

Making Modern Treaties Work – LCAC  
Breakout 1B: Self Government

**Moderator: Adam Fritz, Director, Indigenous Coordination and Engagement, ESDC**

**PANELIST 1A: Heather Castleden, Canada Research Chair in Reconciling Relations for Health, Environments, and Communities**

- As an academic researcher born of settler ancestors from Scotland and Ireland, she has been living on Haudenosaunee and Algonquin territories for most of her life.
- She acknowledged that research can be a ‘dirty word’ in many Indigenous communities, quoting the Maori researcher Linda Tuhiwai Smith. Often associated with colonialism, academic researchers at times are tarnished in that regard.
- She was born in Dene territory, in the town of Yellowknife. As a young researcher she asked the community of Lutsel K’e if she could go there to research deafness in the North. She recounted how if she had gone to Lutsel K’e without an agenda, the research would have been about Caribou. She is grateful to the Lutsel K’e Dene for teaching her how to listen. There is a need for researchers to come to the North without preparing, and rather to listen.
- Heather traced how she ended up working with the Huu-ay-aht First Nation on Vancouver Island, with whom she is now working on her fourth research project. She was there attending a Cedar symposium, where she did more listening. She was asked by the community to help engage the youth in their treaty process, which unfolded through various mediums, such as a photography and participatory film project.
- She was then asked to start studying the treaty implementation process, which the community felt would be useful in future negotiations and for treaty implementation. They felt the research would be useful for their own Nation, as well as other Nations engaged in the same processes.
- A participatory approach was used in this research. Instead of coming up with the questions, she asked the community to come up with questions that were most significant to them.
- Heather described that while interviews worked well with some people, surveys were better with others, photography with some, and at times discussion sessions were held that mimicked negotiations.
- Apart from nation-to nation benefits, the Huu-ay-aht First Nation wanted to understand how the benefits of modern treaties trickled down to impact the community.
- They asked, how is the treaty influencing individual people’s lives?
- There were several themes that came up in a storytelling photo project: forestry and fishing issues and the desire for Huu-ay-aht people to come home. Housing, access to education, employment opportunities, and health care were also areas of concern.
- But there was also a real sense of hope around these issues. Heather noted that one important thing research can do is contribute to the goals of the nation. Currently, she is collaborating with the Nation in preparation for their first 15-year review since the treaty.

**PANELIST 1B: Crystal Jack, Director of Treaty Implementation for the Huu-ay-aht First Nation**

- She is also working in preparation for the first 15-year periodic review, as the Treaty is quite new. The review is a tripartite process, with the purpose to evaluate alignment between the federal, provincial, and First Nation government, and to evaluate the process itself.
- Crystal highlighted the importance of controlling the narrative, to avoid having the Government of British Columbia, or outside consultants tell the Nation how they are experiencing the treaty implementation. She said a benefit of this 15-year review is the opportunity to assess individual experiences from the Treaty.

**PANELIST 1C: hinatinyis, Huu-ay-aht First Nation**

- hinatinyis is a citizen of the Huu-ay-aht First Nation, as well as language student, and volunteer.
- Remarked that she hated the word reconciliation.
- She was once asked to translate it and discovered that one definition of reconciliation is ‘to restore friendship’.
- “That is something I can do,” she said.
- She described her experience on various committees where she observed that “so many of those committees are circle talks”. “Not in a traditional sense” she said, but rather, “people talking around and around about reconciliation.”
- She expressed frustration regarding people who ask, “what is the benefit of the research we are doing, or what are the transferrable skills?”
- hinatinyis offered a piece of advice: “people just need to listen.”
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**PANELIST 2: Bertha Rabesca Zoe, Legal Counsel, Tłı̨cho Government**

- Bertha was the Lead Council representing the Tłı̨cho Government during the devolution process of Northwest Territories. Her talk focused on recognition of rights and intergovernmental relations.
- Bertha began by acknowledging that we all have creation stories, for some First Nations people there is an Inherent Rights story. Rights to land, to practice language, to practice culture, are still relevant today. Tłı̨cho self-government is based on the traditional governance system of the Tłı̨cho, which is based on the ideal of unity, and which has been in existence since time immemorial.
- The Tłı̨cho believe that they have never given anything up, and so the Tłı̨cho Agreement is a formal recognition of the Tłı̨cho as a Nation. The Agreement is between three parties: the Tłı̨cho Government, the Government of Northwest Territories, and the Government of Canada. The Tłı̨cho Assembly makes laws and the Tłı̨cho Executive implements the laws.
- The powers of the Tłı̨cho Government are outlined in Chapter 7.4 of the Agreement. This area defines Tłı̨cho authorities and how Tłı̨cho can exercise this authority.
- There are three different borders which represent Tłı̨cho territory.
  - o The largest border overlaps with Nunavut and is where Tłı̨cho can engage in traditional activities.
  - o The second largest area is governed by the Land and Resources Board.
  - o The third border represents Tłı̨cho land held in fee simple, in which Tłı̨cho have authority over subsurface resources.
- Tłı̨cho lands are more than 3 times the size of Prince Edward Island.

- Bertha described that the Tłı̨cho Government has four types of intergovernmental relationships.
  - The first is internal government priorities, such as nation building, setting up institutions and administration, as well as an implementation team. One challenge she noted was shifting the mindset of the leaders away from the Band Council arrangement of the Indian Act, to get them thinking more like a government. It was also necessary to educate staff and citizens, so government offices were set up in the communities.
  - The second intergovernmental relationship is with the Government of Canada. The Tłı̨cho work with the federal government on co-management boards, and the Implementation Team works with them closely. Devolution of the Northwest Territories was a major concern for the Tłı̨cho Government. There were questions about how co-management would work, and there was a need to ensure that the Tłı̨cho Government was respected. Another challenge came up a few years ago when the Harper government wanted to amalgamate the co-management boards to create one 'super board.' Bertha recounted how this was a huge concern for the Tłı̨cho, and how "when it comes to intergovernmental relations, you're basically at the whim of the government in power at the time." She described how under former Prime Minister Stephen Harper, the federal government wanted to shut down the regional boards, including the Gwich'in and Sahtu Boards, all under one omnibus bill. Tłı̨cho had 50% representation on these boards, so the Tłı̨cho Government filed an injunction, which put a suspension on the amalgamation. When the government changed and Justin Trudeau was elected, the government got rid of the super board notion and worked together for a collaborative amendment, and a process for future amendments.
  - Bertha noted that one good thing that came out of the Harper government was a Cabinet Directive that produced a Deputy Minister Oversight Committee (DMOC), which reflected a whole of government approach. Under Trudeau, the Prime Minister Forum is also step forward. First Nations that have land claims, who might not be part of the Assembly of First Nations, are able to meet and discuss with the Prime Minister. There have been two meetings with the Prime Minister so far.
  - The third intergovernmental relationship is with the Government of Northwest Territories. There have been MOUs on housing, education and health. There are bilateral Agreements such as the Intergovernmental Council, which was created as part of the devolution process. Following the most recent territorial election, the Tłı̨cho Government participated in mandate setting for GNWT and took part in those discussions.
  - The fourth intergovernmental relationship is with other Indigenous Governments. The Tłı̨cho engage with these governments through the Land Claim Agreement Coalition. They work together to come up with model policies, to inform Cabinet Directives, and prepare for the PM Forum. They are working to advance progressive fiscal policies for modern treaty implementation.
- Bertha closed with an analogy of self-government: "It's not a divorce, but an enduring constitutional relationship. It's a government to government to government relationship."

### **PANELIST 3: Rhiannon Klein, Instructor, Yukon College**

- She was born and raised in the City of Edmonton where she lived until she was 19. She moved to Whitehorse, met her future husband, and they were married 8 years later. Now they have a daughter together, and she teaches in Whitehorse. She noted it was important to her to be able to teach her daughter that “we are all Treaty people.”
- Rhiannon’s presentation focused on her experience and involvement with the First Principles Project in Yukon. The project’s aim was to identify the key principles and content of the Umbrella Final Agreement (UFA), the framework that provides the foundation for all of the Final Agreements and Self-Government Agreements for the Yukon First Nations.
- The idea came from an acknowledgement that the fewer people there are to defend the original principles of the UFA, the more vulnerable the principles are to erosion. The First Principles Project hoped to break down the 292-page UFA into a 10-page document over a weekend, turning it into something that people can easily connect to and understand.
- The aim was not to get bogged down in what hasn’t been working historically, but rather, to be a proactive event. The event was attended by 40 participants, including were former chiefs, negotiators, senior public servants and elected officials from the day, as well as scribes. The scribes were tasked with condensing the discussions from the weekend into a draft document. Several of the scribes were former journalists from the day, along with Rhiannon and two women who grew up as daughters of the land claims. Everyone there volunteered their time and paid their way to attend. There were no present-day Chiefs, or other people in positions of power in attendance. Instead, the group included participants who were around the table when the UFA was being negotiated, or other knowledge holders who were in leadership roles at the time of the negotiations. The draft document that was produced from the gathering was called “The First Principles Project: 40 @ - 40°” due to the frigid weather that weekend.
- There were four central themes drawn out of the UFA over the weekend: Governance, land, economy, and relationships.
  - o With respect to the first theme, governance, several key principles emerged. These included the importance of local decision making and influence, the notion that resources should be shared and jointly managed, that everyone should have a voice, that consultation is central to making agreements work, that relationships be built on trust, and that the land, water and way of life must be sustained.
  - o With regard to the second theme, land, the participants identified wanting a fair process for resolution of disputes regarding access to and across First Nation Settlement Land, and that new institutions for management of resources on settlement and non-settlement land, be founded on fairness and equality.
  - o Of significance to the third theme, the economy, participants stressed the importance of providing fair opportunities for Yukon First Nations to participate in the economy and making sure Yukon First Nation people get a share of the economic benefits coming out of the UFA.
  - o And finally, the theme relationships was of central importance to the whole gathering. “Central to the success of the UFA negotiations and forging a social contract were trust, laughter and strong relationships that were created at the community level.” There was an acknowledgement that like a good marriage,

Agreements have to be worked at in good faith, with effective and clear communication.

- Rhiannon described that the weekend ended off with a discussion on how to keep up the momentum and energy around the First Principles Project and how the group envisioned intergovernmental relations going forward.
- They identified next steps, which included developing educational materials for school aged children, as well as accessible, plain language documents for First Nation citizens and the general public. These could include podcasts, short films, and via other mediums.
- Further, the group discussed the provision of materials and training for employees involved in Agreement implementation at all levels of government—territorial, federal and First Nations.
- Rhiannon concluded by sharing some information about her own PhD dissertation research with the audience.
  - o Her research focuses on the transition from modern treaty negotiation to implementation. In particular, the challenges of intergovernmental relations in the context of modern treaties in the Yukon.
  - o She has been working with three Yukon First Nations: Tr'ondëk Hwëch'in Government, Vuntut Gwitchin Government and Champagne and Aishihik First Nations. There are two main focuses to her thesis: the first is around the successes and challenges of modern treaty implementation in a multi-party environment. The second focus is around the challenges of intergovernmental relations under a modern treaty. Rhiannon found that many of her interviewees really wanted to focus discussion around relationships and the human dynamics of these agreements.
  - o The transition from negotiation to implementation has been very challenging. During negotiations there were strong, collaborative partnerships that had been developed. The process today is much more bureaucratic, lower profile and less public interest and engagement. Also, in more recent years, the federal, territorial and First Nations governments have had shifting priorities, which have often created greater tensions and barriers to implementation. Another significant challenge is to overcome First Nations distrust that has evolved over decades.
  - o However, there has been lots of progress, and significant changes at all levels of government, particularly since 2016. The election of the Trudeau government, the new government in Yukon under Premier Sandy Silver, and the new Grand Chief in the Yukon have all embraced change.
  - o We are also seeing a new generation of Indigenous leaders who have grown up almost entirely in a modern treaty environment, and who are also embracing change and leading the way toward developing new relationships.

Questions:

**Moderator Adam Fritz:** We didn't have much time to coordinate between presenters today, but it seems a common theme emerged naturally, which pointed to the importance of relationships and trust. There is a disconnect given that trust and relationships are built between humans, not institutions. How do we overcome that challenge?

1. How does fee simple land work in the Tłı̄cho territory? Was there any grandfathering of land that was in possession of others before the fee simple decision was made? Some of our nations are facing difficult decisions over how to deal with unrestricted fee simple arrangements.

**Bertha Rabesca Zoe**

- There are only a handful of 3<sup>rd</sup> party interests on the land – we call those donut holes. They are mostly mining companies that had prior lease before the agreement. NTPC has a dam as well. But as there are only a few of them it hasn't been an issue within the Tłı̄cho.

2. How did the Tłı̄cho integrate the historic treaty into a modern agreement?

**Bertha Rabesca Zoe**

- Excellent question, we get asked that once in a while. In 1921 traditional territory was laid out in Treaty 11. The language used was strong, and there are words in the Treaty which we still use today.
- While there are some disagreements over what was agreed on in Treaty 11, we respect and recognize the historic treaty.
- The modern Treaty is built on that and more. We always say that we never got rid of Treaty 11.

3. You reach a point where there's too much intergovernmental relations. You reach a point where resources are scarce, and you need to stop negotiating and actually do things, implement. What is your perspective on this?

**Bertha Rabesca Zoe**

- I've been involved in negotiations and implementation for years.
- In Tłı̄cho, things have shifted completely in the past 3 years, from negotiations, to implementation. This is reflected in the the Intergovernmental Services Agreement between the Tłı̄cho Government, the GNWT and the Government of Canada.
- There has been a huge shift to stop negotiating and start collaborating. There is a lot of talking about spirit of intent and moving on, and collaborative discussions (rather than negotiations) is the new word being used.
- Fiscal policy work is a huge area being worked on.
- Collaborative discussions, while being respecting and honoring is hopefully the way of the future.

**hinatinyis**

- I wouldn't consider too much negotiation a bad thing, they could be considered more as growing pains.

**Crystal Jack**

- Negotiation is an opportunity for communities to work together, collaborating internally.
- But yes, it can be a burden to constantly be teaching the government. It's exhausting, and they have turn over.

- But the goal is to change the relationship, and hopefully they will learn, and collaborative discussions won't be so much of a burden.

4. Where do you see intergovernmental relationships going into the future?

**hinatinyis**

- I see an opportunity to use branding – find a word, find a hashtag. All of a sudden all of the stuff that's out there, it's accessible.
- Essentially what I'm talking about is creating a common language – branding that's applicable to all of our self-governments. Then the information that's out there will be a lot more accessible to various nations.

**Bertha Rabesca Zoe**

- I can speak to changes in the bureaucracy in recent years. When you have an assistant deputy minister at your meeting talking about decolonization and reconciliation, that shift, it's huge. And so, collaboration is the work that we've been doing.
- With the GNWT, talking about language and culture with this government has been a huge shift. It shouldn't be politicized, it's an agreement between Nations, and that needs to be respected and honored. We talk about UNDRIP and FPIC and all that but if we can make sure these agreements are honored and respected and the spirit and intent is met, we can see things shift.
- To be able to park your mistrust at the door and have meaningful discussions, I'm seeing it happening, and if the outcome is to achieve what you're there to do, *together*, then it's all worth it.

**Rhiannon Klein**

- What I've heard in communities is the desire for government to not come to meetings with frameworks and processes already made up, but rather to ask communities what they want to see in those frameworks and processes and to work with them in partnership.

**Crystal Jack**

- You want to respect the Nations status, but what we all have in common are really large systemic issues, and what we need are bigger louder voices to be heard. This conference is an example of collaboration. We also want to see Nations supporting each other more often.