly understand what they are giving away by turning their heads from the details of the treaties… You need to know the details, so that when you are going beyond those obligations, you understand the steps you are taking" (IT31, Hale 2020).

Lawrence Joe explained that it was the junior and frontline staff that lacked understanding of the agreements, rather than the Deputy Ministers and Assistant Deputy Ministers (IT8, Joe 2020). He argued that during the negotiations, First Nations had compromised to maintain future relationships with the other governments. Ultimately, however, these compromises were not

worth the losses because the First Nations had to constantly rebuild relationships with the new and often inexperienced federal and territorial staff. For example, Joe pointed out that one of the longest ongoing challenges had been with allocation of Yukon First Nations' traplines (IT8, Joe 2020). According to section 16.11.3 of the UFA and Yukon First Nations Final Agreements, "Each Yukon First Nation's Traditional Territory shall be approximately 70 percent held by Yukon Indian People and Aboriginal people who are beneficiaries of Transboundary Agreements and approximately 30 per cent held by other Yukon residents" (UFA 185). The draft UFA was amended to include 16.11.4, which recognized that six Yukon First Nations exceeded the 70% allocation at the time of negotiation. The amendment stated that Yukon First Nations Final Agreements would address these exceptions. Joe asserted, "this section was added to ensure that First Nations would not have to give up their traplines in order to achieve a Final Agreement. Unfortunately, this could have been drafted more clearly" (IT8, Joe 2020). Yukon First Nations have been trying to resolve this issue since the 1990s. However, as Joe argued, because of changing governments and the consistent turnover of staff dealing with this issue, "they make up their own understanding and interpretation of the agreements in different ways" making it difficult to come to a resolution (IT8, Joe 2020).

In January 2020, the First Principles Project gathering took place in part to respond to this lack of knowledge and understanding of the agreements. Former Premier Tony Penikett observed, "the fewer people there are to defend the UFA when necessary, the greater the risk for future generations intentionally or unintentionally eroding its standing and effectiveness" (Butler 2020, 17). In an earlier discussion, Penikett used the example of the Peel watershed conflict to emphasize that members of the Government of Yukon did not understand the agreements:

> The Peel River conflict was an interesting example of people in government not understanding that at the heart of the land claims and self-government is the notion of power-sharing between Indigenous and Settler populations… I don't see that kind of ethos around. I don't see that kind of ethic in place (IT26, Penikett 2017).

To breakdown the power imbalance that historically existed between the federal, territorial and First Nations in Yukon, it is critical that each of the Parties to the agreements are committed to the government-to-government relationships that are foundational to these treaties. The high turn-over of staff working on land claims files and their limited training and education on land claims and Indigenous-government relations means that few government officials remain who

understand the agreements. This, in turn, diminished the centrality of the treaties to the Yukon government-Yukon First Nations relationship.

After devolving responsibilities to the Government of Yukon, the federal government drastically reduced its physical presence in Yukon. It minimized the size, capacity and role of the regional INAC office, which was a significant loss. With increasing centralization in Ottawa, a growing physical and psychological distance arose between the decision-makers and those on the ground in Yukon (Penikett 2020). As former Premier Penikett contended, "There is a huge psychological problem in the federal government. They just don't understand the people who live in the North" (IT26, Penikett 2020). Michael Hale expressed similar concerns: "Ottawa-driven implementation necessarily reduces local interests and pushes efforts toward a more centralized, uniform outcome, which is antithetical to community-based treaty making" (IT31, Hale 2020). This disconnect is compounded by the high levels of turnover within the senior administration of the federal government, and in particular within INAC. A former federal government employee involved in the negotiations asserted, "I don't think the federal government does a particularly good job in bringing new people up to speed…We usually got people at the Ottawa end of implementation who had never done anything like this at all. I think it is endemic to the federal system and maybe it is to all bureaucracies" (IT17, former federal government employee 2016). As these comments indicate, the challenges the Government of Yukon faced with continuity also occurred in Ottawa, where federal civil servants had little understanding of the land claims agreements and the political and cultural contexts and the history rooted in these treaty relationships.

The successes of land claims negotiations can be largely attributed to the relationships and the trust built by the teams on the ground in Yukon. When negotiations started up again in 1987, most members of the federal land claims team were based in Yukon, including the Associate Chief Federal Negotiator, Tim Koepke (who would later become Chief Federal Negotiator). Elizabeth Hanson pointed out, "We believed the agreements had been successfully negotiated because the bulk of the [federal] team lived in Yukon and knew the importance of making the agreements work" (IT21, Hanson 2020). However, the importance of local input was not carried over to members of the federal implementation negotiation team, who were predominantly based in Ottawa. Hanson argued that there was a fundamental difference in perspective between those working for the federal government in Yukon and those based in

Ottawa: “We felt that having people here responsible for implementing with a federal lens would hopefully see three levels of government work to put in place the cooperative governance arrangements necessary” (IT21, Hanson 2020). Much of this cooperation was lost when the federal government downsized its local team post-devolution and faced ongoing challenges with turnover of the senior administrators in Ottawa.

Critical to the success of intergovernmental treaty relationships and implementation of the agreements is retaining federal government employees in the regional offices who have an in-depth understanding of the agreements and Yukon more broadly. Several interviewees from all three Parties to the agreements spoke to the significance of some of the key local long-term regional office employees such as Robin Bradasch, former Director of Governance, Yukon Region for Crown-Indigenous Relations and Northern Affairs Canada. A citizen of the Kluane First Nation, Bradasch first became involved with Yukon land claims as a researcher in 1994, becoming Chief Negotiator and Director of Lands, Heritage and Governance for Kluane First Nation in 1997. Bradasch led the successful negotiation of the Kluane First Nation Final and Self-Government Agreements, signed in 2003. In 2005, she joined the federal government and worked in land claims implementation with INAC for the following fifteen years. The importance of having experienced federal employees with clear understanding of the politics, culture and intricacies of the agreements and the intergovernmental relations in Yukon is critical. It essentially comes down to the importance of the individual players involved in these relationships and the implementation process. Having people at the table like Bradasch who have garnered much respect and trust from the communities and all levels of government is key to successful intergovernmental relations. No matter how well intentioned they may be, when the key decision makers are located in Ottawa and spend little time directly in the communities building relationships, this creates a significant barrier to developing trust and can impede the progress of implementation.

6.2.3 Changing Governments and Changing Priorities

One of the biggest challenges with intergovernmental treaty relations in Yukon has been navigating changes in governments and leadership at all three levels—First Nations, Yukon and Canada. Although each Party to the agreements had different reasons for negotiating land claims, at the time of negotiation, all three had a common goal to see the agreements successfully negotiated. Throughout implementation, the objectives and mandates of each level of government

have not always aligned. Leslie McCullough argued, "Everyone had a common objective at the time [of negotiation] so that made it somewhat easier to work together. I think now, governments and First Nations do not always have the same objectives and priorities" (IT25, McCullough 2020). The changing government mandates and objectives of each government depended on the views of the individuals that were in power. Each leader's goals and priorities often influenced their approach to Indigenous-government relations and the prioritization of land claims implementation.

As federal and territorial governments transitioned, significant ideological shifts held the potential for major disruption. However, some transitions were smooth at the political level, while disruption lay at the senior administration level, particularly with federal administrators. Below are a series of tables that outline the individual leaders of Champagne and Aishihik First Nations, Tr'ondëk Hwëch'in and Vuntut Gwitchin Government, the Government of Canada and the Government of Yukon between 1986-2016. Alongside the Canadian Prime Ministers are the political parties they represented and their Ministers of Indigenous Affairs. Alongside the Yukon Premiers are their political party affiliations, along with the Assistant Deputy Minister (ADM) for Land Claims (and in later years, Aboriginal Relations).[24] The following section provides brief profiles and assessments of a few key leaders and their approach to the intergovernmental treaty relationships in Yukon.

Table 6.1 Champagne and Aishihik First Nations Chiefs (1986-2016)

Term	Chief
1980-1998	Paul Birckel
1998-2002	Bob Charlie
2002-2006	James Allen
2007-2010	Diane Strand
2014-Present	Steve Smith

[24] In the Government of Yukon, the Premier has always been the Minister responsible for the Executive Council Office, which houses the Land Claims Secretariat and Aboriginal Relations department. The ADM of these departments reported to the Deputy Minister of ECO, who reported directly to the Premier.

Table 6.2 Tr'ondëk Hwëch'in Chiefs (1986-2016)

Term	Chief
1984-1987	Hilda Pohlmann
1987-1990	Angie Joseph
1990-1998	Steve Taylor
1998-2008	Darren Taylor
2008-2014	Eddie Taylor
2014-Present	Roberta Joseph

Table 6.3 Vuntut Gwitchin Government Chiefs (1986-2016)

Term	Chief
1985-1998	Alice Frost
1988-1990	Roger Kyikavichik
1990-1996	Robert Bruce Jr
1996-1997	Chief Randall Tetlichi (resigned in '97)
1997-1998	Chief Marvin Frost (appointed Chief)
1998-2010	Joe Linklater
2010-2012	Norma Kassi
2012-2014	Joe Linklater
2014-2016	Roger Kyikavichik
2016-2018	Bruce Charlie

Table 6.4 Canadian Prime Ministers and Ministers of Indigenous Affairs (1986-2016)

Term	Prime Minister	Party	Minister
1984-1993	Brian Mulroney	Progressive Conservative	Doug Firth (1984) David Crombie (1984-1986) Bill McKnight (1986-1989) Pierre Cadieux (1989-1990) Tom Siddon (1990-1993) Pauline Browes (1993)
1993-1993	Kim Campbell	Progressive Conservative	Ron Irwin (1993-1997) Jane Stewart (1997-1999) Bob Nault (1999-2003) Andy Mitchell (2003-2004) Andy Scott (2004-2006)
1993-2003	Jean Chrétien	Liberal Party	
2003-2006	Paul Martin	Liberal Party	
2006-2015	Stephen Harper	Conservative Party	Jim Prentice (2006-2007) Chuck Strahl (2007-2010) John Duncan 2010-2013 Bernard Valcourt (2013-2015)
2015- Present	Justin Trudeau	Liberal Party	Carolyn Bennett (2015-present)

Table 6.5 Yukon Premiers and ADMs of Land Claims/Aboriginal Relations (1986-2016)

Term	Yukon Premier	Party	ADM
1985-1992	Tony Penikett	New Democratic Party	Gerry Piper (Apr.1986- Mar.1988) *Vacant* (Aug.1988- Apr.1989) Tim McTiernan (Nov.1989- Apr.1996)
1992-1996	John Ostashek	Yukon Party	
1996-2000	Piers McDonald	New Democratic Party	Randy Brandt (Jul.1997-Jan.1999) Florian Lemphers (Sept.1999-Sept.2000)
2000-2002	Pat Duncan	Liberal Party	Karyn Armour (Apr.2001-Aug.2014) Michael Hale (Jul.2014-Mar.2015) Stephen Mills (Mar.2015-Nov.2015) Allan Jones (Nov.2015-Nov.2016) *
2002-2011	Dennis Fentie	Yukon Party	
2011-2016	Darrell Pasloski	Yukon Party	
2016-	Sandy Silver	Liberal Party	Brian MacDonald (Nov.2016-present)

* *Acting ADM*

Yukon First Nations Chiefs were living and breathing the land claims agreements every day in their communities. Significant ideological shifts within the transitions from one Chief to another were rare. Different Chiefs had different approaches to working with the other levels of government, and some were certainly more receptive than others. However, they all saw the value and necessity of seeing these agreements fully implemented and knew of the importance of maintaining intergovernmental treaty relationships. In the three Yukon First Nations governments examined in this study, several long running Chiefs had extensive histories of involvement with land claims. For example, former Champagne and Aishihik First Nations' Chief Paul Birckel, who negotiated and signed the Final and Self-Government Agreement, was Chief for eighteen years. Prior to being elected as Chief, Birckel was the Executive Director of the Council for Yukon Indians from 1975-1980, playing a key role in the early years of the UFA negotiations.

One of the more well-known Yukon First Nations Chiefs, the late former Vuntut Gwitchin Chief Joe Linklater, is highly regarded for the intergovernmental work he did. Linklater was Chief for fourteen years over a sixteen-year period (1998-2010 and 2012-2014), a critical time for the post-effective date implementation of Vuntut Gwitchin Government's Final and Self-Government agreements. In an interview in 2011, Linklater said that he ran for leadership because he saw the importance of being involved in self-government and because his Elders told him he needed to run for Chief. As he explained, the Elders taught their citizens "if they're going to be involved in something, then they're going to be involved in it in a big way" (Perry 2016). Linklater played an instrumental role in several intergovernmental affairs initiatives. For

example, he signed the first Yukon regional land use plan: The North Yukon Regional Land Use Plan, co-developed between Vuntut Gwitchin Government and the Government of Yukon. He also fought hard to protect the Porcupine Caribou herd, a primary food source, whose calving grounds are located on the traditional territory of the Vuntut Gwitchin. Recognizing the declining numbers of Porcupine Caribou, Linklater was instrumental in developing the "Harvest Management Plan for the Porcupine Caribou Herd in Canada" (First Nation of NaCho Nyäk Dun et al. 2010)(2010). This plan brought together the Government of Canada, the Government of Yukon, the Government of Northwest Territories, First Nation of Na-cho Nyak Dun, Gwich'in Tribal Council, Inuvialuit Game Council, Tr'ondëk Hwëch'in and Vuntut Gwitchin Government. Although this was a fractious process at times, the plan was a remarkable demonstration of intergovernmental relations and co-management and is one of the only management plans in Canada that has thresholds for harvesting.

Many Yukon First Nations governments have been led by successive family members; thus, passing on a firm understanding of the context and content of the agreements and more importantly the intent. For example, current Champagne and Aishihik First Nations Chief Steve Smith is the son of former Chief Elijah Smith who led Yukon First Nations Chiefs to Ottawa with *Together Today for our Children Tomorrow* in 1973. Chief Steve Smith grew up surrounded by the land claims negotiations. In describing the respect and understanding that Chief Smith has for the land claims, Lawrence Joe said, "He is a land claims kid. He doesn't really know an environment that was before the land claims. He has a pretty solid understanding of what we tried to accomplish [with the agreements]" (IT8, Joe 2020). This in-depth understanding of both the importance and spirit and intent of the agreements is critical to how they are implemented.

The approach to and priority of these intergovernmental treaty relations at the federal government level also depended on the historical, political and economic contexts. For example, several land claims agreements were being negotiated across Canada against the backdrop of the 1990 Oka Crisis on the Kanesatake Mohawk reserve in Quebec, when Brian Mulroney was Prime Minister under a Progressive Conservative government. The Kanesatake were protesting the expansion of the nearby Oka Golf Course, which if approved would be built on their unceded traditional territory, including the existing location of their cemetery. The protests escalated to a 78-day stand-off between the Kanasatake, Quebec provincial police and the RCMP. Eventually the arrival of the Canadian Army put an end to the blockades and protests (Marshall 2013). Then

federal Minister of INAC, Tom Siddon, believed the Oka Crisis was critical in dismantling barriers and resolving challenges facing the land claims process (Valiante and Rakobowchuk 2015). In response to Oka, Prime Minister Mulroney established the Royal Commission on Aboriginal Peoples (RCAP) in 1991, with the aim of systematically investigating Canada's relationship with Indigenous peoples. In the summer following the Oka Crisis, Mulroney wrote to the Premiers of Northwest Territories and Yukon, committing to completing the land claims negotiations. In one letter he wrote, "the federal government is determined to create a new relationship among Aboriginal and non-Aboriginal Canadians based on dignity, trust and respect" (Barrera 2015). Between 1990-1993, the Mulroney government removed the cap on the number of claims that could be negotiated at one time across the country, tabled the new British Columbia treaty process, and signed off on the UFA and the first four Yukon First Nations Final and Self-Government Agreements.

Stephen Harper, who was also Prime Minister under a Conservative government, made two key contributions to furthering Crown-Indigenous relations. He issued a formal public apology for the Indian Residential School system in 2008 and was the first Prime Minister to endorse the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). On the other hand, along with his Minister of Indigenous Affairs, he is renowned for his adversarial approach to Indigenous relations and intergovernmental modern treaty relations in particular. In 2009, at a G20 meeting, Harper undermined his previous apology by saying that Canada has "no history of Colonialism". It also cannot be overlooked that Idle No More, the largest Indigenous-led social protest movement in Canadian history, arose during Harper's leadership. As Indigenous legal scholar Pam Palmater (2015) asserted, "in ten short years, Canadian Prime Minister Stephen Harper has set the relationship with First Nations back a hundred years" (para. 1).

The Harper Government was known for its focus on economic and resource development. When Harper was Prime Minister, these priorities often had significant detrimental impacts on the intergovernmental relationships with Indigenous governments and communities across the country. A prime example of this is Bill S-6, which the Harper Government introduced in June 2014. Bill S-6 proposed amendments to the Yukon Environmental and Socio-economic Assessment Act (YESAA), which sets out the processes for environmental and socio-economic assessments for all projects conducted in Yukon. YESAA was developed as part of an obligation

outlined in "Chapter 12: Development Assessment" in the UFA and Yukon First Nations' Final Agreements. Many Yukon First Nations governments argued that the proposed changes to YESAA violated their land claims agreements and undermined the spirit and intent of the Act. In October 2015, Little Salmon-Carmacks First Nation, the Teslin Tlingit Council and Champagne and Aihshik First Nations filed a lawsuit against the proposed amendments. Teslin Tlingit Council Chief Carl Sidney argued that "the amendments through Bill S-6 undermine or weaken Yukon's development assessment process and our role as Yukon First Nation governments" (Thomson 2015). Champagne and Aishihik First Nations Chief Steve Smith contended that the lawsuit "happened in part because we were not respected as being legitimate governments and as partners of this great confederation" (Thomson 2016). At the time that Bill S-6 was being tabled, Minister of Indigenous Affairs Bernard Valcourt was cited claiming that Yukon First Nations were not "real governments" (*CBC News* 2014a), disregarding the government-to-government relations that were intended to flow from the Final and Self-Government Agreements. The same month the lawsuit was filed, a federal election was underway, and Justin Trudeau ran on an election promise to repeal the amendments. With the election of Prime Minister Trudeau on October 19, 2015, the lawsuit was set aside.

Premier Pasloski was in full support of Bill S-6 and the proposed amendments, arguing that it would create "certainty" for the mining industry and broader Yukon economy (*CBC News* 2014b). As demonstrated in the Peel Watershed example, Pasloski's prioritization of resource development and relationships with industry often came at the expense of the modern treaties and the Yukon government-First Nations relations. Pasloski was raised in Saskatchewan, a Prairie province that has much different historical treaty relationships from Yukon. His apparent lack of understanding of the land claims agreements and the importance of centering these within the government's mandates, priorities and policies was detrimental to the territorial government's long-term relations with Yukon First Nations. Pasloski's approach was markedly different from many other former Yukon Premiers—with the exception perhaps of John Ostashek—who largely valued strong intergovernmental treaty relations, regardless of their political ideologies.

In 1984/85, there was a growing argument being put forward by a number of Yukoners, led by politicians Dan Lang and Willard Phelps, that the Yukon government needed a position at the land claims negotiation table to represent and protect the interests of 'white' Yukoners. This attitude shifted significantly with the election of Tony Penikett and the New Democratic Party in

1985. For the first time in Yukon's political history, there was substantial Indigenous representation on the government side in the legislature. Four out of eight MLAs in Premier Penikett's Cabinet were Indigenous. Penikett was also a strong proponent of the land claims agreements and argued that "there was a public interest in having a treaty and resolving these land claims" for all Yukoners (IT26, Penikett 2020). Penikett worked hard to prioritize the successful negotiation of the UFA and first four Yukon First Nations Final and Self-Government Agreements. He lost the election in 1992, shortly before signing off on the agreements.

When John Ostashek was elected Premier in 1992 under a Yukon Party minority government, many feared he would choose not to sign-off on the agreements. A rural Yukon big game outfitter from a Prairie treaty context, Ostashek was well known for vociferously opposing the land claims agreements and advocating for non-Indigenous rural Yukoners who wanted assurance that their own interests were being protected in the land claims negotiations. Several Ministers in Ostashek's Cabinet were also known for their opposition to Yukon First Nations' political aspirations and for their staunch resistance to land claims. With the election of Premier Ostashek and the Yukon Party, many feared that after years of negotiations, all the progress could be wiped away. However, in a resounding demonstration of how important these agreements were to all Yukoners and to intergovernmental relations with the federal government, Ostashek signed off on the UFA and first four agreements. Despite this move, Ostachek became known from being adversarial towards Yukon First Nations throughout his term. Although significant progress was made during the Yukon Party's term in negotiating the Selkirk and Little Salmon Carmacks First Nations Final and Self-Government Agreements, no other agreements were completed and signed-off on under the Ostachek government.

The late Denis Fentie was elected Premier under a Yukon Party majority government in 2002. Fentie was born in Alberta and raised in Watson Lake, a rural conservative community in southeast Yukon that is located within the traditional territory of the Kaska First Nation. Fentie, who started his career as an NDP MLA, was said to be a very pragmatic politician and knew the value of establishing strong intergovernmental relations with Yukon First Nations (IT21, Hanson 2020; IT29, Sinclair 2020). Although Fentie supported mining and resource development, he also saw the importance of balancing development with honouring the modern treaties. Throughout his time as Premier, he worked closely with the Kaska First Nation to try and negotiate a

successful land claim. In addition, he established the Yukon Forum, an intergovernmental forum that brought together all Yukon First Nations leaders and the Government of Yukon.

Individual leaders can have a profound effect on intergovernmental relationships and modern treaty implementation. These relationships reflect the commitment and priorities of the individual Prime Ministers, Yukon First Nations Chiefs and Yukon Premiers; they also reflect the alignment of priorities across the levels of government. In Yukon, the transition from one government to the next and, often, shifts in political ideologies have not necessarily impeded progress on modern treaty implementation, nor have they been the root cause of the breakdown in intergovernmental treaty relationships. In 2016, an ideal alignment of objectives occurred with the leaders who were in place at all levels of government.[25] These leaders demonstrated commitments to, and prioritization of, implementing the land claims agreements, improving the damaged intergovernmental treaty relationships and honouring the spirit and intent of the agreements in Yukon.

6.3 Spirit and Intent Versus the Letter of the Law

Honouring the spirit and intent of the treaties means recognizing the reciprocity, respect and commitment made between governments when the agreements were first negotiated. Reference is sometimes made to honouring the spirit and intent of treaties as opposed to simply recognizing the word-for-word obligations as outlined in the texts of the Final and Self-Government Agreements. Reports from the Auditor General, the Land Claims Agreements Coalition and the Senate Standing Committee on Aboriginal Peoples have accused the federal government of neglecting to look beyond the letter of the law to truly implement the intent that is at the heart of these modern treaties. Similar concerns have been raised about the Government of Yukon's narrow approach to treaty implementation. In the view of a long-time Yukon First Nation government employee, implementation is all about fulfilling the spirit and intent of the agreement: "these agreements were made with a specific spirit and intent there, the original negotiators, the Elders, the Chiefs, the officials, all of the other people that were involved all of

[25] The leaders in place in 2016 included: Prime Minister Justin Trudeau, Premier Sandy Silver, Grand Chief Peter Johnson, Champagne and Aishihik First Nations' Chief Steve Smith, Tr'ondëk Hwëch'in Chief Roberta Joseph, and Vuntut Gwitchin Government Chief Bruce Charlie.

the way through for 20+ years, had an intent, and we have to honour that" (IT11, Yukon First Nation government employee 2017). Elder Angie Joseph-Rear explained,

> …In the beginning, [the spirit and intent] sounded like, yes, we agree. All three of us. That's why we shook hands and exchanged gifts and words. It's in spirit. And along the way, as First Nations people, we will interpret it as, yes, we trust you that will continue, we have to. Implementation is a further negotiation, further devolution, and part of the agreement…It's not what is happening (IT4, Joseph-Rear 2016).

Conflicting approaches to implementing modern treaties is often attributed to interpretation difficulties and conflict between fulfilling the letter of the law versus upholding the spirit and intent of the agreements (Papillon 2008; AANDC 2013; Asch 2014; Senate Standing Committee on Aboriginal Peoples 2008; Government of Canada 2015). The government approaches implementation as a contractual obligation; viewing its roles as complete once the agreement has been signed (Senate Standing Committee on Aboriginal Peoples 2008, 13). Further, the federal and territorial governments have been criticized for very narrowly interpreting what they are obligated to implement. The Yukon government demonstrated its narrow focus in the Peel Watershed when it interpreted the meaning of consultation and the process for regional land use planning. Another example raised by several interviewees involves the "shall" clauses in the agreements (e.g., "Government shall consult with the affected First Nation" (DIAND 1993b, 48)) and the "may" clauses in the agreements (e.g., "A Yukon First Nation and Government may agree to exchange Crown Land for Settlement Land…" (DIAND 1993b, 84)). At the time of negotiation, the difference between these two simple words was fervently debated, and hours were spent deciding on which term to use for a single clause. The federal and territorial governments believed that all parties were bound to implementing the clauses that said, "shall". The "may" clauses, on the other hand, were not seen as binding. Gerberding contended, "Canada and the Yukon have taken the view that really the only obligations are to the "shall" clauses and then only narrowly (IT7, Gerberding 2016). The "may" clauses are just so much as a pipe dream." Many Yukon First Nations governments believed that the parties should have "a genuine willingness to consider whatever the "may" clauses said might be done" (IT7, Gerberding 2016) and commitment to look beyond a single word and acknowledge the broader objectives of the agreements.

Interviewees indicated that neither the federal nor territorial civil servants were mandated to implement the spirit and intent of the agreements, the argument being that "spirit and intent"

cannot be defined or measured. Civil servants within both governments are, on the other hand, mandated to fulfill their obligations contained within the clauses of each of the chapters. Based on these perspectives, it seems clear that the civil servants were authorized to implement the treaties as written and not to rely on the value and imprecise concept of the "spirit and intent" of the treaties, which however, were fundamentally important to the Yukon First Nations. Paralleling the experience of the historic treaties, First Nations believed that underlying these agreements was a spirit and intent to honour the agreements beyond the black and white letter-for-letter wording in the clauses of the agreements.

Further, First Nations representatives have asserted that one the most significant challenges throughout implementation has been the federal and territorial governments' narrow focus on the substantive clauses in the agreements at the expense of the overarching objectives (IT15, Strand 2017; IT7, Gerberding 2016). At the beginning of several chapters in the Final Agreements, are a series of objectives. Former Champagne and Aishihik First Nations Chief Diane Strand addressed the challenges her government has faced with the interpretation and implementation of its agreements: "the objectives of the chapter are something that is near and dear to us, and this is why, in our way of thinking, that would be our treaty" (IT15, Strand 2017) Using the example of "Chapter 13: Heritage", Strand pointed out that its objectives are "very spiritual, that is something that is coming from within; it's part of the land, it's part of who we are, looking at all four elements", adding, "Disregarding those objectives and just looking at the substantive clauses, is really disheartening" (IT15, Strand 2017). The objectives of these chapters signify the original intent behind fighting for land claims: achieving self-determination and protection of land, language and culture for today and for future generations. To meet the objectives in the Final Agreement chapters, modern treaties need to be viewed as "living documents" that change and adapt as contexts and priorities of the signatories change (Papillon 2008, 15). Political Science scholar Martin Papillon (2008) suggested, "Treaties must evolve and adjust to changing realities on the ground" (15). It is fundamentally important that all Parties to the Yukon agreements—the Government of Canada, the Government of Yukon and Yukon First Nations governments—consider the overarching objectives of the chapters and not simply what they view as obligatory clauses. In doing so, they commit to honouring the spirit and intent of the agreements.

6.4 Dispute Resolution and Reliance on the Courts

Multiparty agreements, land claims or otherwise, are complex documents subject to differences of opinion and interpretation. Mechanisms to resolve difference are essential. With a multiparty agreement that took nearly twenty years to negotiate, compromises were certainly made and the Parties to the agreements could not possibly anticipate every issue that might arise. When the UFA was negotiated, land claims agreements were relatively new in Canada, and unforeseen developments were expected throughout implementation. With changing governments came changing objectives, priorities and mandates, which inevitably led to disputes.

When intergovernmental conflicts related to the Final and Self-Government Agreements arise in Yukon, the parties can turn to the courts or to dispute resolution mechanisms. At the time of negotiation, Yukon First Nations fought hard for the inclusion of a dispute resolution chapter in the UFA, despite opposition from the federal government. Yukon First Nations saw the importance of building a process that respected their traditional ways of resolving issues and not just the adversarial process that is built into the court system (First Principles Project 2020, 8). The dispute resolution process is founded on trusting and respectful relationships and accommodates different capacities for people to participate in the process, including community members. "Chapter 26: Dispute Resolution" in the UFA and Yukon First Nations Final Agreements outlines processes and mechanisms that allow the parties to resolve disputes by mediation or arbitration. The two objectives of this chapter are as follows:

> 26.1.1.1 to establish a comprehensive dispute resolution process for resolving disputes which arise out of the interpretation, administration or implementation of Settlement Agreements or Settlement Legislation; and
>
> 26.1.1.2 to facilitate the out-of-court resolution of disputes under 26.1.1, in a non-adversarial and informal atmosphere (DIAND 1993b, 271).

The Dispute Resolution Board (DRB), established under article 26.5.4.6 of the UFA and Yukon First Nation Final Agreements, comprises three members jointly appointed by the Parties to the agreements—the Government of Yukon, Yukon First Nations governments and the Government of Canada. The DRB establishes the rules and procedures for the mediation and arbitration processes (Yukon Dispute Resolution Board 2019). The intent of the DRB is to facilitate "an out-of-court, non-adversarial alternative dispute resolution process to resolve

disputes arising from the interpretation, administration or implementation of the settlement agreements and legislation" (Yukon Dispute Resolution Board n.d., 1)

Unlike court proceedings, the two main dispute resolution mechanisms outlined in Chapter 26—mediation and arbitration—are intended to be informal and non-adversarial. The DRB states that "mediation is a negotiation process moderated by an independent and impartial facilitator, the mediator"(Yukon Dispute Resolution Board 2019, 3). Mediation allows the parties to find and develop a process that works for everyone. In a cross-cultural environment, this approach can be much more valuable than formalized western-centered court proceedings. Arbitration, on the other hand, "is an adjudication process presided over by an independent and impartial arbitrator whose role is very similar to that of a judge in a court. Unlike the public courts, however, arbitrations are generally not open to the public" (Yukon Dispute Resolution Board 2019, 3). Ultimately, the decision of an arbitrator is binding; although, arbitration is seen to be much more flexible than public courts and, like mediation, it allows the parties to adapt the process to meet the needs of the case (Yukon Dispute Resolution Board 2019, 3).

Anticipating differences of interpretation during implementation, the Parties to the agreements were determined to include a dispute resolution chapter in the UFA. As a former federal government employee involved in the negotiations indicated,

> Sometimes you get agreement by elevating the language to the level of generality that both parties can say they agree to, even though they may have different understandings of what it is. We knew that this was going to happen, so we set out mediation and arbitration provisions" (IT17, former federal government employee 2016).

Unfortunately, the dispute resolution chapter was written out in formal and legalistic language and is often interpreted in a strict way. Consequently, with few exceptions, since the signing of the Yukon land claims agreements, the dispute resolution chapter has almost never been used (IT27, Stuart 2017; IT26, Penikett 2020; IT25, McCullough 2020).

There are contrasting perspectives on why dispute resolution mechanisms have been underused and why the Parties to the agreements have chosen to turn to the courts when conflicts have arisen. Several First Nations representatives at the First Principles Project gathering argued that the federal and territorial governments see things in black and white or "win versus lose" and would rather turn to the courts for resolution (pers. notes from First Principles Project 2020). Stuart argued that not all problems can easily be broken down into black and white legal contexts

(IT27, Stuart 2020). On the other hand, there are times that reliance on the courts is required to assert certainty and to set precedence for the future (IT25, McCullough 2020). We saw a clear example of this with the Peel Watershed court case when it was escalated to the Supreme Court of Canada. Aware there would be more regional land use planning processes in future, Yukon First Nations wanted certainty that they would not end up back in the courts over conflicts in interpreting "Chapter 11: Land use Planning". Other critical court cases, such as the *Calder* case[26] and *Beckman v. Little Salmon/Carmacks First Nation*[27], have set precedent for land claims and Aboriginal rights more broadly.

Lesley McCullough argued that although there have been some significant court cases, in the bigger picture and compared to other parts of the country, there has not been a reliance on the courts or the dispute resolution mechanisms in Yukon (IT25, McCullough 2020). She further argued that the absence of the use of dispute resolution in Yukon does not necessarily indicate that intergovernmental relations have broken down (IT25, McCullough 2020), adding, "I don't feel disappointed that governments disagree and don't necessarily take advantage of the formal dispute resolution provisions. It's an excellent tool but I also think we need to respect governments to decide which tool is the best tool to be used at the time" (IT25, McCullough 2020). In addition, McCullough pointed out that the land claims agreements and these intergovernmental treaty relations are relatively new. They are less than thirty years old. She

[26] *R v. Calder* (the *Calder* case) was ruled on in 1973. The case involved the Nisga'a Nation from Northern BC, who were suing the Government of British Columbia, seeking a declaration that title to their lands had never been lawfully extinguished. The case was lost in the Supreme Court of British Columbia, as well as the Court of Appeal of British Columbia. At the Supreme Court of Canada, six out of seven of the judges were split in their decision on whether Nisga'a title to the land had been extinguished. The seventh judge tipped the balance on a procedural point and the case was lost for the Nisga'a. However, for the first time in history, six out of seven judges ruled that Aboriginal title existed in Canadian law. This was the first time the Supreme Court of Canada acknowledged that Indigenous peoples had title to their land before Europeans arrived in North America.

[27] *Beckman v. Little Salmon/Carmacks First Nation* was an instrumental case examining the Crown's duty to consult Yukon First Nations within the context of a modern treaty. This was the first Supreme Court decision to examine the duty to consult within this context. On November 19, 2010, the Supreme Court of Canada ruled that the Crown had met their duty to consult even though they had not met with the First Nations in person. They had met the duty through consideration of written submissions. Though the Little Salmon Carmacks First Nation lost this case, the discussion and judgement included important language around the definition of the duty to consult and its application. In addition, it laid out important implications for third party's duty to consult with First Nations.

argued that it will take time for the parties to navigate these new relationships and new processes, and, in time, the dispute resolution mechanisms will be used (IT25, McCullough 2020).

Former Government of Yukon Chief Negotiator Barry Stuart, who has spent decades working in restorative justice and alternative dispute resolution (ADR), argued that the negotiators did not go far enough with Chapter 26: "There wasn't enough time spent on it… We didn't recognize the importance of following up on so many aspects that were part of the implementation of this chapter" (IT27, Stuart 2020). According to Stuart, the Chiefs, territorial and federal government leaders, and other key people in the territory needed training to be able to do ADR and to understand the benefits this process could bring to maintaining respectful intergovernmental relations while resolving disputes (IT27, Stuart 2020).

Dispute resolution acknowledges and uses traditional values and processes. If used properly, it could be an invaluable tool for rebuilding relationships and trust amongst governments. Several participants at the First Principles Project gathering spoke to the need to strategically educate each of the parties on what dispute resolution and mediation entail and when it is appropriate and beneficial to use these processes in place of relying on the courts (pers. notes from First Principles Project 2020). McCullough suggested that "the dispute resolution chapter could support the government-to-government relationships in the long term" (IT25, McCullough 2020). However, the parties need to have confidence in the process and need to see it as a valid process to turn to.

Mediation and arbitration are only valuable mechanisms if there is a will from both sides to work together to resolve the dispute. As political scientist Gerald Baier contends, "when courts are relied upon to resolve intergovernmental disputes it is a clear sign that governments have either run out of opportunities and patience for negotiation or have taken entrenched positions that do not allow them to compromise with one another" (2020, 91). Currently, intergovernmental disputes that arise in Yukon are primarily being resolved in the court systems, perhaps because the negotiators underestimated what was required for the alternative dispute resolution mechanisms to be used: strong relationships, trust and shared interests between the parties. As a result, all Parties to the agreements have fallen back on relying on the courts to provide certainty in resolving disputes.

6.5 Conclusion

The intergovernmental treaty relationships in Yukon deteriorated between the period of approximately 2003 and 2016. This chapter explored three broad trends that contributed to the breakdown of these relationships: (1) continuity, capacity and understanding of the agreements; (2) the conflict between the spirit and intent of the agreements versus the letter of the law; and (3) dispute resolution and reliance on the courts. To successfully implement these agreements, all parties must have political will and good faith. Several interviewees said that 2016 was a critical turning point in Yukon, with new leaders at all levels of government. A Yukon First Nation government employee contended, "I think we're at a really interesting point in history right now in terms of being able to maximize our agreements and actually achieve what I call spirit and intent of the agreement because of the political will at both levels of government" (IT9, Yukon First Nation government employee, 2017). As governments struggle with diverse priorities and mandates, instrumental to successfully negotiating these agreements are improved government-to-government relationships and an acknowledgement of a common overarching goal to honour the spirit and intent of the agreements.

To understand the modern treaty implementation successes and to overcome the barriers, two things are needed: first, a sound knowledge of the policies, processes and structures that are in place to facilitate implementation, and second, an understanding of the relationships and the individuals who are putting these agreements into action. Lesley McCullough stated, "We always have to be aware of the relationships. The relationship is in and of itself an objective [of the agreements]" (IT25, McCullough 2020). These two key pieces to modern treaty implementation should not be studied in isolation.

7. DISCUSSION AND CONCLUSION: CONCEPTUALIZING MODERN TREATY IMPLEMENTATION

Government processes, including something as crucial as treaty implementation, occur in the midst of a constant swirl of policy issues, program and policy changes, elections, regime changes, administrative turnover, and other political and governmental challenges. The study of public policy always requires two key elements: the development and formation of policy, and the implementation of policy. Implementation, however, is often overlooked. American historian Paul Prucha once wrote, "a policy can be fully understood only by watching it unfold in practice" (Prucha 1971, 15). Treaties in and of themselves are not public policy instruments in the limited sense of the concept; they are higher level agreements between governments. The public policy implementation literature contributes to the understanding of modern treaty implementation, as well as the complex nature of multiparty intergovernmental relationships created through treaties. On the other hand, the nature of the implementation literature also emphasized the challenge of conceptualizing a regional study of treaty efforts. Due to the complexity and cross-cultural elements of land claims agreements, it rarely works to try and fit them into the existing theoretical and conceptual frameworks. The agreements are also accords between Indigenous peoples, the Government of Canada, and a sub-national government or governments, and multiparty arrangements have attracted little scholarly attention.

The dissertation addressed two key issues: how have the partners in the negotiation of a modern treaty managed the transition from negotiation to implementation, and what does this transition reveal about the modern treaty process in Canada? This study examined the experience of negotiating and implementing modern treaties in Yukon between 1986 to 2016. More specifically, it sought to understand the experience of negotiating and implementing the Umbrella Final Agreement, as well as the Final Agreements of the Champagne and Aishihik, Tr'ondëk Hwëch'in, and Vuntut Gwitchin First Nations.

After a failed Agreement in Principle in Yukon in 1984, the Government of Canada suspended land claims negotiations while they reviewed their existing negotiation policy. In 1986, the Government of Canada released a revised comprehensive land claims policy, which outlined an intricate, complex, and multi-layered approach to modern treaty negotiations in Canada. Implementation planning was included as a requirement of land claims negotiations for

the first time. This set the path towards the successful negotiation of the Umbrella Final Agreement and the first four Yukon First Nations Final and Self-Government Agreements, signed in 1993. A significant transitional year occurred across all levels of government in Yukon in 2015-2016. Justin Trudeau had been recently elected Prime Minister under a new Liberal majority government at the end of 2015. The next year saw the election of a new Grand Chief of the Council of Yukon First Nations, Peter Johnston, and there was a new Liberal government elected in Yukon, under the leadership of Sandy Silver. In their elections, all three of these political leaders made significant commitments to honouring the land claims agreements and re-igniting the intergovernmental treaty relationships that are central to these agreements. Jim Harper explained that he observed much more progressive approaches to implementation under the leadership of Premier Silver and Prime Minister Trudeau (IT32, Harper 2020). He pointed out that "it was pretty clear the Trudeau government was prepared to make significant commitments, policy change, statements of political will, [and] new funding on an ongoing basis" (IT32, Harper 2020). This marked a significant shift from the repeated breakdown of relationships and increasing barriers to modern treaty implementation that had characterized the previous twenty years.

The close examination of the experience of negotiating and implementing land claims agreements in Yukon during this time period (1986-2016) reveals that all Parties to the agreements made a significant commitment to seeing these modern treaties successfully negotiated. However, there was a clear disconnect between the negotiation phase and putting these agreements into action. This study examined two key topics related to modern treaties that explain some of the more significant barriers and challenges to implementation. The first topic, modern treaty implementation policies, processes and structures was the focus of Chapter 5. Analysis of how these processes and structures developed and evolved over time, particularly at the federal and territorial government level revealed the complex nature of these multiparty agreements. A Yukon First Nation representative described the potential Yukon holds in demonstrating to the rest of the country "how this [treaty] relationship could work" (IT9, Yukon First Nation government employee 2017). However, the reviews of implementation progress in Yukon concluded that one of "the biggest challenges to implementation was that other governments weren't willing to change their policies and practices to embrace self-government" (IT9, Yukon First Nation government employee 2017). Since the signing of the James Bay and

Northern Quebec Agreement in 1975, the forty-five years of modern treaty implementation in Canada (twenty-eight years in Yukon) witnessed only slow and incremental changes to these policies and approaches to modern treaty implementation. Political and policy promises were rarely translated into substantive action.

The completion of land claims processes did not occur in isolation. While Yukon First Nations negotiated their way into Confederation, the Government of Yukon sought to restructure its relationship with the federal government. These parallel processes, both fundamentally important to Yukon governance, intersected in many important respects. Devolution of land and governance rights to the Government of Yukon transformed fundamentally the political and administrative options available to Yukon First Nations. In addition, it resulted in a lengthy period of time where both the Government of Yukon and Yukon First Nations were struggling to build capacity and navigating this new intergovernmental reality in Yukon. Duncan Sinclair explained, "We needed to move to a whole new place around cooperation and collaboration and respect, and [to] new ways of doing business" (IT29, Sinclair 2020).

Foundational to many of the modern treaty implementation barriers and challenges in Yukon are the intersection of intergovernmental relations between the federal, territorial and Yukon First Nations governments. These intergovernmental relationships were the second topic examined in this study and was the focus of Chapter 6. Central to the success of modern treaty negotiations in Yukon were the relationships built between the individuals on the ground at all three levels of government. These relationships were founded on trust, respect and a shared commitment to seeing the agreements successfully negotiated. Throughout implementation, these relationships have unravelled overtime as a result of changing governments, changing policies and changing priorities. Sinclair pointed out, "I think it really came down to the relationships and individual people either having the political will or not having the political will. We saw a period of time there where the relationships certainly broke down quite significantly [in Yukon]" (IT29, Sinclair 2020). Chapter 6 identified three key trends that have contributed to this breakdown of relationships throughout implementation: (1) continuity, capacity and understanding of the agreements; (2) conflict between honouring the spirit and intent versus the letter of the law; and (3) dispute resolution and reliance on the courts to settle outstanding and unresolved conflicts.

The time period of this study (1986-2016) observed significant shifts in the prioritization of Indigenous-government relations and the centrality of modern treaty relationships between governments in Yukon. This resulted in strained relations between Yukon First Nations signatories and their government partners at the federal and territorial level. This study described a disconnect between the political desire to honour the treaties and a commitment to meeting the administrative obligations impeded in the agreements. Though there has been a shift in the political will towards honouring the obligations and responsibility to seeing these agreements fully implemented, there has also been a sense of resistance and only incremental change within the bureaucracy itself. This phenomenon is observable within the federal public service, but similar concerns emerged within the Government of Yukon.

A "whole of government" responsibility is required to see these agreements fulfilled. Jim Harper asserted, "There is a need to make sure that departments understand. It is not just a political mandate at Cabinet level. It is not just a mandate for the Aboriginal Relations division. It's a mandate for the government as a whole" (IT32, Harper 2020). A sense of urgency is being emphasized—from former negotiators at all three levels of government, as well as Indigenous modern treaty holders and implementation staff—for the need to better educate and train public servants about the content, contexts and intent of the land claims agreements, as well as the responsibilities across the different departments within government. This need is not unique to the federal government but is seen as a requirement for all Parties to the agreements. Former Premier Tony Penikett stressed this issue is "system wide: federal, provincial, perhaps even at the First Nation-level, this is a problem. People don't know their own history, they're not interested in their own history, [and] they don't have any mastery of the issues" (IT26, Penikett 2020).

Greater efforts need to be made to ensure that new and current public servants within all governments have a concrete understanding of the intent and meaning of each of the chapters of the agreements. Further, junior and senior public servants working on modern treaty implementation within the federal and territorial governments demonstrate a lack of sufficient training to understand the unique cultural, political, social and historical contexts of the Yukon. This can be explained by consistent turnover and regular introduction of new faces within the public service, as well as a lack of attention to the need for regular opportunities for learning. Training must be routine, ongoing and reflect the current condition. Without this foundational

understanding, it is difficult to move beyond the black and white obligations and truly explore and execute the spirit and intent of the agreements. There will be no effective, honest and meaningful implementation of Yukon land claims without an ongoing commitment to a shared understanding and political will at all levels of government to seeing these agreements successfully implemented. This commitment must also be inclusive of the need to recognize and honour the centrality of the treaties to First Nations-government relations in Yukon.

7.1 Lessons for public policy theory and practice

This study outlined several policy implications and lessons for public policy theory and practice. First: it is crucial that leaders, decision makers and civil servants not underestimate the importance of implementation, which needs to be recognized as important as the negotiations themselves. Implementation planning cannot simply be seen as a 'check-the-box' requirement to getting agreements completed. Implementation planning should be an integral part of the negotiation process of land claims agreements. A longer-term view, beyond a narrow vision of five to ten years post-agreement, is required. Part of this process should involve preparing for, and anticipating, implementation reviews that are built into the implementation plans. Reviews ensure efficiency, effectiveness and accountability (DIAND 2007, 35). During the implementation planning phase, frameworks and baseline indicators and data need to be established in order to accurately assess implementation successes, impacts and outcomes. During review periods, it is necessary to be able to evaluate and track objectives, and also to measure the effectiveness of the agreements. It is important to examine what is not working in implementation but also to be able to formally evaluate and monitor the successes and outcomes of these agreements at the community level.

Second: it is critical to have a clear understanding of the original goals and intent for negotiating a modern treaty. Modern treaty implementation will be judged against these standards. In Yukon, the original intent of the treaties for Yukon First Nations included cultural preservation, self-determination and protection of lands and resources. William Josie, who has held multiple different political and administrative roles within Vuntut Gwitchin Government since the mid-1990s, explained, "our objective was to take control of our territory. We want to run our own affairs, our own lives, our own community" (IT3, Josie 2016). Speaking on behalf of Champagne and Aishihik First Nations, Lawrence Joe stated, "I think our mandate was to

have as much influence and as much power over decisions that affect us… We want to protect our land, protect the water, protect the fish, protect the ability to live as Aboriginal people" (IT8, Joe 2017).

For the Government of Yukon, the intent and objective for wanting a seat at the table was initially one of opposition to the agreements but this turned into a strategy to building pathways to reconciliation and successful co-existence in Yukon, ultimately paving the way for development. Speaking to the original intent of the federal government's involvement in land claims negotiations, Tim Koepke stated, "Canada wanted to discharge its outstanding constitutional obligations for settling claims, and it wanted to, as part of that, promote legal certainty to lands and resources" (IT16, Koepke 2016). Ultimately, the original intent for the Government of Canada was to obtain certainty by removing claims to the land and paving the way for economic development in the North.

This understanding should have been evident from the long, and largely unsatisfactory, history of treaty-making in Canada. Broken promises factor prominently in these crucial treaty relationships. Indeed, lessons learned from some of the earlier modern treaties to be signed in Canada, and more recent changes to government policies, processes and mandates played important roles in the successful negotiation of modern treaties in Canada. In addition, these mechanisms emphasize the importance of implementation in the modern treaty process. We now need to see this exhibited in more direct and substantive action. In 2014, we saw the Government of Canada committed to the development of an interim land claims policy to replace the much-outdated 1986 comprehensive land claims policy. To date, further development to move beyond an interim policy has stalled.

Third: implementation staff at all levels of government require a clear understanding of the foundational historical, political, social, and economic contexts that are foundational to these agreements. Public servants working in direct implementation roles and those who have more indirect responsibilities to implementing specific obligations in the agreements must have a clear understanding of the intent behind each of the chapters. With a few exceptions, no one working in implementation today was involved in the original negotiation of the land claims agreements in Yukon. This lack of institutional memory has serious implications. Without a clear understanding of the history and the intent of these agreements, there is significant risk of misinterpreting what was intended and placing further strain on the intergovernmental treaty

relations. This also creates further risk of future court challenges over interpretation of the agreements.

Finally, Indigenous peoples are the co-creators of these major agreements. This level of multiparty co-development had not occurred in Canada; the Yukon set a precedent for multiparty intergovernmental agreements. Modern treaties laid the foundations for multilevel government and intergovernmental policy development in Yukon and across the country. Political science scholar Martin Papillon conducted extensive research on multilevel governance and intergovernmental relations. In reference to co-policy development between Indigenous groups and public governments, Papillon argues, "their scope and effectiveness also vary considerably. While some processes lead to successful collaboration and innovative policies, others produce little more than time-consuming meetings with little to show for it" (Papillon 2020, 415). Additionally, public governments have not yet employed policy co-development from a perspective that sees all parties as equal partners and that truly embraces the possibilities for integrating both western and Indigenous worldviews into policy development. Even after forty-five years of taking Indigenous issues more seriously, the process of seeing these things through an Indigenous worldview is still lacking. A significant gap exists within the co-development and implementation of policies that bridge western and Indigenous worldviews and ways of knowing. Though this study did not explicitly look at this, it is an important area of study that needs to be examined and could have important policy implications in the future.

7.2 Suggestions for future academic research

There is limited scholarly work on land claims implementation in Canada. The broader field of policy implementation research is also an oft-neglected area of public policy scholarship. This study contributes to a growing need for applied and academic research centering on policy implementation, and more specifically on modern treaty implementation and intergovernmental treaty relations. It is important to recognize, however, the growing momentum that has been building around academic research centered on modern treaty implementation. In 2014, the Land Claims Agreements Coalition Research Group was established to gather evidence to assist policy and decision makers in improving modern treaty implementation. In 2015, the Modern Treaty Implementation Research Project, led by Stephanie Irlbacher-Fox, brought together researchers from across Canada to work alongside modern treaty practitioners to partner on a six-year Social

Sciences and Humanities Research Council Partnership Grant. This project will play a critical role in producing a diversity of understandings of modern treaty implementation. In addition to this work, in 2017, Chris Alcantara developed an "an analytical framework for studying the politics of intergovernmental relations in the implementation of modern treaties in Canada" (Alcantara 2017, 329). A key area of research could build off Alcantara's work through an application of this framework.

This dissertation analyzed the experiences of modern treaty implementation by examining three Yukon First Nations Final Agreements. There have not been uniform experiences across modern treaty holders in Canada, and it will be important to continue this research through an inter-jurisdictional study in other parts of the country to assess whether there are similar barriers and challenges that are being experienced within implementation of modern treaties and the relationships amongst the Parties to the agreements. In addition, there are unique barriers and challenges that arise when implementing specific chapters of the agreements. There has been further interest identified in Yukon for conducting analysis of the experience of implementing individual chapters of the Yukon Final and Self-government Agreements, such as Chapter 22: Economic Development Measures.

Future research should be conducted around multilevel governance, expanding on some of the existing work by scholars such as Martin Papillon and Chris Alcantara (Papillon 2020; 2008; Papillon and Juneau 2015; Alcantara and Morden 2019; Alcantara and Nelles 2014). In a recent book chapter authored by Papillon (2020), he explores "the relationship between Indigenous peoples and Canadian federalism" (415). Papillon speaks to the impactful changes that have occurred in Canada's recent history regarding multi-level governance and intergovernmental relations with Indigenous organizations and governing authorities (397). On the other hand, he asserts that, "these changes are more incremental than transformative in nature. They do not alter the fundamental power structures in Canadian federalism, nor do they recast what remains a profoundly unequal relationship built on colonialism" (Papillon 2020, 397). Building on some of the discussions in this dissertation, research should continue to be conducted around the asymmetry of power between governments—federal, provincial/territorial and Indigenous—and should seek to explore how we can create fundamental changes to these unequal relationships.

Expanding on the discussion of multilevel governance, future research could also examine policy co-development. Questions for framing this research could try to determine if co-development of policies works. It is also difficult to know how to move beyond consultation and collaboration at the policy development stage to collaboration at the implementation stage. Lastly, it is useful to determine what lessons can be drawn from other intergovernmental relations case studies, including non-Indigenous, sub-national government examples.

Finally, there is a need to expand the study on implementation and specifically implementation of multi-party agreements. The multiparty component adds a very different layer of complexity to implementation and intergovernmental relations. This study situates instead within a growing body of scholarship within the field of public policy, intergovernmental relations and multilevel governance.

While conducting this research, gaps emerged that will be critical to better understanding the barriers and challenges to modern treaty implementation and intergovernmental treaty relations in Yukon and further beyond. For example, an in-depth examination of the experience of devolution was beyond the scope of this thesis. The process of devolution, which involved political and administrative capacity being transferred to the Yukon Territorial Government was taking place simultaneously with the Yukon land claims process. An important research topic should examine how Yukon political development, and more specifically devolution, impacted modern treaty implementation.

Another gap is the need to identify whether there has been incremental lesson learning done in Yukon through implementation of the last three agreements that were negotiated and signed: Kluane, Kwanlin Dün, and Carcross/Tagish First Nations. A research question should consider the lessons learned throughout the implementation of the first eight Yukon First Nations agreements that were applied to these later ones and assess the degree to which this learning changed the implementation experience. More broadly, this could be applied to some of the more recent agreements signed in Canada, such as the Tsawwassen First Nation and the Tla'amin Nation Final Agreements in British Columbia. It is important to learn the degree to which the northern experience of treaty-making affected negotiations in southern Canada.

This study showed how fixation on negotiation underestimates the enormous amount of work needed to be done through implementation. It also demonstrated the critical importance of the micro-level impacts on implementation of relationship building and the key roles that a small

number of individuals played in the process. Within the study of public policy and intergovernmental relations, the people at the centre of these processes can be just as important as the macro-level factors. Understanding the relationship dynamics and the influence of key individuals is even more important in the North when we think about the politics of smallness. Coates (2014) explained, the politics of smallness "shows that the webs of connections and personal histories, for better or worse, shape electoral processes, administrative systems, and decision-making in areas with small populations" (24). The size of the political environment and the interconnected networks between all the Parties to the agreements in Yukon has had a direct impact on the course of land claims implementation. We cannot underestimate the importance of the politics of smallness to understanding the dynamics of land claims implementation in Yukon and across the North.

7.3 Conclusion

On a cold weekend in January 2020, forty people gathered in a room at the Kwanlin Dün Cultural Centre in Whitehorse, Yukon. It was the third day in a row that the weather was below 40 degrees Celsius and people had travelled in from several Yukon communities as well as from outside of the territory. This group represented a significant number of the original federal, territorial and Yukon First Nations leaders and negotiators involved in the negotiation of the Yukon First Nations Umbrella Final Agreement between 1973-1993. Recognizing a lack of understanding of the original spirit and intent of the land claims agreements amongst present-day leaders and public servants at all levels of government, these individuals came together to try and capture on paper the original intent behind the negotiation of each of the chapters of the Yukon land claims agreements. The disconnect between understanding the original meaning and intent of the objectives of the agreements played a significant role in the breakdown of relationships and led to significant barriers to implementation of both the Final and Self-Government Agreements in Yukon. This gathering confirmed the necessity for having a greater appreciation of the key transition from spending more than twenty years negotiating an agreement to implementing the agreement (First Principles Project 2020).

Politics played an influential role in determining the pace at which implementation occurred over the years and whether implementation and intergovernmental treaty relations were even seen as a priority. Many of the key barriers and challenges to implementation are tied to the

political decision-makers in power at the time. Funding remained one of the most central issues. The lack of appropriate funding for both implementation planning and implementation itself created ongoing challenges for Indigenous treaty signatories. In addition, despite these being government-to-government agreements, the imbalance of power between governments and the asymmetry of capacity within each level of government persists. This predominantly disadvantaged the Indigenous governments who are Parties to these agreements. Finally, the experience of implementation planning in Yukon, challenged the federal, provincial and territorial governments to adopt a more long-term vision of the Indigenous-government relationships. Public governments are driven and constrained by political mandates and election cycles. First Nations, on the other hand, live with these agreements every day, and emphasize the importance of having a vision of how these agreements will operate and benefit citizens for the next seven generations.

As Tim Gerberding stressed, a fundamental transformation in cultural perspective and concepts of governance is required across all three levels of government if these agreements are to be successfully implemented (IT7, Gerberding 2019). This fundamental shift would need a system-wide change within the federal and territorial governments with regards to implementation, how they view their roles and responsibilities, and the importance of moving beyond specific and technical obligations.

This transformation appears to have occurred in Yukon through the period of 1973-1993. Yukoners' cultural, social and political thinking and perspectives changed dramatically, as did First Nations-government relations within the territory. Difficulties emerged thereafter. After the signing of the agreements, the transformation slowly degraded through difficulties with implementation and changes in the individuals in power. Michael Hale argued that "it is very hard for public government to cede power. So, immediately after finalizing an agreement, it slips into clawing back any power [and] authority that was ceded" (IT31, Hale 2020).

The Yukon was a fractured territory in the 1970s, characterized by polarizing viewpoints between Yukon First Nations and non-First Nations citizens. In the experience of most First Nations peoples, racism and discrimination were deeply ingrained in the North. In addition to this, Yukon First Nations struggled with the detrimental impacts of colonization, including the disruptive impacts of the advent and imposition of the modern welfare state. In a letter to the editor in the Whitehorse Star written in 1972, Margaret Joe, Vice President of the Yukon

Association of Non-Status Indians (YANSI) wrote, "…Being an Indian and being stepped on, discriminated against, and slandered all your life, only we know what a great fight we have ahead of us. Sitting back and accepting things as they are is all in the past" (Joe 1972, 8).

When the Yukon Indian Brotherhood (later known as the Yukon Native Brotherhood and later still as the Council for Yukon First Nations) was formed in 1968, they became a critical voice fighting for Yukon First Nations' rights and for improved social conditions. This rise of political mobilization was further empowered with the formation of YANSI in 1971. Momentum coalesced around the pursuit of a land claims settlement. When Prime Minister Pierre Trudeau accepted the Yukon Native Brotherhood's proposal for a claims settlement in 1973, there was immediate backlash within the territory. The public media identified this as a "white political backlash" from the segment of Yukon citizens who opposed the pursuit of a Yukon First Nations land claim ("Lloyd Barber and Mr. Buchanon Response in CBC Radio Interview" 1975). The extent of this racism was so shocking to the broader public that it received coverage in the Toronto Star. In a feature article published in The Star on October 20, 1975, Frank Jones wrote, "the Land-Claim Negotiations…have exposed the ugly reality of racism on which much northern development has been based" (1975).

If the situation looked dire in the mid-1970s, with strong divisions between First Nations and non-First Nations peoples, the following two decades saw remarkable changes in Yukon political culture. In comparatively short order, the Government of Yukon gained responsible government under Prime Minister Joe Clark. They also secured a seat at the negotiating table in 1979, negotiating a promising but ultimately failed Agreement in Principle in 1984 and, in the wake of a breakdown in the talks, revitalized relationships. With active participation from the Yukon government, particularly under Government Leader Tony Penikett, the new approach focused on interest-based negotiations. Negotiators moved out of Ottawa and focused on spending more time in Yukon communities. What had long been seen as a First Nations enterprise was increasingly understood as a Yukon-wide process, promising stability and benefits to the whole territory. At a press conference in February 1992, Premier Penikett stated,

> I see this as a major step in the process of decolonization in the territory. At the end of the day, at the end of negotiations, I think everyone will say that Yukoners on the whole have gained more ability to take control over their lives" (Tobin 1992, 5).

When the UFA and the first four Yukon First Nations Final Agreements finally came in 1993, almost all Yukoners hailed the settlement for what it truly was: a major act of reconciliation by First Nations and non-First Nation Yukoners, and between Yukon First Nations and the Crown.

The same level of fundamental transformation in cultural perspective and concepts of governance did not occur within the federal government. Such a transformation is critical to seeing these agreements successfully implemented. All Parties to the agreements—the Government of Canada, the Government of Yukon, and Yukon First Nations governments—will need to commit to re-establishing relationships and recommit to the intent that underpinned the negotiation of the agreements. As Judy Gingell avowed, "if we are going to succeed together as governments, there has to be a willingness to remain open minded, explore all of the options and be prepared to do things differently" (Gingell 2017). This would include committing to an interest-based approach, taking the time to develop trusting relationships, spending time in the communities, and working together collaboratively and cooperatively to develop policies and structures at the federal and territorial levels that support the success of modern treaty implementation. Allan MacDonald, Director General, Implementation Branch for the Government of Canada, argued we need to be able to shift the thinking beyond seeing implementation as a contractual obligation. He explained, "That to me is the end game: when we stop talking about implementation of a contract…and start talking about the fulfillment of an intergovernmental relationship that has constitutional weight behind it" (IT22, Macdonald 2020). He went on to assert that modern treaties "create a different relationship than the Indian Act relationship and that is the perspective we need to take. It's going to continue, it's going to evolve, it's going to grow, it's going to be strong" (IT22, Macdonald 2020).

At the time of negotiation, the key to success was trust and commitment to building relationships and to envisioning shared common values and interests in seeing these agreements successfully negotiated and signed. To achieve system-wide change would require a commitment from all Parties to the agreements and across all departments internally within each government to re-establishing the vision of shared common values and interests. As Prairies folk often say, "We are all treaty people." Indigenous and non-Indigenous peoples alike have a stake in seeing these agreements successfully implemented in accordance with their original intent, which covered cultural preservation, Indigenous self-determinations, and the protection of lands and resources, in addition to successful coexistence and establishing pathways to reconciliation.

This study demonstrated the importance of prioritizing modern treaty implementation, especially during the planning process. The people involved in decision-making roles and on the ground, and the relationships between both the individuals and at the government-to-government level are instrumental to the successful implementation of these agreements. The people are the centre of these modern treaties. This must include the people who fought for land claims through *Together Today for Our Children Tomorrow*, the people who sat at the negotiation tables for twenty years to get successful agreements in Yukon, the people who are working to put these agreements into action today, and the beneficiaries of the agreements for the next seven generations. The human dimension of policy development cannot be neglected, as are the intricacies of these intergovernmental relations. These relationships, as Yukon experience says, are just as important as having the structures, policies, and processes in place.

POSTSCRIPT

In 2018 I began teaching in the Indigenous Governance Degree (IGD) program at Yukon College (now Yukon University). This is the first made in Yukon undergraduate degree, that was built in partnership with all fourteen Yukon First Nations. The IGD "aims to build northern leadership capacity by providing students with the values, knowledge and skills to work collaboratively within the unique governance landscape of the North" (Yukon University n.d.). One of the major impetus for developing this degree program was to be able to teach the rest of Canada the successful story of modern treaty making and First Nations self-government that has taken place in Yukon.

In the Fall 2020 semester, I was teaching a first-year course entitled, "Indigenous Governance and Modern Treaty Making in Canada". The main focus of this course is to introduce students to the evolution of Indigenous governance and modern treaty making in Canada from pan-Canadian perspectives, with a particular focus on Yukon First Nations' experiences. In the last week of the course, students were asked to reflect on the question, "what does the future of Indigenous governance look like to you?". To prepare the students for responding to this, I filmed short interviews with three former land claims negotiators as well as two senior-level IGD students, asking them to respond to the same question. These interviews were then presented to the students in the class. I was so impressed with the responses given by the two IGD students. Both of these students are "children of the land claims"—they have predominantly grown up in a post-land claims world and are children and grandchildren of Indigenous leaders who have played important roles in the negotiation and implementation of modern treaties in northern Canada. They both spoke to the significance of the land claims agreements and the possibilities that these agreements could create if properly implemented.

Fittingly, the only way to truly understand the experience of treaty implementation, is to listen to first-hand perspectives of the next generation of Yukon First Nations leaders, who have distinctly grown up in a modern treaty world. Colesen Ford is a young twenty-year old First Nation leader and is a third-year student in the IGD program at Yukon University. He was born and raised in Yukon and comes from a long lineage of First Nations leaders. Below is an introduction to his family lines, followed by his response to the question, "What does the future of Indigenous governance look like to you?"

> My great, great, Grandmother Louise George (Killer Whale Clan, Kluckwan, Alaska), daughter of Klanott (Chief George) and Aagé (Kitty Chief) of Dyea Alaska; Kaash (Skookum Jim) was Louise George's Uncle which was referenced by Alice Lee. Furthermore, declarations from Angela Sidney, Johnny Johns and Kitty Smith state Aagé was born in Tagish. After the death of her husband she brought Louise George back to Tagish; staying there for a while then moving up to 40 mile by Dawson. Louise stayed in Tagish and was raised by her aunt Gus'duteen.
>
> I never thought of myself as a land claims baby… There really is an entire generation of Indigenous people who don't know anything else other than land claims, and don't resonate with [the] Indian Act or Department of Indian Affairs. I think that really is a testament to show how far we've come already and demonstrates the spirit and intent of Indigenous decision-making systems.
>
> My name is Colesen Ford. I am the Kluane First Nation Youth Councillor. I am from Burwash Landing. I am Wolf and Killer Whale Clan. I am a senior in the [IGD] program…
>
> Land claims are a very powerful tool, but majority of the land claims are not implemented. I will talk specifically in the context of my First Nation. Kluane First Nation is one of the smallest First Nations in Yukon, if it isn't the smallest, but our Final Agreement gives us the power to be on the same level as other Indigenous governments who have larger population bases… Moving forward, to truly actualize the vision that the negotiators of the land claims agreements had, it is going to be a continued path to education.
>
> You hear it lots when you're talking about *Together Today for our Children Tomorrow*, and what kind of connotations that has. The Final Agreements that the First Nations in Yukon hold and in other places in Canada, they are really binding agreements not just between the First Nations and the State but also between other people who live and reside on those territories, and it affects all of those relationships. I can foresee in the future, less conflict between Indigenous peoples and the State. In Yukon, I think we're at a really big turning point and we have been here for a while. It doesn't matter if you're Indigenous in Yukon or you're non-Indigenous, it really depends on your skillset. For Indigenous people, a large part of that is having this wealth and knowledge connected to the land, which is really invaluable to every industry.
>
> There are not very many entirely Indigenous people anymore and we have to begin to recognize that. We are Indigenous but we are also Canadian. The Final Agreements aren't about creating a better world for Indigenous peoples, it is about creating a better world for everyone (IT33, Ford 2020).

An entire generation of Yukoners have now grown up in a modern treaty context and this next generation shows the promise of being the ones to reignite the transformation that occurred

in Yukon between 1973-1993. These are the “children of tomorrow” that Elijah Smith and the Yukon Native Brotherhood sought to build a future for when they wrote the foundational document, *Together Today for Our Children Tomorrow*. All Parties to the land claims agreements need to continue to work together to honour the spirit and intent of the land claims agreements through implementation and to strive towards rebuilding the relationships that were foundational to these agreements. This will lead to achieving the future that the negotiators from all three levels of government worked so hard for through the negotiation of the Yukon land claims agreements.

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APPENDIX A: CHRONOLOGY OF YUKON LAND CLAIMS HISTORY

1898	Klondike Gold Rush brings thousands of people to Yukon
1900-1902	Chief Jim Boss petitions the Government of Canada to settle a claim to protect Yukon First Nations land and people
1960s	Yukon First Nations political mobilization
1968	Formation of Yukon Native Brotherhood (YNB)
1969	White Paper is released
1971	Formation of Yukon Association of Non-Status Indians (YANSI)
1973	Chief Elijah Smith and a delegation of Yukon First Nations leaders present a land claim statement, *Together Today for Our Children Tomorrow* to Prime Minister Pierre Trudeau in Ottawa
1973	The Calder Case
1973	Prime Minister Trudeau releases the comprehensive claims policy
1973	The Council of Yukon Indians (CYI) is formed to negotiate land claims (YNB and YANSI continue to exist)
1974- 1979	Preliminary bilateral land claims negotiations
1979	The Government of Yukon joins the negotiations
1980	YANSI and YNB amalgamate with CYI to become one umbrella organization representing status and on-status Yukon First Nations
1984	Agreement in Principle is completed and rejected by Yukon First Nations during ratification
1989	New Agreement in Principles for the UFA is signed and ratified
1993	UFA Final Agreement Signed
	Champagne and Aishihik Final and Self-Government Agreements signed
	First Nation of Na-cho Nyak Dun Final and Self-Government Agreements signed
	Teslin Tlingit Council Final and Self-Government Agreements signed
	Vuntut Gwitchin First Nation Final and Self-Government Agreements signed

1995	CYI adopts a new constitution and is renamed the Council for Yukon First Nations
1997	Little Salmon/Carmacks First Nation Final Agreement Final and Self-Government Agreements signed
	Selkirk First Nation Final and Self-Government Agreements signed
1998	Tr'ondëk Hwëch'in Final and Self-Government Agreements signed
2002	Ta'an Kwach'an First Nation Final and Self-Government Agreements signed
2003	Kluane First Nation Final and Self-Government Agreements signed
2005	Kwanlin Dün First Nation Final and Self-Government Agreements signed
	Carcross/Tagish First Nation Final and Self-Government Agreements signed

APPENDIX B: RESEARCH METHODS

This appendix provides additional information that was used to support the methods and research design for this study. This section includes: (1) a complete list of interviewees, (2) the participant consent form, and (3) the semi-structured interviewee guides that were initially developed to be used with representatives from each level of government: Yukon First Nations, Government of Yukon, and Government of Canada. Please note that to support the constructivist grounded theory approach, these interview questions were intended to be flexible and were modified after each round of coding and analysis.

1. Interviewees, coding and level of government representing

The table below identifies each of the individuals interviewed for this dissertation research. Each interview was given the opportunity to consent to be named or request to remain anonymous. A coding identifier was assigned to each interviewee to account for those who wished to remain anonymous.

Table B.1 Interviewees

Coding	Full Name (if permission granted)	Level of Government
IT1	Howard Linklater	Yukon First Nations
IT2	Stanley Njootli Sr.	Yukon First Nations
IT3	William Josie	Yukon First Nations
IT4	Angie Joseph-Rear	Yukon First Nations
IT5	*Anonymous*	Yukon First Nations
IT6	*Anonymous*	Yukon First Nations
IT7	Tim Gerberding	Yukon First Nations
IT8	Lawrence Joe	Yukon First Nations
IT9	*Anonymous*	Yukon First Nations
IT10	Shadelle Chambers	Yukon First Nations
IT11	*Anonymous*	Yukon First Nations
IT12	Dave Joe	Yukon First Nations
IT13	Angie Wabisca	Yukon First Nations
IT14	Roberta Joseph	Yukon First Nations
IT15	Diane Strand	Yukon First Nations
IT16	Tim Koepke	Government of Canada
IT17	*Anonymous*	Government of Canada
IT18	Wayne Crutchlow	Government of Canada
IT19	Barrie Rob	Government of Canada
IT20	Robin Bradasch	Government of Canada
IT21	Elizabeth Hanson	Government of Canada
IT22	Allan Macdonald	Government of Canada
IT23	*Anonymous*	Government of Canada

IT24	Catherine Constable	Government of Yukon
IT25	Lesley McCullough	Government of Yukon
IT26	Tony Penikett	Government of Yukon
IT27	Barry Stuart	Government of Yukon
IT28	Karyn Armour	Government of Yukon
IT29	Duncan Sinclair	Government of Yukon
IT30	Piers McDonald	Government of Yukon
IT31	Michael Hale	Government of Yukon
IT32	Jim Harper	Yukon First Nations
IT33	Colesen Ford	Yukon First Nations
IT34	Robert Bruce Junior	Yukon First Nations
IT35	Peggy Kormendy	Yukon First Nations
IT36	Percy Henry	Yukon First Nations
IT37	Ronald Johnston	Yukon First Nations
IT38	Lynn Hutton	Yukon First Nations
IT39	Michael Durham	Yukon First Nations
IT40	Stephen Walsh	Yukon First Nations
IT41	Chuck Hume	Yukon First Nations
IT42	Shakir Alwarid	Government of Yukon
IT43	Brian McGuigan	Government of Canada

Participant Consent

The following was the original participant consent form. Note the title of the dissertation changed overtime.

Participant Consent Form

You are invited to participate in a research study entitled: "From Negotiation to Implementation: First Nations Modern Treaties in the Yukon, 1993-2016."

Researcher(s): Rhiannon Klein, PhD Candidate, Johnson-Shoyama Graduate School of Public Policy, University of Saskatchewan, 867-334-9933, rhiannon.klein@usask.ca

Supervisor: Dr. Ken Coates, Johnson-Shoyama Graduate School of Public Policy, University of Saskatchewan, 306-966-5136, ken.coates@usask.ca

Purpose(s) and Objective(s) of the Research:
This research project will explore the transition from negotiation to implementation of Comprehensive Land Claims Agreements in the Yukon. The study of the implementation process in the Yukon provides an opportunity to identify initial expectations and to explore the impact of the different motivations. It also permits the identification of the achievements and implementation successes, as well as the barriers and political/administrative challenges that have slowed implementation.

Procedures:
You are invited to participate in a one-on-one interview, at an agreed upon time and location. The interview will involve questions related to your experience with the negotiation and implementation of comprehensive land claim agreement(s) in the Yukon. With your permission, the interview will be audio- recorded and written notes will be taken during the interview. The recording is to accurately record the information you provide, and will be used for transcription purposes only. If you choose not to be audiotaped, only notes will be taken. If you agree to being audiotaped but feel uncomfortable at any time during the interview, the recorder can be turned off at your request. You can also choose to stop the interview at any time. Please feel free to ask any questions regarding the procedures and goals of the study or your role.

Potential Risks:
This interview involves minimal risk to you. Your participation is voluntary and you have the right to withdraw at any time. The researcher will make every effort to preserve the confidentiality of the interview. The researcher will try to ensure your identity is protected in the ways described below. If for some reason the researcher wishes to quote you in some way that might reveal your identity, your permission will be sought beforehand.

Potential Benefits:
Participating in this study of the implementation process in the Yukon provides an opportunity to identify initial expectations and to explore the impact of the different motivations of the

negotiating parties. It also permits the identification of the barriers and political/administrative challenges that have slowed implementation.

The complete implementation of modern treaties will strengthen the relationships that have been built between First Nations signatories, Yukon Government and Government of Canada. In addition, it will allow the First Nation governments to realize the objectives that brought them to the negotiations in the first place: increasing capacity for governance and ensuring protection of their lands and resources.

Confidentiality:
Your identity will be protected through the use of a pseudonym and/or number code in place of your name and any identifying information will be removed from transcripts. Your consent forms will be stored separately from the transcripts, so that it will not be possible to associate a name with any given set of responses.

The research conclusions will be published in a variety of formats, both print and electronic. These materials may be further used for purposes of conference presentations or publication in academic journals. In these publications, the data will be reported in a manner that protects confidentiality of participants, your name will not appear in any publications without prior consent. In principle, actual names will not be used; however, leaders whose position involves speaking on behalf of their organization may be asked if certain comments they have made can be attributed to them by name in publications. Any communication of these results that has potential to compromise confidentiality will not proceed without your approval.

Storage of Data:
In accordance with the university guidelines, the transcript and audiotaped files will be securely stored (separate from the consent form) in the care of the researcher for a minimum of five years.

Right to Withdraw:
Your participation is voluntary and you can answer only those questions that you are comfortable with. You may withdraw from the research project for any reason, at any time without explanation or penalty of any sort. Upon withdrawal, all the data that you wish to have deleted will be. Your right to withdraw data from the study will apply until September 1, 2020 when results have been compiled and assessed. After this date, it is possible that some form of research dissemination will have already occurred and it may not be possible to withdraw your data.

Follow up:
Communities will be provided with a summary report of the research findings. You will also have access to an electronic copy of the full PhD dissertation.

Questions or Concerns:
For any additional questions or concerns, please contact the researcher using the information at the top of page 1.

This research project was approved on ethical grounds by the University of Saskatchewan Research Ethics Board on April 1, 2016. Any questions regarding your rights as a participant may

be addressed to that committee through the Research Ethics Office ethics.office@usask.ca (306) 966-2975. Out of town participants may call toll free (888) 966-2975.

Consent to Participate:

I have understood the above description. I consent to participate in the study understanding that I may withdraw this consent at any time. A copy of this consent form has been given to me for my records. I also understand that I will have the opportunity to review the transcript of this interview.

_____	_____
Participant Name	Researcher's Name
_____	_____
Participant Signature	Researcher's Signature
_____	_____
Date	Date

I grant permission to be audio recorded: YES:_____ NO:_____

I grant permission to have my organization or First Nation's name used: YES:_____ NO:_____

I wish to remain anonymous: YES:_____ NO:_____

You may quote me and use my name: YES:_____ NO:_____

You may credit me in the results of the study: YES:_____ NO:_____

For the dissertation, I would like my title to be referenced as (e.g. former senior federal negotiator):

_____

If you wish to obtain an electronic version of the summary report or PhD dissertation, please include your email address below. Your email address will be kept confidential and will not be used for any other purpose.

_____

Email Address

ORAL CONSENT

I have read and explained this Consent Form to the participant before receiving the participant's consent, and the participant had knowledge of its contents and appeared to understand it. In addition, consent may be audio recorded.

_____	_____	_____
Name of Participant	*Researcher's Signature*	*Date*

3. Semi-Structured Interview Guides

#1: First Nation Government

NOTE: The following interview guide includes all possible questions to be asked to respondents representing a Yukon First Nation government. A selection of these will be asked, depending on the participant's experience with the negotiation and/or implementation of the Final Agreements. No individual participant will be asked all of the questions.

INTRODUCTION:

I. Brief self-introduction

II. Brief introduction to the project

Background: This is the research project for my PhD dissertation entitled, "From Negotiation to Implementation: Aboriginal Modern Treaties in the Yukon, 1993-2013." The focus of the project was decided upon through discussions with several Yukon First Nations' representatives, and individuals who had been involved in modern treaty negotiations in the Yukon on behalf of the Federal and Territorial governments. I wanted to ensure that I selected a topic that would be beneficial to Yukoners, and that could contribute to better understanding the successes and challenges faced by implementing modern day treaties.

The purpose of this project is to answer two main questions: How have the partners in the negotiation of a modern treaty managed the transition from negotiation to implementation? And what does this transition reveal about modern treaties in Canada?

There are four general topics that we will discuss today:

- The post-signing implementation process (mostly focused on the first 5 years)
- Capacity building for implementation of the treaty (at all levels of government)
- Interpretation difficulties and the impact of divergent motivations and expectations
- Management, by the First Nations', federal and territorial governments, of third party relationships affected by the agreements

The specific focus of the research is on the implementation of Chapter 22: Economic Development measures.

The time frame for the research focuses on the first 20 years after the UFA and the first four Final Agreements were signed (1993-2013).

Interviews- over the next six months, I will be interviewing approximately 50 people from Yukon First Nation's Governments, Yukon Government, and the Government of Canada. Participants will include past and present Yukon First Nations' Chiefs, administrators, economic development officials, implementation staff, negotiators, and key community stakeholders. From the territorial and federal government, participants will include

negotiators, treaty implementation staff, representatives from the economic development departments, and additional key stakeholders.

Reporting Back- Participants and communities will be provided with an electronic copy of the full PhD dissertation, as well as a summary report. I will also return to the Yukon in the Spring/Summer of 2018 for a series of community presentations to report back on the findings of the project.

III. Consent Form

Go through consent form, provide time for participant to read through and ask questions.

INTERVIEW:

I. Introduction

- Can you please start by telling me your name, which First Nation you are a member of (or work for) and how you have been involved with modern treaties in the Yukon?

- Before we get into the specific questions, can you tell me what "implementation" means to you? How would you define or explain implementation?

II. The post-signing implementation process (mostly focused on the first 5 years)

- How would you describe the overall implementation process of [First Nation's] Final Agreement during the first five years?

- What protocols or processes were envisioned or planned out in advance for implementing the Final Agreement (e.g. joint implementation committees—structure, representation, frequency of meetings)?
  - Did you draw lessons from the experience of other modern treaty implementation processes [in the Yukon or outside of the Yukon]? If so, did you try to mitigate past problems or look for alternate solutions?
  - Has traditional knowledge been integrated into the implementation process? If so, can you provide an example?

- Are you aware of any specific implementation protocols or processes that the Federal government had planned out in advance?
  - **If yes**, what did these consist of?
  - **If no**, *move on to next question.*

- Are you aware of any specific implementation protocols or processes that the Yukon Government had planned out in advance?
  - **If yes**, what did these consist of?
  - **If no**, *move on to next question.*

- Can you identify any specific implementation successes that occurred in the first five years?

- Can you identify specific challenges or barriers to implementation that occurred during the first five years?

- If you could go back, what would you have done differently during the transition from the signing of the Final Agreement to the beginning of implementation?

III. Capacity building for implementation of the treaty

- To what degree was your First Nation ready, at the time of signing, to implement the agreement?
    - Was there any training available to First Nations' staff?

- What were the major challenges in the area of capacity building?
    - Do these challenges still exist?

- Was there, and does there continue to be, enough money to implement the agreement?
    - If not, what did [First Nation] do to address these challenges?

- Did the Government of Canada and the Yukon Government have people in place that had an understanding of First Nations' conditions and culture to support the implementation process?

- Did the Government of Canada and Yukon Government have enough employees to ensure the implementation of the agreement?

IV. Interpretation difficulties and the impact of divergent motivations and expectations

- In each of the negotiations, the tripartite teams (First Nation, Yukon Government, Federal Government) entered into the agreements with different intentions, objectives and expectations. Can you explain the initial intentions, objectives and/or expectations for negotiating a Final Agreement from the perspective of your First Nation?
    - Do you think these objectives have changed during the transition from negotiation to implementation? If so, how have they changed?

- How would your First Nation perceive the initial intentions, objectives and/or expectations of the Yukon Government?
    - Do you think these have changed during the transition from negotiation to implementation? If so, how have they changed?

- How would your First Nation perceive the initial intentions, objectives and/or expectations of the Federal Government?
    - Do you think these have changed during the transition from negotiation to implementation? If so, how have they changed?

- Conflicting interpretations of the agreements have been identified as an ongoing issue. What have been some of the main challenges or barriers of these divergent interpretations?
    - Do you foresee there being any specific solutions to resolving these?

- Another discussion that often takes place around implementation challenges is the conflict between fulfilling the letter of law (the literal interpretation of the words but not necessarily the intent of those who wrote them) versus recognizing the spirit and intent of the agreements.
    - How do you understand the concept of the "spirit of the agreements"?

    - Do you feel this is being honoured throughout the implementation of the agreements?
        - Please give an example where you feel this has been the case.
        - Please give an example where you feel this has *not* been the case.

    - Do you feel that the Governments are honouring the letter of the agreements?
        - Please give an example where this has been the case.
        - Please give an example where this has *not* been the case.

V. The mobilization of economic development elements of the agreements (Chapter 22)

Chapter 22 includes 3 main objectives. I will go through each of these objectives with you.

1. <u>To provide Yukon Indian People with opportunities to participate in the Yukon economy.</u>

- During the implementation of this chapter, do you feel this objective has been met?
    - **If yes,** how? Can you give specific examples of how it has been implemented?
    - **If not**, what have been some of the barriers/challenges to implementing this objective?
        - Despite these challenges, can you identify any specific examples of successes in implementing this objective?

2. <u>To develop economic self-reliance for Yukon Indian People.</u>

- How would you define or interpret "economic self-reliance"? What does this include?
- During the implementation of this chapter, do you feel this objective has been met?
    - **If yes,** how? Can you give specific examples of how it has been implemented?
    - **If not**, what have been some of the barriers/challenges to implementing this objective?
        - Despite these challenges, can you identify any specific examples of successes in implementing this objective?

3. ***<u>To ensure that Yukon Indian People obtain economic benefits that flow directly from the Settlement Agreements.</u>***

- During the implementation of this chapter, do you feel this objective has been met?
  - **If yes,** how? Can you give specific examples of how it has been implemented?
  - **If not**, what have been some of the barriers/challenges to implementing this objective?
    - Despite these challenges, can you identify any specific examples of successes in implementing this objective?

- To what degree, if any, has Indigenous Traditional Knowledge been recognized and included in the economic development and management processes?

- Chapter 22 identifies a number of places where economic benefits were expected to flow to First Nations. Can you tell me, in general and with examples where appropriate, how the governments have done in each of these areas?
  - Economic development agreements
  - Economic development corporations
  - Access to employment contracts
  - First right of refusal for government contracts
  - Yukon asset construction agreements*
  - Economic Development Funds*

  **These are unique to the last four Final Agreements that were signed*

VI. Management, by the First Nations', federal and territorial governments, of third party relationships affected by the agreements

- When the modern treaties were signed, critics worried about the likely impact of the agreements on third party interests. With reference to your First Nation, how have third party interests been affected by the Final Agreement?
  - Can you describe your third party relationships at the time the agreement was being negotiated?
  - Can you describe your third party relationships when the signed agreement was first being implemented?
  - How have these relationships evolved? What has worked and have there been any challenges?

- Within your government-First Nation relationships with the federal and Yukon Government, how are concerns with third party interests addressed and managed?

- Do your relations with industry differ from those with Federal and Yukon government? If so, how?

VII. General Questions

- How would you define successful or complete implementation?
    - Is there an end goal that would mean *Chapter 22: Economic Development Measures* has been fully implemented?
    - Is there an end goal that would mean the Final Agreement has been fully implemented?

- Is there anything else you would like to add before we conclude?

- Are there any individuals you think I should speak to as part of my research on the transition from negotiation to implementation of modern day treaties in the Yukon?

- Are you aware of any archival or existing documents, reports etc. that you think might contribute to this project?

- Would you be willing to do a follow-up interview by telephone over the next few months? If yes, what is the best way to reach you?

Guide #2: Yukon Government

NOTE: The following interview guide includes all possible questions to be asked to participants responding on behalf of Yukon Government. A selection of these will be asked, depending on the participant's experience with the negotiation and/or implementation of the Final Agreements. No individual participant will be asked all of the questions.

INTRODUCTION:

I. Brief self-introduction

II. Brief introduction to the project

Background: This is the research project for my PhD dissertation entitled, "From Negotiation to Implementation: Aboriginal Treaties in the Yukon, 1993-2013." The focus of the project was decided upon through discussions with several Yukon First Nations' representatives, and individuals who had been involved in modern treaty negotiations in the Yukon on behalf of the Federal and Territorial governments. I wanted to ensure that I selected a topic that would be beneficial to Yukoners, and that could contribute to better understanding the successes and challenges faced by implementing modern day treaties.

The purpose of this project is to answer two main questions: How have the partners in the negotiation of a modern treaty managed the transition from negotiation to implementation? And what does this transition reveal about modern treaties in Canada?

There are four general topics that we will discuss today:

- The post-signing implementation process (mostly focused on the first 5 years)
- Capacity building for implementation of the treaty (at all levels of government)
- Interpretation difficulties and the impact of divergent motivations and expectations
- Management, by the First Nations', federal and territorial governments, of third party relationships affected by the agreements

The specific focus of the research is on the implementation of Chapter 22: Economic Development measures.

The time frame for the research focuses on the first 20 years after the UFA and the first four Final Agreements were signed (1993-2013).

Interviews- over the next six months, I will be interviewing approximately 50 people from Yukon First Nation's Governments, Yukon Government, and the Government of Canada. Participants will include past and present Yukon First Nations' Chiefs, administrators, economic development officials, implementation staff, negotiators, and key community stakeholders. From the territorial and federal government, participants will include negotiators, treaty implementation staff, representatives from the economic development departments, and additional key stakeholders.

Reporting Back- Participants and communities will be provided with an electronic copy of the full PhD dissertation, as well as a summary report. I will also return to the Yukon in the Spring/Summer of 2018 for a series of community presentations to report back on the findings of the project.

III. Consent Form

Go through consent form, provide time for participant to read through and ask questions.

INTERVIEW:

I. Introduction

- Can you please start by telling me your name, in what capacity you have been involved with modern treaties in the Yukon, and which agreements you have been involved with negotiating and/or implementing?

- Before we get into the specific questions, can you tell me what "implementation" means to you? How would you define or explain implementation?

II. The post-signing implementation process (mostly focused on the first 5 years)

- What protocols or processes did the Yukon Government envision or plan out in advance for implementing the Final Agreement (e.g. joint implementation committees—structure, representation, frequency of meetings)?

    - Did you draw lessons from the experience of other modern treaty implementation processes [in the Yukon or outside of the Yukon]? If so, did you try to mitigate past problems or look for alternate solutions?

- Are you aware of any specific implementation protocols or processes that the Federal government had planned out in advance?
    - **If yes**, what did these consist of?
    - **If no**, *move on to next question.*

- Are you aware of any specific implementation protocols or processes that [First Nation(s)] had planned out in advance?
    - **If yes**, what did these consist of?
    - **If no**, *move on to next question.*

- Can you identify any specific implementation successes that occurred in the first five years?

- Can you identify specific challenges or barriers to implementation that occurred during the first five years?

- If you could go back, what would you have done differently during the transition from the signing of the Final Agreement to the beginning of implementation?

III. Capacity building for implementation of the treaty

- To what degree was the Yukon Government ready, at the time of signing, to implement the agreement?

- In regards to implementation, what were the major challenges in the area of capacity building for the Yukon government?
  - Do these challenges still exist?

- Did the Yukon Government have people in place that had an understanding of First Nations' conditions and culture to support the implementation process?
  - Was there specific training available for this?

- Did the Yukon Government have enough employees to ensure the implementation of the agreement?
  - Which Yukon Government departments were in charge of implementing the agreements? Has this changed over the past twenty years?

- Did the Government of Canada have enough employees to ensure the implementation of the agreement?
  - Do you feel they have the capacity today?

- Do you think the Yukon First Nations' that you negotiated with had the capacity to implement agreements when they were first signed?
  - Do you feel they have the capacity today?
  - Are there any supports in place to assist the First Nations with capacity building (i.e. training)?

IV. Interpretation difficulties and the impact of divergent motivations and expectations

- In each of the negotiations, the tripartite teams (First Nation, Yukon Government, Federal Government) entered into the agreements with different intentions, objectives and expectations. Can you explain the initial intentions, objectives and/or expectations for negotiating a Final Agreement from the perspective of Yukon Government?
  - Do you think these objectives have changed during the transition from negotiation to implementation? If so, how have they changed?

- How would the Yukon Government perceive the initial intentions, objectives and/or expectations of the First Nation you were negotiating with?
  - Do you think these have changed during the transition from negotiation to implementation? If so, how have they changed?

- How would the Yukon Government perceive the initial intentions, objectives and/or expectations of the Federal Government?
    - Do you think these have changed during the transition from negotiation to implementation? If so, how have they changed?

- Conflicting interpretations of the agreements have been identified as an ongoing issue. What have been some of the main challenges or barriers of these divergent interpretations?
    - Do you foresee there being any specific solutions to resolving these?

- Another discussion that often takes place around implementation challenges is the conflict between fulfilling the letter of law (the literal interpretation of the words but not necessarily the intent of those who wrote them) versus recognizing the spirit and intent of the agreements.
    - How do you understand the concept of the "spirit of the agreements"?

    - Do you feel this is being honoured throughout the implementation of the agreements?
        - Please give an example where you feel this has been the case.
        - Please give an example where you feel this has *not* been the case.

    - Do you feel that the federal government is honouring the letter of the agreements?
        - Please give an example where this has been the case.
        - Please give an example where this has *not* been the case.

V. The mobilization of economic development elements of the agreements (Chapter 22)

Chapter 22 includes 3 main objectives. I will go through each of these objectives with you.

4. To provide Yukon Indian People with opportunities to participate in the Yukon economy.

- During the implementation of this chapter, do you feel this objective has been met?
    - **If yes,** how? Can you give specific examples of how it has been implemented?
    - **If not**, what have been some of the barriers/challenges to implementing this objective?
        - Despite these challenges, can you identify any specific examples of successes in implementing this objective?

5. To develop economic self-reliance for Yukon Indian People.

- How would you define or interpret "economic self-reliance"? What does this include?
- During the implementation of this chapter, do you feel this objective has been met?
    - **If yes,** how? Can you give specific examples of how it has been implemented?

- **If not**, what have been some of the barriers/challenges to implementing this objective?
    - Despite these challenges, can you identify any specific examples of successes in implementing this objective?

6. <u>To ensure that Yukon Indian People obtain economic benefits that flow directly from the Settlement Agreements.</u>

- During the implementation of this chapter, do you feel this objective has been met?
    - **If yes,** how? Can you give specific examples of how it has been implemented?
    - **If not**, what have been some of the barriers/challenges to implementing this objective?
        - Despite these challenges, can you identify any specific examples of successes in implementing this objective?

- Chapter 22 identifies a number of places where economic benefits were expected to flow to First Nations. Can you tell me, in general and with examples where appropriate, how you feel the Yukon Government has done in each of these areas?
    - Economic development agreements
    - Economic development corporations
    - Access to employment contracts
    - First right of refusal for government contracts
    - Yukon asset construction agreements*
    - Economic Development Funds*

    **These are unique to the last four Final Agreements that were signed*

VI. Management, by the First Nation, federal and territorial governments, of third party relationships affected by the agreements

- When the modern treaties were signed, critics worried about the likely impact of the agreements on third party interests. How have third party interests been affected by the Final Agreement?
    - Can you describe your third party relationships at the time the agreement was being negotiated?
    - Can you describe your third party relationships when the signed agreement was first being implemented?
    - How have these relationships evolved? What has worked and have there been any challenges?

- Within the relationships between the Yukon Government and the Yukon First Nations, how are concerns with third party interests addressed and managed?

- Do your third party relationships in the Yukon differ from those with the federal and First Nations' governments? If so, how?

VII. General Questions

- How would you define successful or complete implementation?
    - Is there an end goal that would mean *Chapter 22: Economic Development Measures* has been fully implemented?

    - Is there an end goal that would mean a Final Agreement has been fully implemented?

- Is there anything else you would like to add before we conclude?

- Are there any individuals you think I should speak to as part of my research on the transition from negotiation to implementation of modern day treaties in the Yukon?

- Are you aware of any archival or existing documents, reports etc. that you think might contribute to this project?

- Would you be willing to do a follow-up interview by telephone over the next few months? If yes, what is the best way to reach you?

#3: Government of Canada

NOTE: The following interview guide includes all possible questions to be asked to participants responding on behalf of the Government of Canada. A selection of these will be asked, depending on the participant's experience with the negotiation and/or implementation of the Final Agreements. No individual participant will be asked all of the questions.

INTRODUCTION:

I. Brief self-introduction

II. Brief introduction to the project

Background: This is the research project for my PhD dissertation entitled, "From Negotiation to Implementation: Aboriginal Modern Treaties in the Yukon, 1993-2013." The focus of the project was decided upon through discussions with several Yukon First Nations' representatives, and individuals who had been involved in modern treaty negotiations in the Yukon on behalf of the Federal and Territorial governments. I wanted to ensure that I selected a topic that would be beneficial to Yukoners, and that could contribute to better understanding the successes and challenges faced by implementing modern day treaties.

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- Interpretation difficulties and the impact of divergent motivations and expectations
- Management, by the First Nations', federal and territorial governments, of third party relationships affected by the agreements

The specific focus of the research is on the implementation of Chapter 22: Economic Development measures.

The time frame for the research focuses on the first 20 years after the UFA and the first four Final Agreements were signed (1993-2013).

Interviews- over the next six months, I will be interviewing approximately 50 people from Yukon First Nation's Governments, Yukon Government, and the Government of Canada. Participants will include past and present Yukon First Nations' Chiefs, administrators, economic development officials, implementation staff, negotiators, and key community stakeholders. From the territorial and federal government, participants will include negotiators, treaty implementation staff, representatives from the economic development departments, and additional key stakeholders.

Reporting Back- Participants and communities will be provided with an electronic copy of the full PhD dissertation, as well as a summary report. I will also return to the Yukon in the Spring/Summer of 2018 for a series of community presentations to report back on the findings of the project.

III. Consent Form

Go through consent form, provide time for participant to read through and ask questions.

INTERVIEW:

I. Introduction

- Can you please start by telling me your name, in what capacity you have been involved with modern treaties in the Yukon, and which agreements you have been involved with negotiating and/or implementing?

- Before we get into the specific questions, can you tell me what "implementation" means to you? How would you define or explain implementation?

II. The post-signing implementation process (mostly focused on the first 5 years)

- What protocols or processes did the federal government envision or plan out in advance for implementing the Final Agreement (e.g. joint implementation committees—structure, representation, frequency of meetings)?

    - Did you draw lessons from the experience of other modern treaty implementation processes [in the Yukon or outside of the Yukon]? If so, did you try to mitigate past problems or look for alternate solutions?

- Are you aware of any specific implementation protocols or processes that the Yukon government had planned out in advance?
    - **If yes**, what did these consist of?
    - **If no**, *move on to next question.*

- Are you aware of any specific implementation protocols or processes that the Yukon First Nations had planned out in advance?
    - **If yes**, what did these consist of?
    - **If no**, *move on to next question.*

- Can you identify any specific implementation successes that occurred in the first five years?

- Can you identify specific challenges or barriers to implementation that occurred during the first five years?

- If you could go back, what would you have done differently during the transition from the signing of the Final Agreement to the beginning of implementation?

III. Capacity building for implementation of the treaty

- To what degree was the Government of Canada (GOC) ready, at the time of signing, to implement the agreement?

- In regards to implementation, what were the major challenges in the area of capacity building for the federal government?
  - Do these challenges still exist?

- Did the GOC have people in place that had an understanding of First Nations' conditions and culture to support the implementation process?
  - Was there specific training available for this?

- Did the GOC have enough employees to ensure the implementation of the agreement?

- What was the specific role for INAC (formerly AANDC) during implementation?
  - How did other GOC departments support INAC?
  - Aside from INAC, which departments were most involved in implementation?

- Did the Yukon Government have enough employees to ensure the implementation of the agreement?
  - Do you feel they have the capacity today?

- Did the Yukon First Nations' that you negotiated with, have the capacity to ensure the implementation of the agreements when they were first signed?
  - Do you feel they have the capacity today?
  - Are there any supports in place to assist the First Nations with capacity building (i.e. training)

IV. Interpretation difficulties and the impact of divergent motivations and expectations

- In each of the negotiations, the tripartite teams (First Nation, Yukon Government, Federal Government) entered into the agreements with different intentions, objectives and expectations. Can you explain the initial intentions, objectives and/or expectations for negotiating a Final Agreement from the perspective of the GOC?
  - Do you think these objectives have changed during the transition from negotiation to implementation? If so, how have they changed?

- How would the GOC perceive the initial intentions, objectives and/or expectations of the Yukon Government?
  - Do you think these have changed during the transition from negotiation to implementation? If so, how have they changed?

- How would the GOC perceive the initial intentions, objectives and/or expectations of the First Nation you were negotiating with?
    - Do you think these have changed during the transition from negotiation to implementation? If so, how have they changed?

- Conflicting interpretations of the agreements have been identified as an ongoing issue. What have been some of the main challenges or barriers of these divergent interpretations?
    - Do you foresee there being any specific solutions to resolving these?

- Another discussion that often takes place around implementation challenges is the conflict between fulfilling the letter of law (the literal interpretation of the words but not necessarily the intent of those who wrote them) versus recognizing the spirit and intent of the agreements.
    - How do you understand the concept of the "spirit of the agreements"?

    - Do you feel this is being honoured throughout the implementation of the agreements?
        - Please give an example where you feel this has been the case.
        - Please give an example where you feel this has *not* been the case.

    - Do you feel that the GOC is honouring the letter of the agreements?
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        - Please give an example where this has *not* been the case.

V. The mobilization of economic development elements of the agreements (Chapter 22)

Chapter 22 includes 3 main objectives. I will go through each of these objectives with you.

IV. <u>To provide Yukon Indian People with opportunities to participate in the Yukon economy.</u>

- During the implementation of this chapter, do you feel this objective has been met?
    - **If yes,** how? Can you give specific examples of how it has been implemented?
    - **If not**, what have been some of the barriers/challenges to implementing this objective?
        - Despite these challenges, can you identify any specific examples of successes in implementing this objective?

V. <u>To develop economic self-reliance for Yukon Indian People.</u>

- How would you define or interpret "economic self-reliance"? What does this include?
- During the implementation of this chapter, do you feel this objective has been met?
    - **If yes,** how? Can you give specific examples of how it has been implemented?

- **If not**, what have been some of the barriers/challenges to implementing this objective?
    - Despite these challenges, can you identify any specific examples of successes in implementing this objective?

VI. <u>To ensure that Yukon Indian People obtain economic benefits that flow directly from the Settlement Agreements.</u>

- During the implementation of this chapter, do you feel this objective has been met?
    - **If yes,** how? Can you give specific examples of how it has been implemented?
    - **If not**, what have been some of the barriers/challenges to implementing this objective?
        - Despite these challenges, can you identify any specific examples of successes in implementing this objective?

- Chapter 22 identifies a number of places where economic benefits were expected to flow to First Nations. Can you tell me, in general and with examples where appropriate, how you feel the Government of Canada has done in each of these areas?
    - Economic development agreements
    - Economic development corporations
    - Access to employment contracts
    - First right of refusal for government contracts
    - Yukon asset construction agreements*
    - Economic Development Funds*

    **These are unique to the last four Final Agreements that were signed*

VI. Management, by the First Nation, federal and territorial governments, of third party relationships affected by the agreements

- When the modern treaties were signed, critics worried about the likely impact of the agreements on third party interests. How have third party interests been affected by the Final Agreement?
    - Can you describe your third party relationships at the time the agreement was being negotiated?
    - Can you describe your third party relationships when the signed agreement was first being implemented?
    - How have these relationships evolved? What has worked and have there been any challenges?

- Within the relationships between the GOC and the Yukon First Nations, how are concerns with third party interests addressed and managed?

- Do your third party relationships in the Yukon differ from those with the Yukon and First Nations' governments? If so, how?

VII. General Questions

- How would you define successful or complete implementation?
    - Is there an end goal that would mean *Chapter 22: Economic Development Measures* has been fully implemented?

    - Is there an end goal that would mean a Final Agreement has been fully implemented?

- Is there anything else you would like to add before we conclude?

- Are there any individuals you think I should speak to as part of my research on the transition from negotiation to implementation of modern day treaties in the Yukon?

- Are you aware of any archival or existing documents, reports etc. that you think might contribute to this project?

- Would you be willing to do a follow-up interview by telephone over the next few months? If yes, what is the best way to reach you?

APPENDIX C: "GUIDELINES: COMPREHENSIVE LAND CLAIMS IMPELEMNTATION PLANS" OVERVIEW OF ALIGNMENT OF IMPLEMENTATION PLANNING FUNCTIONS

Table C.1 Alignment of Implementation Planning Functions

	NORTHERN AFFAIRS PROGRAM			**SELF-GOVERNMENT SECTOR**
Organization/ Claims Process	**Claim Negotiating Team**	**Program Development Implementation Directorate**	**DIAND Regional Organization**	**Policy and Legislation Directorate**
Agreement-In-Principle Stage	Obtaining commitments of native, provincial/territorial and federal parties to undertake specific activities pursuant to signature of the Final Agreement and/or AIP. Preparing Memoranda to Cabinet including the incorporation of implementation material.	Preparing for discussion bilateral or tripartite sub-agreements or implementation. Conducting AIP clause by clause review as drafts become available. Advising claims negotiators on the practicality and clarity of clauses and the acceptability of AIP agreements re: implementation. Acting as advisors to SADM and claims negotiators on implementation matters. Obtaining sign-off of the sub-agreement on implementation by the negotiating parties or delegating this responsibility to the claims negotiators.	Providing operational advice to implementation negotiators on the practicality and clarity of AIP agreement clauses.	Policy: Providing in-depth technical analysis, strategic policy advice and/or policy development support.

	NORTHERN AFFAIRS PROGRAM			SELF-GOVERNMENT SECTOR
Organization/ Claims Process	**Claim Negotiating Team**	**Program Development Implementation Directorate**	**DIAND Regional Organization**	**Policy and Legislation Directorate**
	Briefing staff of the Implementation Directorate in the interpretation of, strategy behind and nuances of agreement clauses. Renegotiating or re-editing where considered feasible and practical, prior to submission of the AIP to Cabinet, clauses where the Implementation Directorate have identified as impractical or unclear re: implementation. Circulating to staff of the Implementation Directorate draft of AIP sub-agreements as they become available.	Presenting sub-agreements on implementation to the Comprehensive Claims Steering Committee. Assisting the claims negotiators in the preparation of Memoranda to Cabinet re: implementation matters. Assisting the claims negotiators in the preparation of implementation funding estimates. Attending caucus and working group sessions of claims negotiators, when necessary.		
Final Agreement Stage	Commencing and/or completing activities and processes in accordance with terms of the AIP (e.g. land selection).	Identifying and resolving financial transfer issues. Developing implementation plans to accompany Final Agreement proposals to Cabinet. Conducting in consultation with the native parties and federal government a Final Agreement clause by clause review.	Advising implementation negotiators on the practicality and clarity of agreement clauses. Identifying future obligations and activities including resource requirements. Sitting on committees examining procedures for	Policy: Providing indepth technical analysis, strategic policy advice and/or policy development. Legislation: Coordinating and/or advising on the developments of legislation and legislative amendments.

	NORTHERN AFFAIRS PROGRAM			SELF-GOVERNMENT SECTOR
Organization/ Claims Process	**Claim Negotiating Team**	**Program Development Implementation Directorate**	**DIAND Regional Organization**	**Policy and Legislation Directorate**
			implementation of Final Agreements.	
Final Agreement Stage		Advising claims negotiators on the practicality and clarity of agreement clauses and the acceptability of Final Agreement re: implementation. Attending caucus and working group sessions of claims negotiators, when necessary. Providing for the identification of legislative regimes that apply to the settlement area, their impact, and specification of activities necessary to change existing provincial/territorial and /or Canada legislation and regulations to implement the Final Agreement.	Representing their interest on implementation caucus group(s) and observing at working group sessions.	

	NORTHERN AFFAIRS PROGRAM			SELF-GOVERNMENT SECTOR
Organization/ Claims Process	**Claim Negotiating Team**	**Program Development Implementation Directorate**	**DIAND Regional Organization**	**Policy and Legislation Directorate**
		Coordinating the preparation of any RIAS to accompany the Memoranda to Cabinet for approval of the Final Agreement. Coordinating the activities of implementation negotiation and support teams and reviewing implementation planning progress.		
Final Agreement Stage	Preparing Memorandum to Cabinet including the incorporation of implementation material. Drafting instruction for new legislation and legislative amendments on comprehensive claims and related matters.	Reviewing existing program authorities and procedures and conducting inter/intra departmental consultations to identify necessary accommodations in existing operational program authorities/ procedures/policies. Acting as Advisor(s) to Deputy Minister and SADM, DIAND on implementation matters. Advising claims negotiators on any potential inconsistencies between comprehensive claims settlements and what has been concluded through negotiation on devolution.		

	NORTHERN AFFAIRS PROGRAM			SELF-GOVERNMENT SECTOR
Organization/ Claims Process	**Claim Negotiating Team**	**Program Development Implementation Directorate**	**DIAND Regional Organization**	**Policy and Legislation Directorate**
		Consulting with all parties to incorporate input to the implementation plans including, if necessary, giving briefings and holding sessions with regional representatives of other federal government departments and various provincial/territorial departments.		
Final Agreement Stage		Formalizing of commitments in implementation plans by native, provincial/territorial and federal parties. Assisting the native parties in implementation funding and training matters including the identification of existing training programs. Coordinating and/or developing within DIAND the operational and administrative practices and procedures to come into effect on signing of the Final Agreement. Assisting other government departments in the development of operational and administrative practices and procedures to come		

	NORTHERN AFFAIRS PROGRAM			SELF-GOVERNMENT SECTOR
Organization/ Claims Process	**Claim Negotiating Team**	**Program Development Implementation Directorate**	**DIAND Regional Organization**	**Policy and Legislation Directorate**
		into effect on signing of the Final Agreement. Monitoring progress in the development of operational and administrative practices and procedures.		
Final Agreement Stage		Keeping central agencies informed on the progress on comprehensive claims implementation planning and addressing their concerns and requirements. Negotiating financial transfer arrangements and the preparation of related Treasury Board submissions as required. Assisting the claims negotiators in the preparation of sections in Memoranda to Cabinet dealing with implementation matters. Briefing staff of headquarters and DIAND regional offices on the interpretation of, strategy behind and nuances of agreement clauses		

	NORTHERN AFFAIRS PROGRAM			SELF-GOVERNMENT SECTOR
Organization/ Claims Process	**Claim Negotiating Team**	**Program Development Implementation Directorate**	**DIAND Regional Organization**	**Policy and Legislation Directorate**
		in terms of future requirements for implementation. Making presentations on implementation matters to the Comprehensive Claims Steering Committee.		
Operations	Providing, when necessary, advice and direction to those organizations responsible for implementation in the interpretation of clauses and commitments.	Negotiating transfer arrangements and meeting statutory funding obligations pursuant to agreements with native parties. Negotiating, when necessary, adjustments to existing financial transfer agreements with provincial/ territorial governments. Renegotiating financial arrangements at the end of their term. Submitting negotiated financial transfer arrangements to Treasury Board for approval.	Carrying out their obligations for implementation of comprehensive claim agreements based on the processes, terms and conditions included in implementation plans. Acting as members in various boards and committees. Making recommendations to resolve identified operation problems. Reporting on progress achieved in implementing their obligations.	Legislation: Coordinating and/or advising on the development of legislation and legislative amendments.

	NORTHERN AFFAIRS PROGRAM			SELF-GOVERNMENT SECTOR
Organization/ Claims Process	**Claim Negotiating Team**	**Program Development Implementation Directorate**	**DIAND Regional Organization**	**Policy and Legislation Directorate**
Operations		Discussing and assisting in the resolution of conflicts arising from differing agreement interpretations. Providing, when necessary, advice to those organizations responsible for implementation on the rationale of the implementation plan and how to resolve operational problems. Conducting inter-departmental consultations on parallel funding arrangements with other federal departments based on principles in the financial transfer arrangements to assist in the adjustments of program funding authorities.	Making recommendations to resolve identified operational problems involving themselves and other organizations. Assisting in the development of RIASs and regulations. Periodically assessing/evaluating the effective implementation of those terms and conditions of the agreement for which they are responsible.	

(Modified from: Indian and Northern Affairs Canada 1989, 5–16)

APPENDIX D: SAMPLE ACTIVITY SHEET

PROJECT: Negotiation of economic development agreements

RESPONSIBLE PARTY:
Canada, Yukon, CAFN

PARTICIPANT/LIAISON:

OBLIGATIONS ADDRESSED:
Government may enter into economic development agreements with the Champagne and Aishihik First Nations which provide:

- technical and financial assistance for economic development purposes to residents of the Champagne and Aishihik First Nations Traditional Territory and to organizations, businesses and corporations owned by those residents; and
- for the participation of the Champagne and Aishihik First Nations in the planning, management, administration and decision making of those programs and services.

Economic development agreements referred to in 3.1:

- shall describe the purpose for which technical and financial assistance may be used;
- may provide for a financial contribution by the Champagne and Aishihik First Nations, consistent with the ability of the Champagne and Aishihik First Nations to contribute; and
- may provide for a financial contribution by Governmetn for the purpose of the agreement.

The Champagne and Aishihik First Nations shall have the right to nominate no less than one third of the members of any joint planning, management, advisory, or decision making body established pursuant to an economic development agreement referred to in 3.1.

REFERENCED CLAUSES:
Chapter 22 Schedule A Part I 3.1, 3.2, 3.3;

Cross reference
22.6.6

Table D.1 Sample Activity Sheet

Responsibility	Activities	Timing
Canada, Yukon, CAFN	At discretion of any Party, initiate request to negotiate economic development agreements with CAFN	After Effective Date
Canada, Yukon, CAFN	Assess need to negotiate economic development agreement.	

Parties	Respond to request to enter negotiations.	Within a reasonable period of time.
Canada, Yukon, CAFN	Negotiate economic development agreements.	If Parties agree.
CAFN	Nominate no less than one third of the members of any joint planning, management, advisory or decision making body.	If established pursuant to an economic development agreement.

(Indian Affairs and Northern Development 1993a)

APPENDIX E: CABINET DIRECTIVE ON THE FEDERAL APPROACH TO MODERN TREATY IMPLEMENTATION

This Directive lays out an operational framework for the management of the Crown's modern treaty obligations. It guides federal departments and agencies to fulfill their responsibilities.

1- Roles and Responsibilities

All Federal Departments and Agencies:

- Will ensure that they are aware of, understand, and fulfill their departments' obligations pursuant to all modern treaties in effect.
- Will ensure that they are aware of, understand and are prepared to fulfill their departments' obligations, prior to approving new modern treaties under negotiation.
- Will develop and deliver activities, programs, policies and legislation in a manner that respects and complies with modern treaty provisions and the rights therein. To this end, departments and agencies will conduct an Assessment of Modern Treaty Implications on all policy, plan and program proposals to Cabinet.
- Will report on the status of their obligations on an annual basis by contributing to an Annual Report, coordinated by AANDC, provided to the Minister of AANDC.
- Will participate in treaty-related governance structures as per the terms of reference of those structures, and as appropriate to the scope of their responsibilities.

Assessment of Modern Treaty Implications

In developing policy, plan and program proposals to Cabinet, departments and agencies are expected to consider the implications of modern treaties on the proposals, and to attest to the compliance of the proposals with the legal obligations contained in modern treaties.

More specifically, departments and agencies will complete an assessment of modern treaty implications and legislative policy, plan or program proposal, when:

1. the proposal is submitted to Cabinet for approval; and
2. implementation of the proposal may have implications on modern treaties in effect and the rights enshrined therein.

Cabinet

- Ministers, through meetings of Cabinet committees, will have the shared responsibility of determining if assessments of modern treaty implications have been undertaken on proposals to Cabinet.

Department of Aboriginal Affairs and Northern Development Canada

- AANDC is responsible for federal representation on implementation committees
- AANDC will coordinate the interdepartmental committee structures put in place to manage the Crown's approach to modern treaties.
- AANDC will administer the Treaty Obligation Monitoring System (TOMS); will be accountable for regularly updating the system to reflect new or revised obligations, and will provide directions to departments and agencies reporting into the system.
- AANCD will provide guidance for other departments and agencies in interpreting modern treaty provisions and their implications for departmental activities; in determining potential implications of modern treaties on departmental policy, programs and legislation; in completing Assessments of Modern Treaty Implications, and in undertaking intergovernmental relationships with Aboriginal signatories.

Central Agencies

- Central agencies, including the Privy Council Office, the Department of Finance and the Treasury Board Secretariat will confirm that the assessment of modern treaty implications has been completed prior to referral of proposals to Cabinet.

Department of Justice

- The Department of Justice will provide advice and guidance to departments and agencies with respect to their legal responsibilities pursuant to modern treaties; potential legal repercussions/risk of contemplated departmental activities; relationship of laws and interpretation of key legal concepts related to modern treaties, such as honour of the Crown.

2- Deputy Ministers' Oversight Committee

A Deputy Minister-level Oversight Committee will be created and chaired by the Deputy Minister of Aboriginal Affairs and Northern Development Canada. The Oversight Committee's mandate will be to provide executive oversight of the implementation of the Directive, and by extension, of Canada's roles and responsibilities under modern treaties. This mandate will encompass:

- Program and policy direction to departments in fulfilling Canada's responsibilities under modern treaties;
- Decision-making (and dispute resolution), as necessary, when cross-cutting issues arise that require senior executive intervention;
- Coordination of the federal approach to broad, cross-cutting obligations;
- Oversight of monitoring and reporting and performance measurement;

- Meeting with Aboriginal and other treaty partners as appropriate and as laid out in the committee terms of reference.

3- Modern Treaty Implementation Office

A Modern Treaty Implementation Office will be established in AANDC to provide ongoing coordination and oversight of Canada's modern treaty obligations, and to support the mandate of the Deputy Ministers' Oversight Committee. The Office's mandate will be two-fold:

- The Office will work with departments to establish ongoing oversight and accountability through the development and implementation of a performance measurement framework, the development and administration of monitoring and reporting tools, the coordination of departmental input into these tools, and the development of an annual report provided to the Minister of AANDC.
- The Office will provide interdepartmental coordination by serving a liaison function between implementation committees, regional and federal officials-level interdepartmental Caucuses, Federal Steering Committee and the Deputy Ministers' Oversight Committee. Further, the Office will provide a secretariat function for interdepartmental committees and will coordinate issues management across departments.

4- Evaluation of the Directive

Within five years of the implementation of the Directive, AANDC will conduct an evaluation to assess the effectiveness of the Directive in meeting its stated objectives; to assess the ongoing need for the Directive, and to determine if changes to the Directive and its component tools and structures should be pursued.

(Crown-Indigenous Relations and Northern Affairs Canada 2015)

APPENDIX F: LAND CLAIMS AGREEMENTS COALITION'S "FOUR-TEN" DECLARATION OF DEDICATION AND COMMITMENT

1. The first "modern land claims agreement" between Aboriginal peoples and the federal Crown was entered into in 1975. Since then, 19 modern treaties applying to Aboriginal traditional lands encompassing more than half of the lands and waters of Canada and the immense resources they contain have been negotiated by the Government of Canada and Aboriginal peoples and ratified by Parliament.

2. For Canada, land claim agreements provide a basis for the shared beneficial usage of lands and natural resources, facilitating economic development on treaty lands, and also providing means for Aboriginal peoples to consent to and benefit from development within their traditional territories.

3. For Aboriginal signatories, land claim agreements are intended to enable economic, social, and cultural development, environmental protection, and self-government. The rights defined in comprehensive land claim agreements are recognized and affirmed in Canada's Constitution.

4. In November 2003, leaders representing the Aboriginal peoples of Canada that have entered into Land Claims Agreements since 1975 gathered in Ottawa at Redefining Relationships: Learning from a Decade of Land Claims Implementation. The Land Claims Agreement Coalition ("LCAC") was established, involving all of the beneficiary or signatory organizations or governments of the "modern" land claims agreements in Canada.

5. In the face of persistent challenges in implementation of their land claims agreements, leaders at Redefining Relationships articulated "4 Points" for a renewed relationship with the federal government of Canada:

   LCAC "4 Points"
   1. Recognition that the Crown in right of Canada, not the Department of Indian Affairs and Northern Development, is party to our land claims agreements and Self-Government Agreements.
   2. There must be a federal commitment to achieve the broad objectives of the land claims agreements and Self-Government Agreements within the context of the new relationships, as opposed to mere technical compliance with narrowly defined obligations. This must include, but not be limited to, ensuring adequate funding to achieve these objectives and obligations.
   3. Implementation must be handled by appropriate senior level federal officials representing the entire Canadian government.
   4. There must be an independent implementation and review body, separate from the Department of Indian Affairs and Northern Development. This could be the Auditor General's department, or a similar office reporting directly to Parliament. Annual reports will be prepared by this office, in consultation with Groups with land claims agreements.
6. LCAC leaders and organizations have elaborated upon these "4 Points" in 2005 with the following "10 Fundamental Principles" respecting modern land claims agreements and their proper implementation by the federal Crown:

LCAC "10 Fundamental Principles"

A new land claims implementation policy must be situated in the following context:

1. The history of nation-to-nation contact and interaction between the Crown and the Aboriginal peoples in Canada has created an enduring relationship between the Crown and Aboriginal peoples, one that is fundamentally predicated on the honour of the Crown.
2. "[T]he doctrine of aboriginal rights exists, and is recognized and affirmed by s. 35(1), because of one simple fact: when Europeans arrived in North America, Aboriginal peoples were already here, living in communities on the land, and participating in distinctive cultures, as they had done for centuries." Supreme Court of Canada.
3. "The historical roots of the principle of the honour of the Crown suggest that it must be understood generously in order to reflect the underlying realities from which it stems. In all its dealings with Aboriginal peoples, from the assertion of sovereignty to the resolution of claims and the implementation of treaties, the Crown must act honourably. Nothing less is required if we are to achieve "the reconciliation of the pre-existence of aboriginal societies with the sovereignty of the Crown." Supreme Court of Canada.
4. Relations between the Crown and Aboriginal peoples have been and will always be manifested in a wide variety of political and legal arrangements and instruments. No single political or legal arrangement or instrument can be said to comprehensively express the dimensions, in breadth, depth or time, of the ongoing and evolving relationship that connects the Crown and an aboriginal people.
5. Treaties and land claims agreements between the Crown and Aboriginal peoples are acknowledged to be "basic building blocks in the creation of our country …[T]reaties -- both historical and modern -- and the relationship they represent provide a basis for developing a strengthened and forward-looking partnership with Aboriginal people." Government of Canada.
6. Among the key political and legal instruments that affirm the relationship between the Crown and Aboriginal people are modern land claims agreements, and ancillary agreements such as implementation and Self-Government Agreements that attach to or follow from land claims agreements.
7. Modern land claims agreements, which give rise to treaty rights, are multi-faceted, and the ongoing rights they affirm are, among other things, constitutional, statutory, contractual, fiduciary, and in keeping with the "living tree" principle of Canadian law, evolving and progressive in nature.
8. The negotiation and implementation of modern land claims agreements, and their ancillary agreements, engage the honour of the Crown, and demand results and ongoing outcomes that are just. "Where treaties remain to be concluded, the honour of the Crown requires negotiations leading to a just settlement of Aboriginal claims." Supreme Court of Canada.
9. The treaty rights arising from modern land claims agreements express the mutual desire of the Crown and Aboriginal peoples in Canada to reconcile through sharing the lands, resources and natural wealth of this subcontinent in a manner that is equitable and just – no longer so as to solely assimilate, take or extinguish the interest of the Aboriginal peoples involved, but rather so as to implement mutual objectives that will ensure their socio-economic, political and cultural survival, well-being and development as peoples.
10. Aboriginal and treaty rights are human rights, and they are not amenable to extinguishment as a matter of respect for Canada's international human rights obligations. "The situation of the Aboriginal peoples remains the most pressing human rights issue facing Canadians…. [T]he practice of extinguishing inherent aboriginal rights be abandoned as incompatible with article 1 of the [International] Covenant [on Civil and Political Rights]." United Nations Human Rights Committee.

7. These 4 Points and 10 Principles are now known as the "LCAC FourTen".

8. Consistent with the LCAC Four-Ten, members of the Land Claim Agreements Coalition will continue to undertake information sharing, joint activities and coordination, mutual encouragement and support, advocacy, policy development, Canadian and international public education, inclusion of new land claims agreement entities, appropriate contact and efforts with governments, and such other future steps as may be decided by Coalition participants.

9. The task at hand is to implement the modern land claims agreements in ways that bring political, economic and social justice to their signatory nations and their members and that achieve in full measure, the letter, spirit, intent and lasting objectives of modern land claims agreements with the federal Crown.

10. The land claims agreement coalition is dedicated and committed to achieving these necessary and important goals, for the benefit and development of all land claims agreement organizations, governments and beneficiaries and also for the benefit and self-respect of all Canadians.

(Land Claims Agreements Coalition 2006)

APPENDIX G: DOUGLAS EYFORD'S RECOMMENDATIONS REGARDING THE IMPLEMENTATION OF MODERN AGREEMENT

1. Canada should increase awareness, oversight, and accountability across departments about modern treaty obligations and improve internal structures for co-ordinating and fulfilling implementation activities.

2. Canada should centralize responsibility for the coordination and oversight of modern treaty implementation in a central agency.

3. Canada should continue to collaborate with the Land Claims Agreements Coalition to advance the parties' shared objectives

4. Canada should ensure treaty provisions are interpreted and given effect in the manner intended by negotiators.

5. Canada should develop a training program for federal officials whose responsibilities involve treaty implementation.

6. Canada should, through the central agency responsible for the coordination and oversight of treaty implementation, file and annual report in Parliament about treaty implementation activities.

(Eyford 2015, 78)

APPENDIX H: "CHAPTER 11: REGIONAL LAND USE PLANNING"

11.1.0 Objectives

11.1.1 The Objectives of this chapter are as follows:

> **11.1.1.1** to encourage the development of a common Yukon land use planning process outside community boundaries;
>
> **11.1.1.2** to minimize actual or potential land use conflicts both within Settlement Land and Non-Settlement Land and between Settlement Land and Non-Settlement-Land;
>
> **11.1.1.3** to recognize and promote the cultural values of Yukon Indian Peoples;
>
> **11.1.1.4** to utilize the knowledge and experience of Yukon Indian People in order to achieve effective land use planning;
>
> **11.1.1.5** to recognize Yukon First Nations' responsibilities pursuant to Settlement Agreements for the use and management of Settlement Land; and
>
> **11.1.1.6** to ensure that social, cultural, economic and environmental policies are applied to the management, protection and use of land, water and resources in an integrated and coordinated manner so as to ensure Sustainable Development.

(Indian Affairs and Northern Development 1993b)

11.6.0 Approval Process for Land Use Plans

11.6.1 A Regional Land Use Planning Commission shall forward its recommended regional land use plan to Government and each affected Yukon First Nation.

11.6.2 Government, after Consultation with any affected Yukon First Nation and any affected Yukon community, shall approve, reject or propose modifications to that part of the recommended regional land use plan applying on Non-Settlement Land.

11.6.3 If Government rejects or proposes modifications to the recommended plan, it shall forward either the proposed modifications with written reasons, or written reasons for rejecting the recommended plan to the Regional Land Use Planning Commission, and thereupon:

> **11.6.3.1** the Regional Land Use Planning Commission shall reconsider the plan and make a final recommendation for a regional land use plan to Government, with written reasons; and

11.6.3.2 Government shall then approve, reject or modify that part of the plan recommended under 11.6.3.1 applying on Non-Settlement Land, after Consultation with any affected Yukon First Nation and any affected Yukon community.

11.6.4 Each affected Yukon First Nation, after Consultation with Government, shall approve, reject or propose modifications to that part of the recommended regional land use plan applying to the Settlement Land of that Yukon First Nation.

11.6.5 If an affected Yukon First Nation rejects or proposes modifications to the recommended plan, it shall forward either the proposed modifications with written reasons or written reasons for rejecting the recommended plan to the Regional Land Use Planning Commission, and thereupon:

11.6.5.1 the Regional Land Use Planning Commission shall reconsider the plan and make a final recommendation for a regional land use plan to that affected Yukon First Nation, with written reasons; and

11.6.5.2 the affected Yukon First Nation shall then approve, reject or modify the plan recommended under 11.6.5.1, after Consultation with Government.

(Indian Affairs and Northern Development 1993b)