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# Yukon's Self Governing First Nations

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by Marian C. Horne, MLA

*The federal government devolved responsibility formerly held by the Northern Affairs Program for public lands, water, forestry, mineral resources and environmental assessment to the Yukon Government on April 1, 2003 by way of the Devolution Transfer Agreement. Since then, self-government agreements have changed the face of governance in the Yukon and altered the relationship between the governments of First Nations, Yukon and Canada. Eleven of the fourteen First Nations in Yukon have settled their land claims. This article looks at recent developments in this area.*



Aboriginal peoples in Canada are defined in the *Constitution Act, 1982* as Indians, Inuit and Metis. About 25% or 8,500 of Yukon's 34,000 citizens are of First Nation ancestry.<sup>1</sup> We, as First Nations have governed and followed our cultural beliefs and traditions since time immemorial. Traditional leadership roles and responsibilities have been the underlying laws of our societies. Citizens inherently knew their role and responsibilities within the community and respected the role and value of other citizens. Honor and reverence for everything, from the smallest blade of grass at our feet, to the birds in the skies, to the Creator of all living things was innate and as sure as our very existence. Many early missionaries misconstrued our reverence to other living things portrayed in objects such as totem poles as blasphemy. It was our way of affirming our spiritual connection to the land and Creator.

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Up to the 1950s, government policies attempted to assimilate First Nations peoples into the larger non-aboriginal society. Primary decision-making power was the responsibility of the Minister of Indian Affairs and Northern Development or with the Department. Canada viewed us as children, as wards of the state and treated us as if we had no sophistication or capacity despite the fact that we had governed ourselves for countless generations.

Rather than try to describe what that did, let me ask the following: how many people would be able to own their own home if they were unable to secure a mortgage? How many would be able to start a new business without being able to borrow money? Where would Canada be today if only a few people owned their homes or if only the already-rich were able to start small businesses?

By divesting us of rights and responsibilities, Canada took away our ability to be full citizens. This had devastating consequences for our culture. In 1927, the *Indian Act* was amended to prevent anyone (aboriginal or otherwise) from soliciting funds for Indian legal claims without a special license from the Superintendent-General. This effectively prevented any First Nation from pursuing aboriginal land claims.

In the 1950s, we saw the beginning of transferring of Indian Affairs programs to bands, provinces and other federal agencies. The devolution of programs continues to the present day. First Nation's people have asserted our rights to self-government since initial contact



Teslin Tlingit Heritage Centre, totem poles of the 5-clans represented by the Government: Eagle, Crow, Frog, Wolf, Beaver



Teslin Tlingit child

with Europeans; the drive for self-government began during the 1970s and took on greater force which led to the self-government agreements of today.

The early misconceptions led to our way of life and laws being ignored or actually legally suppressed while the federal government attempted to impose a uniform set of vastly different Euro-Canadian political ideals on Aboriginal societies. We were forced into governance imposed with the European influence. Our governance structures, like our language, reflect our world view, our philosophy that was developed over countless generations. Our governance structures were developed as a way of defending and propagating our culture.

Our inability to exercise our old governance system forced us into change and adjustment within our nation. In spite of policies and laws put into place, the traditional values, identity, institutions and practices of the First Nations people endured. We must bear in mind First Nations people could not vote provincially until 1949, or federally until 1960, nor stand for election and could not pursue claims in court. We were totally under the control of the federal government.

We have had temporary setbacks as a society but we are regrouping, rebuilding and remain an identifiable, unique race. We also recognize there will be many challenges in developing governance methods to

replace current structures within our communities.

We are adapting and evolving and we will continue to grow and change to ensure all decisions will be made in the best interests of our land, resources, culture, language and the future of our respective nations. Community education and citizen involvement is imperative in this change.

Self-government is seen as a way to regain control over the management of matters that directly affect First Nations and to preserve the unique cultural identities. Self-government is referred to as an “inherent” right, a pre-existing right rooted in First Nations peoples’ long occupation and government of the land before European settlement.

First Nations people do not seek to be granted self-government by Canadian governments, but rather to have Canadians recognize that First Nations governments existed long before the arrival of Europeans and to establish the conditions that would permit the revival of their governments.

For example, the Tlingit were the first group to form a council to govern their people in North America under Chief Shaikes in California. The Tlingit inhabited the coast of Alaska and traveled inland for trade and eventually stayed year round when Europeans began inhabiting Alaska. My mother was born on the trading route trail in 1908.

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## Historical Landmarks of the Road to Self-governance

In 1973, the modern process began when the Yukon Native Brotherhood, formed by the 12 Yukon First Nation bands in place at the time and led by Chief Elijah Smith, presented “Together Today for Our Children Tomorrow” to Prime Minister Pierre Trudeau. This presentation was the beginning of the negotiation process between the Government of Canada and Yukon First Nations. Later that year, the Yukon Native Brotherhood and the Yukon Association of Non-Status Indians created the Council for Yukon Indians (CYI) to negotiate land claims on behalf of Yukon First Nations. CYI has since become the Council for Yukon First Nations (CYFN).

Twenty years later on May 29, 1993, four Yukon First Nations signed the first Final Agreements, including my First Nation, the Teslin Tlingit Council (often shortened to TTC). Since then, seven more have settled. Today, the White River First Nation, Liard First Nation and Ross River Dena Council, which is also in my riding, remain bands under the federal *Indian Act*.

Because I represent both Teslin and Ross River, I see first hand the differences between these communities. In Ross River we have no local municipal government. Even dealing with something as simple as a dog issue meant we had to bring an animal control officer in from Whitehorse.

## Agreements

Prior to becoming self-governing, as *Indian Act* bands, Yukon First Nations served as delivery agents for programs designed by Indian and Northern Affairs Canada and other federal agencies, with limited authority to modify them. Yukon First Nations migrated from *Indian Act* bands to self-governing First Nations by way of a series of negotiated agreements and plans.

The Umbrella Final Agreement was negotiated first and is the model upon which each First Nation’s Final Agreement is based. It creates public government institutions, defines the quantum of settlement land, and includes a commitment to negotiate self-government agreements. Final Agreements are based on the Umbrella Final Agreement with specific provisions for each First Nation. Financial agreements provide for financial compensation, identify settlement land for each nation and outline land and resource ownership.

The Umbrella Final Agreement Implementation Plan lays out activities, time frames and resources that have been agreed upon to give effect to the final agreement.

A Self-Government Agreement establishes the First Nation government as a “legal person,” and ensures that the First Nation has a Constitution which sets out its governmental structure – so the First Nation has the capacity to act and govern itself.

Upon achieving self-government, the *Indian Act* no longer applies and the First Nation government stands in its place as a legal entity having the capacity and powers of a natural person, including the ability to enter contracts and hold property.

Self-governing First Nations (SGFN) are recognized governments, having many of the authorities and responsibilities of both territorial and municipal governments. When I talk to people outside of Yukon they often think that their bands have the same powers as Yukon’s First Nations. I do not think they do, as Yukon First Nations have considerable powers.

For my First Nation some of our laws are linked to our citizenship and apply no matter where we are; other laws are land based and apply to everyone on our land, whether they are Teslin Tlingit Council citizens or not. Examples of citizen-based laws that apply to our citizens no matter where they live in the Yukon include child welfare, health care, language, culture and education.

The First Nation also has the authority to make land-based laws in relation to our Settlement Land, and these laws are applicable to anyone on Settlement Land. Examples include land use and zoning, lands and natural resources such as forestry and wildlife, and business activity.

***Our Final Agreements speak to trapping, access to land for harvesting and commercial harvesting, Forestry, Water, Non-Renewable Resources, and Heritage Resources.***

Our First Nation governments provide autonomous governance and programs for all our citizens through the Yukon. We collaborate with Canada and Yukon in a government-to-government relationship to ensure our citizens receive programs and services comparable to those provided across the territory.

We have rights and benefits under the final agreement and power over our lands, resources and the management and administration of our government. We are responsible for program/services design, management, delivery and spending.

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We are responsible for developing and maintaining a constitution that acts as a legal framework that defines our government including decision making and legislation development processes, our leadership selection. It also recognizes and protects the rights and freedoms of their citizens. On that note, the *Canadian Charter of Rights and Freedoms* applies to First Nations governments.

The First Nation can negotiate for anything within the scope of their law-making powers, whether or not the First Nation has made a law related to the matter. Yukon laws are displaced by First Nation citizen and settlement-land based laws. Generally, Yukon laws apply until a First Nation makes a law on the same subject; the Yukon law will cease to apply to the extent a First Nation law deals with the same matter.

### **Taxation**

A First Nation can make laws regarding property taxation on Settlement Land. A First Nation can also make laws for other direct taxes such as income or sales tax. Some Yukon First Nations have negotiated sharing agreements with the governments of Yukon and Canada for the Goods and Services Tax and income tax. For instance, Yukon Government is in the process of renewing tax agreements with the First Nations Governments to collect taxes on their lands. Under the current 10 year agreements, the First Nations keep 95% of the income tax collected on their settlement lands every year.

Each First Nation's Final Agreement sets out that First Nation's share of financial compensation from the Government of Canada. Negotiations take into account matters such as population, own source revenues, economies of scale, and prevailing fiscal policies.

Each First Nation can negotiate, with the governments of Canada and/or the Yukon, to assume responsibility for programs and services for their people. For example the administration of justice agreements may include provisions in relation to adjudication, civil remedies, punitive sanctions (including, fine, penalty and imprisonment), prosecution, corrections, law enforcement, the relation of Self-governing Yukon First Nations courts to other courts, and any other related matter.

The Government of Yukon created the Yukon Forum to formalize the government-to-government relationship between the Government of Yukon and self-governing Yukon First Nations. The *Cooperation in Governance Act* recognizes that First Nation and Yukon governments both have jurisdiction and authority over many similar matters. The Yukon Forum is the place

for dialogue among these governments, to encourage cooperation and collaboration in governance within Yukon's boundaries.

### **Land**

In total, the fourteen First Nations receive 41,438 square kilometers of Settlement Land in the Yukon. This amount represents 8.5% of the total land area of Yukon. Each First Nation is the legal owner of its Settlement Land, of which there are three types, rural, community and site specific. Yukon-wide, First Nations own:

- 25,899 sq. km. of Category "A" land, which the First Nation fully owns including both surface and sub-surface (mines and minerals) and exclusive fish and wildlife harvesting rights; and
- 15,539 sq. km. of Category "B" land on which the First Nation has rights to the surface. Yukon Government retains the sub-surface rights; the Yukon public has access to this land for non-commercial fish and wildlife harvesting.

Some treaty rights, such as harvesting, extend over a much wider area within what is called the Traditional Territory of each First Nation. A Traditional Territory is the area claimed to have been traditionally used and occupied historically by that particular First Nation. Some areas were used by more than one First Nation and these areas are called "overlap" areas.

Provisions allowing for access, taxation, development assessment, surface rights and many more aspects of land use are also set out in either the individual Final Agreement or the companion Self-Government Agreement.

Governments have to consult with First Nations about the use of non-settlement land when the use may have a significant impact on adjacent First Nations' land. Each First Nation Final Agreement provides for establishment of a Regional Land Use Planning Commission to recommend a plan for both Settlement and Non-Settlement Land. The Yukon Land Use Planning Council was established through the agreements to deal with land use planning for all areas covered by Final Agreements.

Final Agreements provide for the establishment of Special Management Areas or SMAs. These are areas which all parties to the negotiations agreed should be protected or managed differently than ordinary public or Settlement Land. Some examples include: Tombstone Territorial Park, Vuntut National Park, Kusawa Territorial Park and Ddhaw Ghro Habitat Protection Area, and Lewes Marsh Habitat Protection Area.

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## Involvement In Yukon Government Institutions

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Final Agreements establish several boards or committees with significant responsibilities. All of the boards and committees have guaranteed First Nation representation, usually 50% of the membership. For example, the Yukon Fish and Wildlife Management Board is the primary instrument for fish and wildlife management in the Yukon. A Renewable Resource Council is the primary instrument for fish and wildlife management within a Traditional Territory. Other institutions are the Heritage Resources Board, the Surface Rights Board, and the Land Use Planning Council.

Conservation and sharing are the guiding principles of Chapter 16 of the Final Agreements, which deal with Fish and Wildlife. We have the right to harvest any number of all species, in all seasons, for subsistence reasons within our Traditional Territory.

Each First Nation administers and manages the rights of Yukon Indian People harvesting within its Traditional Territory. Consequently, a First Nation member also has the right to harvest in another First Nation's Traditional Territory when given permission by that First Nation.

The Government of Yukon can limit a First Nation's ability to harvest, but only for very specific reasons, like public safety, public health and conservation, and then only after meeting strict consultation requirements of the Final Agreement.

### The Teslin Tlingit Council Final

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I am of Tlingit ancestry and a citizen of the Teslin Tlingit Council. I sat as a councilor on our General Council before being elected to the Yukon Party in October 2006. I am more familiar with our government's set up and will give a brief outline of how it is established.

The Teslin Tlingit Council is representative of its Clans and citizens, and is responsible for the executive and legislative branches. To this effect, the Executive Council, who initiate policy and watch over the enforcement of the law, works in harmony with the General Council, who enact laws and chart the overall political course. To do this effectively, the Executive Council members have seats on the General Council to whom they are, at all times, responsible.

The Teslin Tlingit Council recognizes the fundamental importance of the separation between legislative and executive activities. In this capacity, the Executive Council provides the linkage between the General Council and senior, departmental management.

The Teslin Tlingit Council believes in ensuring accountability through disclosure, transparency and redress.

The structure of the Teslin Tlingit Council Clan System Government incorporates traditional Tlingit Clan culture with contemporary organizational and management principles. The result reflects the inherent principles and an exceptional model of good government, independent but synchronistic governing bodies, the constitutionally entrenched principles of the government branches, and the division of legislative from executive roles.

The constitution of the Council establishes that:

- It is a consensus government;
- We have a Chief Executive Officer, not a chief;
- Our CEO is selected, not elected;
- Citizenship and organization of each Clan is determined by the customs inherited and observed by the Clan and acknowledged by the other Clans;
- Each Clan has a leader and Elders recognized as such to the Clan membership;
- Clans have emblems which are part of their tradition.

The Teslin Tlingit legislative branch is the twenty-five member General Council composed of five representatives appointed by each of the five clans for four-year terms. The General Council is the forum where the members bring forward government business for discussion, debate and deliberation. The supremacy of the General Council means that this is the ultimate political decision making body of the Teslin Tlingit government, with the power to pass and amend the Constitution, make and rule on law, and to respond to the voice of the people.



Sam Johnston when he was chief of Teslin Tlingit Council

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The agreement enables the Teslin Tlingit Council to establish the legal and political framework for government-to-government relations with Canada and the Yukon. To this end, the Teslin Tlingit Council is able to enact its own laws from a set of predefined terms set out in the agreement:

- The use, management and good government on Settlement lands and the people living on said lands.
- The administration, operation and internal management of the Teslin Tlingit Council's citizens including the rights and benefits realized prior to its final agreement.
- The legislative powers apply to Teslin Tlingit Council citizens wherever they may reside in the Yukon.

Teslin Tlingit Council will continue increasing responsibility over areas administered prior by the Canadian or Yukon Government. This will be achieved through a process of negotiations to devolve responsibility for the design, administration and delivery of program services. Canada will provide the financial resources through Transfer Agreements.

The Elders Council is composed of all Elders attaining their fifty-eighth year and older, presided over by the Clan leaders. The Elders Council gives advice and direction to all other Teslin Tlingit government branches and is responsible for safe-guarding, encouraging and instilling the heritage, culture, language and other traditions of the Tlingit First Nation. It can be likened to the Canadian Senate; its purpose is to have a second look at legislation and leadership selection.

The Teslin Tlingit Council administration implements the political determination and the laws of the General Council. The Council administration also implements policy and other top management decisions of the Executive Council, while assisting other Teslin Tlingit Council government branches in exercising their autonomy and respective political roles. While the jurisdiction of the governing bodies is political, the one exception is the Teslin Tlingit Council Management Board, or the administrative governing body, which provides an area of shared political and executive power, and of administrative expertise.

The nine-member Executive Council is composed of a Chief Executive Officer, a Deputy Chief Executive Officer, a Youth Councilor and one representative from each of the five Clans, all of whom are appointed for four-year terms by the General Council. One Executive Elder is appointed by and for a term at the pleasure of the Elders Council. The Executive Council is the top management team that heads up the Teslin Tlingit Council government.

There is also a Justice Council composed of the five Clan Leaders, established by General Council in accordance with the traditional elements of Tlingit customary law and upon the counsel of the Elders Council.

### **Conclusion**

I often think of our First Nations Elders, many still alive, who did not see a non-First Nation person until the Alaska Highway pushed through in 1943. They had never heard the English language and most have learned to speak the language fluently in very short order. I was born that year, in a tent, at a harvesting camp, on top of a mountain named after me on the Canol Road. I have seen incredible changes during my life, sometimes when I recall instances in the past it almost seems surreal that things happened so quickly.

Indeed the road to self-governance has been challenging and extremely bumpy at times but it has been rewarding and is starting to yield benefits not only for First Nation citizens, but also all other Yukon residents. It is unfortunate that the initial negotiators are not alive to reap the benefits.

Jim Boss who wrote urgently through an interpreter to "Tell the King very hard, we want something for our Indians because they take our land and game." Would not it be rewarding to have him return for one day to show him the King did indeed read his letter and today we not only sit as active members of the "King's government" but we have our "own Self-government".

### **Notes**

1. The Government of Yukon has a very helpful web page, *Land Claims and Self Government Overview*, found at <http://www.eco.gov.yk.ca/landclaims/overview.html>. Teslin Tlingit Council, found at <http://www.ttc-teslin.com/government.html>.