

Making Modern Treaties Work – LCAC

Plenary 1: History, Diversity, Implications, & Benefits: Insider's Overview of LCA

Chair: Math'ieya Alatini, Chief Strategist, GSD Strategies

SPEAKER 1: Dave Joe, President, Dave Joe Law Corporation

- Dave Joe is a Lawyer and citizen of the Wolf Clan of Champagne and Aishinik First Nations.
- In his presentation he spoke about modern treaties in Yukon. These include the Yukon Umbrella Agreement which provides a framework for all Yukon First Nations Final Agreements and Self-government Agreements.
- First, he spoke about the history of the Yukon Land Claim, acknowledging individuals that worked on the Final Agreement and Self-government Agreements.
- Second, he shared some components of the Self-Government Agreements and Treaty.
- Third, he addressed some issues that modern treaty groups face, from the perspective of experiences in Yukon.

History of the Yukon Land Claim

- Dave explained the historical context in which the Yukon Land Claim came to be. He said the first request for a land claim to the federal government came from Chief Jim Boss in 1902. Around this time there was a gold rush in Yukon, which was attracting an influx of people, and putting a considerable amount of pressure local resources such as land, and caribou. This first request was denied.
- Then, there was another push to organize in the 1950s and 1960s. At this point in time, 'Indians' were not allowed to go to law school, attain legal counsel, let alone advance land claims processes. Chief Elijah Smith, a veteran, returned from war during this area and went to claim his parcel of land. However, the federal government said no because he was an Indian. In response to all of this, Indigenous people in Yukon formed brotherhoods and sisterhoods, and began to pursue a modern land claim Agreement.
- This paralleled a similar movement that was happening in Alaska. In 1965, the Tlingit Haida launched an action based on Native Title concepts, and they were successful. But when oil was discovered in Alaska, establishment of Native Title was extinguished by the United States government.
- In 1969, Canada announced the White Paper Policy, which attempted to transfer all of First Nation reserve land, and responsibilities of the federal government to Indigenous people to the provinces.
- On Valentine's Day in 1973, all the Yukon Chiefs got together and went to meet Prime Minister Pierre Trudeau. With their document in hand, "Together Today for Our Children Tomorrow", the delegation of Yukon Chiefs were able to convince the federal government to commence a land claims negotiation process.

Final Agreements and Self-Government Agreements

- In Yukon, there are 14 Yukon First Nations (YFN), of whom 11 have Final Agreements (FAs) and Self-Government Agreements (SGAs), representing 6 of 8 linguistic groups.

- As each First Nation completes their FA, they also reach an SGA. The FAs are created from one Umbrella Final Agreement (UFA) with common terms that apply to all YFNs with FAs.
- Every YFN has the right to negotiate specific terms for its FA where permitted in the UFA. YFNs then ratify the FAs and SGAs in a manner as determined by them. There are 28 chapters in FAs, and up to 30 sections in SGAs. FAs are considered treaties under Section 35 (3) in the Canadian Constitution and are enabled under Federal and Territorial law.
- Dave Joe gave a detailed account of the legal intricacies with respect to Yukon FAs and SGAs. He noted that the right to self-government is not entrenched in the FAs, as is the case in some other land claims. As such, YFNs retain inherent right to self-government under Section 35 of the Canadian Constitution.
- SGAs are not treaties but are enabled under Section 91 (24) of the British North America Act. Of 16,600 square miles of settlement land, YFN have subsurface rights to 10,000 square miles. Aboriginal Title is retained, there is a conditional release to land and water to the rest of the land. These rights to the land are shared amongst the YFNs.
- The FAs and SGAs have seen challenges from both the territory and the federal government.
- With regard to land use planning, there was a Supreme Court of Canada decision as to whether or not the Government of Yukon could reject a land use plan and replace it with their own version. In the end, the Supreme Court said no, because this action would deviate from the terms of the Treaty.
- During the Harper years, the federal government tried to ‘short circuit’ the development environmental assessment process. The YFNs resisted and settled the issue out of court.
- There are several matters where YFN laws are paramount over Yukon laws. For example, spiritual and cultural beliefs, health care, social services, and use of treaty lands, among others.
- However, things are not black and white, and questions persist around certain laws. For example, if the federal government were to pass a law restricting firearms, it isn’t clear if a YFN law allowing firearm possession would be paramount to that federal law. But there is a process by which the YFNs and the federal government can decide which law is paramount.
- One area the YFN do not have control over is taxation – they share GST, PST, etc., through a tax sharing agreement. However, 95% of direct taxation income is returned to YFN.
- Dave Joe closed by describing the Carcross/Tagish First Nations (C/TFN) system of Clan Governance, which provides a model of how each YFN, and others throughout Canada, can govern themselves. Citizenship within the FN is generally based on ancestry. The C/TFN has a General Council, made up of 18 members from each of the six clans. There is also an Executive Council and Justice Council, made up of Clan members. Together, these institutions allow the FN to pass and enact laws, as well as judicate.

SPEAKER 2: Ethel Blondin-Andrew, Sahtu Secretariat Inc

- The second speaker was Ethel Blondin-Andrew, who has served as Chair of the Sahtu Secretariat Incorporated, as well as a federal Member of Parliament for the Western Arctic for 17 years.

- Ethel stressed that she was honoured to share the stage with the two other speakers.
- She recounted that John Amagoalik was one of 87 'High Arctic Exiles,' a group of Inuit who were forcibly relocated to the communities of Grise Fiord and Resolute Bay. This is something that would never happen today, she said.
- Ethel described growing up in Tulita in the Sahtu region. Like most children at that time, she spent time in the bush, and went to a residential school. It never occurred to her that "we were not as good as anyone else."
- She noted her outlook came from her grandmother, who was a big role model in her life, and advised her to "never be afraid." Her grandmother was never educated in western institutions but had a wealth of Traditional Knowledge, including with respect to traditional medicine.
- Ethel shifted gears to speak about some of the history behind how the Sahtu Dene and Métis Comprehensive Land Claim came to be. It has been 27 years since the Land Claim was signed between the Sahtu Dene and Métis people and the territorial and federal governments. Ethel noted that the Land Claim evolved from Treaty 11, which was signed in 1921 by Ethel's grandfather and Chief Albert Wright. Given her connection to Treaty 11, Ethel held that she always knew her history and where she was coming from.
- There is an interesting story behind Treaty 11 which captures the great significance of the Treaty to the Dene people, and the extent to which community leaders felt that they must act in the best interest of their people.
 - o The federal government wanted to get the Treaty signed, but it was springtime and the mountain Dene were out on a spring hunt. So, her grandfather took the dogs and walked across the river (on ice), into the mountains.
 - o The mountain Dene weren't there when he arrived at the camp, as they had travelled into the Yukon to meet with family and friends. He saw their trail and left a number of posts in the ground, to signal the mountain Dene to follow them when they returned, so they could be present to discuss the Treaty terms.
 - o "Talk about 'Big C' Consent," Ethel pointed out.
 - o She recounted a time when she and an Elder returned to where her grandfather had placed the sign-posts. As the Elder emotionally touched the post he said, "our people sure know how to do what is right." She went on to explain that "our people are natural negotiators. You wake up in the morning and you start negotiating, and you negotiate until you go to sleep. The people of the Sahtu were not trained in institutions, but the Treaty was not signed until people were aware."
- There was a rich oil discovery in Norman Wells. So rich that it has its own chapter in the Treaty, the Proven Area Agreement. The Sahtu Dene and Métis engaged with the federal government and Imperial Oil every year, at Proven Area Agreement meetings.
- But Ethel described how "the government always says when they come to us – you have to pay. We need a reason if you want a highway, or a boat." As uranium mining unfolded around Great Bear Lake, local workers were exposed, many who died from cancer.
- In war time, there was a pipeline built from Yukon to Norman wells – the CANAL trail. "This could not have been done without our people," she said. Yet most of the money went to the federal government, and the companies. "They've gotten enough. It's been a long, hard fight and struggle to get what we get out of Norman Wells, and now the oil field is nearing the end of its life."

- The Sahtu Land Claim started as a comprehensive claim, until it was broken down into regions. The Dene wanted self-government as part of the claim, but that didn't happen. Yet the Dene did whatever they could to get the tools they could to move forward. They ended up with \$75 million dollars, \$130,000 each year for 15 years.
- "This is what we had, and this is what we were able to accomplish."
 - o Exclusive hunting, trapping, and fishing rights, over the area of 280,000 km, including Great Bear Lake.
 - o Co-management Boards, such as the Sahtu Renewable Resources Board and the Sahtu Land Use Planning Board were established.
- In their mandate, these boards guaranteed Sahtu representation for decision making over land, resources, and finances.
- Self-government was not established as part of the claim, but the right to pursue self-government at the community level was.
 - o Deline is the first community to finalize their Self- Government Agreement.
- Ethel spoke to how aspects of the Land Claim have evolved over the years. She gave an example of the Renewable Resource Council, which 27 years ago, was given a budget and a relatively narrow role.
 - o Their role has greatly changed, and they now deal with everything to do with land and resources, including dealing with companies that want to explore on the land.
 - o There was a struggle to increase the budget, but another \$100,000 dollars annually was eventually secured, and was greatly needed.
 - o She said that the people needed to really push (the government) hard for money like this, but at the same time, these people needed to go out and hunt and feed their families.
 - o Today, things have changed. "How different past negotiations would have been if there had been access to the technology we have today."
- Ethel left parliament in 1996 and spent 9 years on implementation with the Sahtu Secretariat Incorporated.
- Immediately, she knew there was a problem, so she hired Justice Thomas Berger to take a look at what could be done.
- The lack of resources is one of the biggest problems we have, she said.
- Fiscal policy arrangements are outdated and eurocentric.
- However, there is a group here at the conference working on changing this fiscal policy, she said. They have done more than any other group on this. "Right now, the government is willing to listen and move on this."
- One of the co-management institutions that came out of the Land Claim was the Mackenzie Valley Resource Management Act. During the Harper years, the government tried to amalgamate the regional co-management boards into one 'super board.' However, this would mean that Dene people wouldn't be secured spaces on the board, which meant that Traditional Knowledge would also not be used.
- But the Tlicho people challenged this decision, stalling its implementation, and when the Liberals were elected, they decided not to pursue the 'super board'.
- Ethel closed by stating that the world has changed significantly. "We have these documents, but they're outdated." There is still a lot to do.
- She sees hope in the 40 young people who came to Ottawa to learn about modern treaties and to practice negotiating skills. She said it's hard not to jump in, not to correct them,

but you have to sit back, respect them, and listen. “Everything we’ve got, is something we have fought for. Do what Ovid said once: ‘never go into a room where you’re unable to leave with some hope after.’”

SPEAKER 3: John Amagoalik, Senior Advisor, Nunavut Tunngavik Inc.

- The third presenter was John Amagoalik, often regarded as “the father of Nunavut,” and who was instrumental in finalizing the Nunavut Land Claim.
- He began by stating the expectations of the Inuit during negotiations in the 1970s, and 1980s. He said the Inuit wanted respect for their culture and institutions, access to benefits from development, involvement in environmental assessment and game management, better infrastructure, and a made-in-Nunavut education system.
- He said the negotiators mostly got what they expected.
- The majority of elected leaders are Inuit, however, the same cannot be said for the bureaucracy, as it was necessary to have a public service, many of whom were from the south.
- They expected the language of Nunavut to be used, and for the government’s working relationship with Nunavut to be improved. Through co-management boards, and impact benefit agreements, the Inuit have better control over their affairs.
- Further, the governments of Nunavut and Canada signed a Final Agreement for devolution, though implementation will likely take some time.
- However, John noted that Nunavut as a jurisdiction remains behind the rest of the country. There is a housing crisis, and education needs to be greatly improved. A re-drafted Education Act is now going through public hearings.
- John then turned to explain why the leaders in Nunavut chose a public government as opposed to self-government.
 - o First, they knew a public government would have an easier time accessing federal funds.
 - o Second, they assumed, because the population was 85% Inuit, that the Inuit people would have control over the Inuit agenda.
 - o Third, they wanted their institutions to be inclusive, as non-Inuit people were friends, co-workers, and family members, who supported the creation of the new territory.
 - o Fourth, legal advisors assured the leaders that self-government would remain an option for the future.
- John then asked, what has the Land Claim given us? He remarked it has resulted in more jobs, fisheries, mining, and public sector. There is an emerging middle class, though still very small.
- Personally, he said, he was worried about two things at the time of signing. Would the people of Nunavut feel welcome? And, how would the young people react?
- But as it turns out, young people are enthusiastic about Nunavut, and there is energy to move forward. In 1999 the leaders were happy with their success, with the creation of their own territory and government.
- “But in the back of our mind there was always doubt. Could we do this? Could we fund our own government? That doubt is no longer there. It was predicted our government would collapse because of corrupt and mismanagement. That did not happen, and it’s now been 20 years.”

- While there's no question things have improved since 1999, issues persist. Nunavut still has a housing crisis, the people are losing their language, climate change threatens the communities, the suicide rate is among the highest in the country, and the rising cost of living remains a barrier to improving quality of life.
- Devolution might take a long time, but signing a Final Agreement is encouraging.
- John concluded with a meaningful request: "We would like the federal government to get rid of terms like extinguishment and surrender. This language is cloaked in colonialism. One side should not be asked to surrender, and one side should never extinguish another's culture and way of life."