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Resolving Conflict between Canada's Indigenous Peoples and the Crown through Modern Treaties: Yukon Case History

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This article presents an example of how modern treaties with Yukon First Nations have created a foundation for co-relational involvement in the direction and control of land and resource management throughout Canada's subnational region of Yukon, approximately 470,000 square kilometers in size. The modern treaties with eleven of the fourteen Yukon First Nations create assessment and management structures where appointment to these bodies are nominations not only from the territorial and federal governments but from the Yukon First Nations. The rights captured in the treaties are protected under Canada's supreme law, the Constitution Act, 1982. The treaty relationship has effectively changed conflict. No longer is the Indigenous population (approximately 25 percent of the territory) alienated from government powers that control land and resources. The structures set out under the modern treaties provide shared ownership of the institutions that either control or have extensive influence over critical aspects of governing the territory: land, water, surface and subsurface resources, heritage, wildlife, fish, and the environment.

In September 2018 the "Freedom and Fragmentation" conference was convened at the Centre for the Resolution of Intractable Conflict at Harris Mansfield College at the University of Oxford. One theme within this broad global topic was conflict between the indigenous populations found in many parts of the world and national governments. Yukon is a subnational region in Canada that has shown significant progress in changing the dynamic of conflict through new federal policy. That progress is the subject of this article.

The article argues that the modern treaties (comprehensive land claims settlements) and their companion self-government agreements that eleven of the fourteen Yukon First Nations have entered into brought about a fundamental change in the architecture of conflict experienced in Yukon. The modern treaties have created institutions either recognized or created by them with far-reaching authority over the assessment and management of critical aspects of Yukon lands and resources. This co-relational framework shared by public government (the federal and territorial governments) and Yukon Indigenous governments has changed the dynamic of conflict. It no longer presents as an indigenous population outside the power elite of the national and subnational governance structure protesting the actions of an uncaring or hostile public government. Where conflict arises, it is where public government makes poor choices and shows a lack of willingness to listen to the public (Indigenous and non-Indigenous) interest. Examples demonstrate this shift in the dynamic of conflict.

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History of Oppression

Canada's treatment of the Indigenous Peoples has, through much of its history, been deplorable by any measure of fairness and respect. Initial post-contact history of Indigenous-settler relations is very different from what occurred in the nineteenth and much of the twentieth century.

At contact during the fifteenth through eighteenth centuries (varying by region), the first peoples were accommodating to the settler populations. In many instances they prevented mass starvation and death from scurvy and were instrumental in giving settlers the skills and knowledge to make their way throughout the continent.

After the Seven Years' War, Britain's King George III, in the Royal Proclamation of 1763, provided guidelines for settlement by European settlers in Indigenous territories in what is now Canada and parts of the United States. This proclamation has been referred to as the "Indian Magna Carta" because it is explicit in recognizing Aboriginal title. It sets out the requirement for treaties as the instruments to acquire Aboriginal lands. The government ("the Crown") is authorized to buy land through treaty and then sell it to settlers. The proclamation recognizes both Indigenous land title and the right to self-determination.

This approach to Indigenous-Crown relations, however, did not last. Not long before, and following Confederation in 1867—the creation of the Dominion of Canada as a nation state—things changed. The government of Canada's policies and approach to Indigenous people were now based on the belief that they were savages, lacking social, political, and economic sophistication (and, not to forget, also lacking moral veracity, possible only with conversion to the dominating culture's religious beliefs).

Canada's Indian Act, brought into effect in 1876, gave legal force to state efforts to bring about fundamental cultural and economic changes in the Indigenous population. The Indian Act in its various forms has been and remains a repressive instrument for the state to maintain control over the lives of Indigenous Peoples.

Although today the act has been amended to remove some of the most heinous provisions associated with cultural repression (such as rendering Indigenous ceremonies illegal), it is still an instrument of control over the majority of Indigenous people in Canada.

Throughout much of the nineteenth and twentieth centuries, Indigenous people have had self-determination stripped from them. Until the mid-twentieth century, they were restricted from leaving their reserves (small and the least productive lands that were granted by the federal government) without permission and could not serve their country by joining the military or voting without relinquishing their "Indian status," in effect saying that if you wish to take part as a recognized and full Canadian, you must give up your connection to your heritage.

In addition, public policy regarding treatment of indigenous youth up to the age of eighteen has, in effect, left the Indigenous people of today working to rediscover and repair their societies. Residential schools, run by the main churches or by government, ripped children from their communities throughout Canada and placed them in schools in many instances far removed from the communities. The first of these schools was set up in the 1880s and the last was closed in 1996. Thus, for over a century these institutions of acculturation ("civilizing" the Indians by taking away their hereditary names and removing them from contact with their families, which meant from culture, language, and Indigenous laws and traditions, and subjecting them to brutal physical and sexual violence) created generations of Indigenous survivors who had lost all sense of connection to their hereditary roots. In short, they had the "Indian" ripped out of them by institutions of the state.

The effects of the Indian Act provide an important backdrop to understanding how fundamentally challenging the journey has been for today's Indigenous leadership to bring about revitalization of their heritage, language, culture, traditional ways, and self-determination. But this struggle is continuing and progress is being made.

Common Public Perception

Although public awareness of the historic wrongs done to the Canadian Indigenous population has been increasing and governments have made efforts to reconcile with this approximately 4.9 percent of the Canadian population, there remain common perceptions in some parts of the general population and among some communities of Indigenous Peoples that continue to provoke a climate of conflict when there is divergence of perspective on land and resources subjects. What is described here is a very broad generalization for the purpose of comparison with the Yukon context and does not do justice to the complexity and variety of views found among Canada's 37 million people, either the Indigenous or the non-Indigenous populations.

The conflict divide has on one side the dominant elite, comprising government, industry, and developers. This side is characterized as the colonial "masters," dominating through imposed legislative regimes based on European systems of government adopted and matured in the Canadian context since before Confederation. This legal construct gives the power elite regulatory control over development, enabling public government to pick and choose the winners and losers in the national discourse. Inevitably it has meant Indigenous populations have been on the losing side. Where conflict has resulted between the dominant and the oppressed, police authority and physical conflict has occurred.

A well-known example of this conflict is the 1990 land dispute between the village of Oka and Mohawk of the Kanesatake reserve over a proposed golf course expansion and condominium development on lands claimed by the Mohawk that included a known burial site. Conflict escalated during the seventy-eight-day stand-off that saw armed Mohawk protestors and warriors engaging with police with gun fire from both sides. Two people died in the conflict and several were injured. The Canadian Army was brought in and peace was established when Mohawk barricades were taken down.

On the other side of the conflict divide, the Indigenous population is characterized as alienated from any form of institutional or legal control. They are on the outside of society looking in, both figuratively and literally for those who live apart from the mainstream Canadian community on lands set aside as reserves. The view persists that their only means of protecting their Aboriginal rights and interests is through protest, sometimes violent, to gain any sense of control.

A recent opinion piece in the national newspaper, the *Globe and Mail*, reflects this continued sense of where the Indigenous population finds itself in the Canadian power context.

The Trans Mountain pipeline debate has seen mainstream commentators and politicians in Canada position First Nations people with environmentalists and other "professional objectors" together on one side of the debate, with realists, job creators, and the national interest on the other. In effect, they pit First Nations issues and people against what they present as "serious" issues and people. Our Indigenous issues are seen as airy-fairy, theirs are about bread and butter.¹

Modern Treaties

A significant step toward correcting the power imbalance in Canada and recognizing the relationship between Indigenous Peoples and land and resources came in 1973 with the federal government's establishment of the Comprehensive Claims Policy (amended in 1986 with the same set of general objectives).

Since its introduction, twenty-six comprehensive land claims agreements have been reached throughout Canada. These agreements give Indigenous populations direct ownership of more than 600,000 square kilometers of land in Yukon, Northwest Territories, Nunavut, British Columbia, Quebec, and Newfoundland and Labrador; compensation and other funding exceeding \$3.2 billion; recognition of traditional pursuits and lifestyles; resource and economic development opportunities; involvement in land and resources management on and off Indigenous-owned lands; and clarity (certainty) over land ownership involving more than 40 percent of the land mass of Canada (Canada's total land mass is 9.985 million km²); and recognition of different structures of government that vary according to the Indigenous group and the era in which the treaty was negotiated.

Of particular note is that comprehensive land claims agreements (also known in Canada as modern treaties) are recognized and their rights protected through Canada's supreme law, the Constitution Act, 1982. Section 35(1) of the Constitution Act, 1982, states:

Recognition of existing aboriginal and treaty rights

35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

Definition of "aboriginal peoples of Canada"

(2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.

Marginal note: Land claims agreements

(3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.

This recognition has been of particular importance before the courts. There is a long list of disputes between the Crown and Indigenous groups over the interpretation of modern treaties, and the courts have repeatedly spoken to the treaties as an articulation of Indigenous rights recognized on the same plane as those recognized for all Canadians through Canada's superior constitutional law, within which is provided the Charter of Rights and Freedoms.

This reinforcement of the modern treaties by Canada's Constitution endorses the long-held belief of Indigenous groups that theirs is not a simple dominant/subordinate relationship with the Crown but one of equals in national partnership.

Yukon Land Claims and Self-government

The grievances held by Yukon Indigenous Peoples over the impacts of in-migration and development (mostly resulting from the Klondike gold rush of the late 1890s) on their traditional way of life was first expressed by Chief Jim Boss in 1902 when he commissioned a Whitehorse lawyer to write to the superintendent of Indian Affairs in the national capital, Ottawa.

The Yukon Indigenous population again took up the pen in the early 1970s when they presented to Prime Minister Pierre Elliott Trudeau a statement of their concerns and an offer to begin discussions to reconcile the challenges in the Indigenous/settler population relationship.

This manifesto, *Together Today for Our Children Tomorrow*, is a poignant statement on Indigenous grievances and the willingness to set things right between “the Indian people” and the “Whiteman.”² In effect, it set the stage for two decades of negotiations among Canada, the subnational Yukon government, and First Nations.

A unique approach was taken in Yukon. In the 1980s, it was agreed that, rather than a single modern treaty to cover the Yukon’s Indigenous population with its eight different languages and fourteen First Nation groupings, a broad framework would be negotiated and used as the basis for negotiation of individual Yukon First Nation land claims agreements with the fourteen. The framework, the Umbrella Final Agreement (UFA), was completed in 1990 and used as the basis for negotiation of the first four Yukon modern treaties with Champagne and Aishihik First Nations, First Nation of Nacho Nyak Dun, Vuntut Gwitchin First Nation, and Teslin Tlingit Council.³ Seven other land claims agreements were reached between 1997 and 2006. There remain three areas of Yukon where modern treaties or other agreements to reach settlement have not been reached. Following unsuccessful negotiations, the Liard First Nation, Ross River Dena Council, and White River First Nation rejected the UFA as the framework for negotiations.

With the UFA and the land claims agreements with eleven First Nations, however, a significant environment of reconciliation has been reached in the territory, wherein the conflict has changed markedly from the “Indian”/“Whiteman” divide.

Through the twenty-eight chapters of the UFA and the land claims agreements with the eleven First Nations, a stable platform has been created that addresses key issues that in the past contributed to an environment in which Indigenous/public government conflict could arise: recognized and demarcated substantial land ownership, provisions for self-government and economic development, and land and resources co-relational management over all Yukon lands (federal, territorial, First Nation, and municipal).

Where land direct ownership is concerned, the eleven Yukon First Nations now possess approximately forty-one thousand square kilometers of land in the territory, or 8.5 percent. On a significant percentage of this area, approximately twenty-six thousand square kilometers, the eleven First Nations enjoy ownership of both the surface and the subsurface resources. (In Canada it is highly uncommon for there to be private ownership of subsurface resources.) In the past several years, the only producing mine in the territory was located on the Category A (surface and subsurface ownership) lands of the Selkirk First Nation. This meant that a portion of the royalties from production went to the First Nation, and benefits agreements negotiated for the mining cycle brought to First Nation citizens’ employment, contracting opportunities, and other supports to the community.

Chapter 24 of the agreements sets out the terms through which the First Nations negotiated self-government. General provisions are provided here, whereas the specifics for the First Nations’ government structures and jurisdiction are provided for in separate self-government agreements. In all instances, the eleven First Nations signed their modern treaty and their self-government agreements concurrently. The self-government agreements mean that the Yukon First Nations no longer fall under the narrow and controlling governance provisions of the federal Indian Act, the legacy colonial aspects of which are discussed earlier. They control their own structures of government (some have incorporated clan and family structure into their governance models), determine and vote on their own constitutions specific to their First Nation, and hold authority to pass legislation in many areas normally associated in Canada with the subnational provincial and territorial governments. In many instances, once a First Nation law is passed, it replaces territorial statutes on the same subject.

Chapter 22 recognizes a First Nation's right to pursue economic development for its government and citizens. The principles upholding this chapter reflect willingness to support aspirations for a First Nation to have opportunities within the Yukon economy, with the objective to gain self-reliance. In addition, it recognizes that First Nation citizens can expect economic benefits that flow from the land claims agreements. It is highly significant that Canada in the treaty negotiations has agreed to the acceptance of this term "citizen" for those individuals who are beneficiaries of the treaty. In effect it becomes recognition of a people within a society that have recognition of a unique status as Indigenous people.

Of greatest significance in building a positive cooperative environment in which the First Nations and non-Indigenous public governments can set direction and benefit from development throughout Yukon are the co-relational management bodies created through the provisions of several chapters of the UFA and land claims agreements. Among the many relevant sections of the UFA and land claims agreements, the Yukon Heritage Resources Board (Chapter 13), the Water Board (Chapter 14), and the Yukon Fish and Wildlife Management Board and associated Renewable Resources Councils (Chapter 16) are of particular note. In all instances, First Nations through processes coordinated by the umbrella organization, the Council of Yukon First Nations, are empowered to nominate individuals to sit on these boards and councils (technically they nominate, but in practice nominations are accepted). Thus, in all instances, the work of these management bodies, and the Water Board's regulatory authority, are "owned" by the parties (First Nations and public government) by virtue of the capacity to nominate for appointment individuals whom First Nation citizens can see as representative of their values and perspectives in those important governance seats. Thus, for example, for wide-ranging matters affecting the management of fish and wildlife in Yukon, such as hunting bans and fishing regulations, the shared co-relational Yukon Fish and Wildlife Management Board and the Renewable Resources Councils, which have authority within individual First Nation traditional territories, shape the direction of this field; before government makes final decisions, input from these bodies must be sought and given careful consideration. The Yukon Heritage Resources Board similarly provides guidance and direction to the territorial and First Nations governments on matters that First Nations citizens and indeed all Yukoners consider important. The co-relational Water Board has real authority over licensing activities throughout Yukon on water use and related matters. One important example is the board's authority over issuing authorizations to placer miners. (Placer mining where gold is taken from creek sediment is a ninety-million-dollar industry found in several environmentally and culturally sensitive areas of the territory.) These authorizations are made by the board directly, and as such, constitute true co-management.

Other co-relational entities that relate directly to the conflict cases described in the next section are the Land Use Planning Council and Commissions (Chapter 11) and the Yukon Environmental and Socio-economic Assessment Board (Chapter 12). These entities are products of the UFA and land claims agreements negotiations and therefore reflect the expression of First Nations' rights in planning the balance between development and conservation in all regions of Yukon as well as the thorough and timely examination of projects to determine whether there are significant adverse environmental and socio-economic effects from proposed projects, and where there are such effects, whether mitigations can be applied that will render the impact insignificant.

As with the Water Board and Heritage Resources Board, First Nations have rights, through various formulae set out in the UFA and land claims agreements, to nominate or directly appoint members to the council and commissions and to the Yukon Environmental and Socio-economic

Assessment Board. Although individuals so appointed are to act in the public interest (the best interests of the principles of the modern treaties, the laws in Yukon, and best practices), individuals bring certain biases into these positions that reflect their own history and experiences. Because of these wide-ranging backgrounds, there is greater likelihood that all residents of Yukon (Indigenous and non-Indigenous) will be able to see their interests reflected in the outcomes of the deliberations by these bodies. In addition, and in all instances, provisions of these co-relational chapters of the modern treaties provide in significant detail the ways in which Yukoners can contribute to the discourse of the respective board, council, or commission.

Anatomy of Conflict in a Post-claims Context

Two cases that relate to the new era following the application of the modern treaties and self-government governance structures reveal a new divide in which conflict lines are no longer drawn between an alienated Indigenous population and a power elite controlling public policy and the legislative sphere. The new divide is now between one group made up of caring Indigenous and settler Yukoners (and other Canadians) and nonresponsive governments; these governments are unwilling to engage with care and respect with the First Nations to meet the spirit and intent of the modern treaties. As Indigenous leaders have argued since the first modern treaty came into effect, these treaties are about everyone's rights, not just those of the Indigenous Peoples. Thus, they need the backing of all citizens who bring pride of ownership to these constitutionally protected documents. As the two cases presented here show, they are about relationships among many parties, not just the interests of one, and therefore they need backing from the general populace.

The first case relates to a dispute between the federal and territorial governments (public governments) and Yukon self-governing First Nations (the eleven with modern treaties and self-government agreements in place). It relates to the five-year review of the Yukon Environmental and Socio-economic Assessment Act (YESAA). The co-relational structures set up through this federal legislation provide a foundation for setting direction and timing and the extent of development in Yukon where projects are triggered for an assessment.

The conflict between the public and First Nations governments began in 2015–2016 when federal and territorial governments, without adequate consultation, added four amendments to a long list of changes that had been negotiated between the public governments and the First Nations with land claims agreements; this review of the legislation was a commitment in the modern treaties and, as far as First Nations were aware, had concluded in 2012.

The First Nations objected to the four amendments because they attempted to pull back power to the federal government and, eventually, to the territorial governments in direct violation of the value of independence for the YESAA process that had been painstakingly negotiated into Chapter 12 of the UFA and land claims agreements.

The many amendments to YESAA, including those that had been negotiated and the offensive four that had been added, were introduced in Parliament in June 2014 as Bill S-6. Yukon First Nations used opportunities provided through the parliamentary process to protest the offensive changes in the Senate and the House of Commons, calling them a break of the constitutionally protected modern treaties. Of particular note, at the hearings, non-Indigenous Yukoners also voiced considerable concern over this breach of treaty.

Throughout the movement of the bill through the two houses, Yukon First Nations called on governments to return to negotiations of the four offensive amendments. These overtures fell on

deaf ears, and thus the amended YESAA received royal assent and passed into law June 18, 2015.

In keeping with the protest before Parliament, three Yukon First Nations, Teslin Tlingit Council, Little Salmon/Carmacks First Nation, and Champagne and Aishihik First Nations, filed suit in Yukon's Supreme Court in opposition to the unilateral changes. Before the challenge could make its way through the Court, the democratic process intervened. The fall federal election saw the Conservative government replaced by a Liberal majority led by Prime Minister Justin Trudeau. The new government's commitment was to return to discussions with Yukon First Nations and to repeal the offensive provisions. Bill C-17, "An Act to amend the Yukon Environmental and Socio-Economic Assessment Act and to make a consequential amendment to another Act," making these changes passed December 14, 2017.

Candidates in Yukon during the campaigns for the federal election in 2015 and the territorial election in 2016 when a majority Liberal government was given office in Yukon heard considerable criticism of the unilateral actions of the federal government relating to the changes to YESAA. This criticism was delivered by both non-Indigenous Yukoners and First Nation citizens.

The second case supporting the argument that the anatomy of conflict discourse in Yukon has significantly changed involves a dispute over the interpretation of provisions in Chapter 11 of the UFA and land claims agreements relating to the process for land use planning in the Peel Watershed of central Yukon that found its way through three levels of court, reaching conclusion before the Supreme Court of Canada, indexed as *First Nation of Nacho Nyak Dun v. Yukon*.⁴

As in the preceding case, the appellants before the court included non-Indigenous groups and individuals. Three treaty First Nations (First Nation of Nacho Nyak Dun, Tr'ondëk Hwëch'in First Nation, and Vuntut Gwitchin First Nation) were joined by the Yukon Conservation Society and the Canadian Parks and Wilderness Society, Yukon Chapter. Revealing the extent of non-Indigenous interest in the case, while the case was before the Court, the Peel Land Use Planning Commission, during its consultations over the draft plan presented to the Government of Yukon and First Nations, received ten thousand submissions, two thousand from Yukoners and eight thousand from outside the territory.

The commission had been charged with the delicate business of finding a balance between conflicting interests, largely those between mineral rights and conservation interests in a sensitive, largely untouched area of the territory.

The issue before the Court was whether the Government of Yukon was accurately interpreting the provisions of Chapter 11. The government believed that it had the right to rewrite many aspects of the draft plan because the great majority of the lands (over 90 percent) were Crown (i.e., public) lands and thus not owned by any of the aggrieved First Nations.

In short, the government lost, and key points in the Supreme Court judgment reinforced fundamentals of the treaty relationship that had been worked out in the treaties themselves. It was determined, first, that it is not the business of the Courts to micromanage how parties sort out their differences under treaty. In effect, it is important for the Courts to be exact in answering the questions put to them and not to stray into areas not asked about. Similarly, where specificity exists in the treaty, it is not the Court's business to challenge or in any way subvert the clear expressions set out in treaty. Second, government must meet the test of "the honor of the Crown." In this instance the Court determined that the Government of Yukon did not meet this test because it ignored the process that, in the Court's opinion, was properly and clearly set out within the treaty.

Finally, the Court clarified to the underlying foundation of the modern treaties, noting at paragraph 33 that they “set out in precise terms a co-operative governance model.” The defining point here is that in both the YESAA five-year review and the Peel Watershed debate, the conflict divide was not an alienated and dispossessed Indigenous population fighting a powerful colonizing government but a population of non-Indigenous Yukoners—Canadians—alongside First Nations people fighting a territorial government (and in the case of the YESAA amendments, the federal government) to uphold the rights of the Indigenous population. Public governments (federal or territorial) may now expect significant consequences if they ignore or try to interpret unfairly the treaty relationship either codified in the text or held up as the spirit and intent that speaks to meeting the test of the honor of the Crown.

Where there is conflict in Yukon today between public and Indigenous governments, it is more associated with a subnational form of the Canadian federation model. Canada is known for its perennial disputes, usually over money, between the federal government and the provinces. These disputes have been going on since Confederation in 1867. They were a main theme in the constitutional conferences leading up to Confederation, through two world wars, the Great Depression, and the implementation of social programs such as universal health care, and they continue today over matters such as pipelines and a federal carbon tax, as well as the constitutionally entrenched Equalization process, according to which “Parliament and the Government of Canada are committed to the principle of making equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services and reasonably comparable levels of taxation.”⁵

In Yukon today, the dialogue between the public and First Nations governments is around the same thing, sufficiency of funding provided by public government to enable First Nations to provide that objective of “reasonably comparable levels of public services.” Just as provinces and territories have jurisdiction to pursue this constitutional objective at the regional level, the Yukon’s self-governing First Nations are held to this goal for their citizens in policy and programming areas where they hold responsibility. A recent example of this tension is the case before the Supreme Court of Yukon in which the Teslin Tlingit Council (First Nation government) has taken the federal government to task over insufficient comprehensive funding for that Indigenous government from Canada and delays in substantive negotiations to renew the funding agreement known as the Financial Transfer Agreement (FTA). This tension has existed since 2010. So far no agreement has been reached on a new-generation multi-year FTA. This dispute is government to government, not an alienated disenfranchised social group fighting a dominant government elite. It shows, again, that conflict has not gone away, but the foundation for the tensions, especially within a federal governance system, is based on a constitutional framework reflected and protected by Canada’s constitution and underlying principles, a constitutionally protected land claims agreement, a self-government agreement, and implementation agreements, including the FTA, that have set the new government-to-government relationship.

Concluding Observations

The use of co-relational governance approaches can be an effective tool for sustained conflict resolution on the global scene. These arrangements are transformative where political/cultural relations are concerned. When co-relational institutions are designed to reflect visible involvement by all parties (dominant and oppressed), the conflict divide will shift, giving leaders

within the oppressed group seats in the institutions of authority that often the oppressed believe to be the instruments of the tyranny they oppose.

The elements required for success, as suggested by the Yukon example, are the following: the aggrieved party must be provided with resources that allow it to be fully engaged and with competent expertise at the negotiation table where the co-relational institutions are being designed; and all parties must be engaged in the design and have the capacity for full involvement. Of note in the Yukon example is that those negotiations led to very different governance structures for the boards, councils, and commissions that were established in the various chapters of the UFA and land claims agreements. With the objective that all parties are able to see themselves and their role in the final structures, each table negotiated a different model, which best suited the topic at hand.

Some of the institutions created by this process have real, direct regulatory authority, such as the Water Board recognized in the modern treaty. Other institutions are advisory, such as the Yukon Environmental and Socio-economic Assessment Board. But on the spectrum of influence over the governments with final regulatory authority (federal, Yukon, and First Nations governments) all of these boards, councils, and commissions are highly influential. This point is shown repeatedly in the political discourse that results when advice from these bodies is partially or fully rejected by the decision bodies. In short, Yukoners feel ownership in the institutions set out by treaty and are not shy about wading in when governments reject recommendations from these independent bodies.

The second critical element is the importance of all parties to have the capacity to either directly appoint or nominate for appointment a balanced number of seats for the bodies designed by the parties. Even where there is the express wish for all board or council members to be neutral and not representative of the group that appoints or nominates, citizens will see themselves reflected in the agency when “their people” are appointed.

An important third element to maximize success relates to the lesson learned through the ponderous journey of the Peel Watershed case through three levels of Canadian courts. The message is be specific in substance (jurisdiction, authority, etc.) and in process. With such specificity, the focus of effort can remain on discovery of valuable information, analysis, and a final decision, and the parties do not get bogged down in what was meant by the designers in negotiations.

The political will to be amenable to the sharing of power is psychologically difficult for most political leadership. The vision that led to the negotiation of modern treaties is a success where this process of letting go by the dominant political culture is concerned.

It is important to note, however, that this journey continues. Despite the commitments reached in the treaties, implementation is ongoing and is often contentious where parties read treaties in different ways. Nonetheless, these commitments are a valuable tool in reducing conflict between dominant and oppressed cultures.

In a 2010 judgment of the Supreme Court of Canada in *Beckman v. Little Salmon/ Carmacks First Nation*, Justice Ian Binnie wrote:

The reconciliation of Aboriginal and non-Aboriginal Canadians in a mutually respectful long-term relationship is the grand purpose of s. 35 of the Constitution Act, 1982. The modern treaties, including those at issue here, attempt to further the objective of reconciliation not only by addressing grievances over the land claims, but by creating the legal basis to foster a positive long-term relationship between Aboriginal and non-

Aboriginal communities. . . . The treaty is as much about building relationships as it is about the settlement of ancient grievances. The future is more important than the past.⁶

One final caution: the Yukon example in which modern treaties have created a new societal foundation for Indigenous and settler populations to share management of land and resources is due, at least in part, to the unique circumstances enjoyed at the time of negotiations. Where Yukon is concerned, there were relatively few pressures on land and resources in an immense area when compared with the provinces in southern Canada. Without doubt it would be far more difficult to negotiate similar arrangements in more populated areas. Although what has worked in Yukon may not be applicable elsewhere, the Yukon case does demonstrate, however, that imaginative yet practical solutions do exist for mitigating conflict.

Notes

¹ Robert Jago, “It’s Time to Take Consultations with First Nations Seriously,” *Globe and Mail*, August 31, 2018.

² Yukon Indian People, *Together Today for Our Children Tomorrow: A Statement of Grievances and an Approach to Settlement by the Yukon Indian People* (Whitehorse, Yukon: Council for Yukon Indians, 1973), 9, www.eco.gov.yk.ca/pdf/together_today_for_our_children_tomorrow.pdf.

³ Council of Yukon First Nations, Umbrella Final Agreement, available at <https://cyfn.ca/agreements/umbrella-final-agreement/>.

⁴ First Nation of Nacho Nyak Dun v. Yukon, 2017 SCC 58, [2017] 2 S.C.R. 576.

⁵ Constitution Act, 1982, s. 36(2).

⁶ *Beckman v. Little Salmon/ Carmacks First Nation*, 2010 SCC 53, para. 10.