



HSL faculty

**‘ Ugha jesedüda k’e’ - We work together**

The impact of modern treaty First Nations in the Yukon working together on the implementation of the Final and Self-government Agreements

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*Cover Page:* First Nations in the Yukon Chiefs standing on Parliament Hill, Ottawa Canada  
celebrating submission of *Together Today for Our Children Tomorrow* to Prime Minister.  
Photo: [mappingtheway.ca](http://mappingtheway.ca)

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## **Abstract**

This master's thesis examines how modern treaty First Nations in the Yukon (MTFNs) currently collaborate, and the potential impact of MTFNs collaborating more on the implementation of the Final and Self-government agreements. It explores how MTFNs, and non-Indigenous governments (Canada and Yukon) describe the implementation of the agreements; the benefits and obstacles to collaboration according to participants; and whether increased collaboration amongst MTFNs could improve the implementation of the agreements. I argue that more collaboration would lead to increased resources for MTFNs, an important need cited by participants for improved implementation. Collaboration would increase the power of MTFNs, helping to offset the power imbalance between MTFNs and non-Indigenous governments. This would improve negotiated outcomes for MTFNs which leads to better implementation. Also, collaboration has indirect benefits such as improved relationships, increased trust and better solutions which could support improved implementation. And finally, when MTFNs collaborate and use the court system it helps to improve implementation by balancing power between MTFNs and non-Indigenous governments. Overall, participants saw collaboration as a useful tool to implement the agreements but saw many obstacles to collaboration. Only MTFNs know whether the additional work of collaboration will overcome the obstacles leading to the desired results.

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# 1 Introduction

## 1.1 Challenge

Modern Treaty First Nations in the Yukon (MTFNs) along with their treaty partners agree that the Final and Self-government Agreements are not being implemented at the pace anticipated by MTFNs. Twenty years after the signing the last set of agreements<sup>1</sup> large portions are still not implemented. Only two Land Use Plans of ten<sup>2</sup> are completed; one partial Administration of Justice Agreement of eleven has been completed; the reviews of Implementation Plans and Chapter 22 – Economic Development are stalled; the resolution of overlapping territories remains outstanding; the number of indigenous language speakers continues to fall; and the health and welfare of MTFN members is not equal to that of non-First Nation Yukoners<sup>3</sup> (Yukon Bureau of Statistics, 2016)<sup>4</sup>. As stated by Evelyn Peters of University of Saskatchewan, the negotiation of land claims settlements “is only half the battle; implementation is the other half.” (Land Claims Agreements Coalition, 2021)

First Nations in the Yukon have collaborated in the past. The main two collaborations being *Together Today for Our Children Tomorrow*<sup>5</sup>, a document presented to then Prime Minister Pierre Elliot Trudeau that started land claims agreement negotiations in the Yukon, and the Umbrella Final Agreement, a template for land claims agreements between individual First Nations in the Yukon, and the governments of Canada and Yukon. These agreements are among some of the first in Canada. There are also recent examples of MTFNs coming together including two court cases which made it to the Supreme Court of Canada. One regarding the Peel Land Use Plan and Yukon governments proposed amendments. The other regarding proposed amendments to the *Yukon Environmental and Socio-Economic Assessment Act* (YESAA). There are also multiple organisations where FNs come together

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<sup>1</sup> The last Final and Self-Government Agreement was signed in 2004 by Carcross/Tagish First Nation on October 22, 2005.

<sup>2</sup> The North Yukon and Peel Watershed plans are approved. The recommended Dawson region plan has been released. Land use plans for Northern Tutchone Na-Cho Nyäk Dun region, Teslin region, and Whitehorse region have begun planning. Planning regions for which formal planning has not started include Kaska, Kluane, White River and Yukon Northern Slope. (Yukon Land Use Planning Council, 2023)

<sup>3</sup> The template for Self-government Agreements includes in the Principle section a commitment by all parties “to promoting opportunities for the well-being of [MTFN] Citizens equal to those of other Canadians” (“The Kluane First Nation Self-Government Agreement,” 2003, provision 2.2) .

<sup>4</sup> 9.6% of Aboriginals in the Yukon reported having an Aboriginal mother tongue. The median income of Yukon Aboriginals in 2015 was \$33,581, for Yukon non-Aboriginals it was \$49,879.

<sup>5</sup> On the title page is a photo of the Chiefs in front of Canada’s parliament buildings commemorating the meeting with the Prime Minister on February 14, 1973.

based on geographic location, language, and priorities. There are also two organisations purporting to represent all First Nations in the Yukon, The Council of Yukon First Nations (CYFN) and the Yukon Region chapter of the Assembly of First Nations (AFN).

While the governments of Canada and Yukon acknowledge the need to work with First Nations on a Nation-to-Nation basis they encourage First Nations to work together rather than individually with them. Canada's "Principles respecting the Government of Canada's Relationship with Indigenous Peoples" starts with the governments commitment "to achieving reconciliation with Indigenous peoples through a renewed, nation-to-nation, government-to-government" relationship (G. o. Canada, 2021). The Yukon government and First Nation governments meet regularly as the Yukon Forum to "collaborate on shared priorities" (Yukon Government). Work to date includes a memorandum of understanding to develop new mining legislation, co-developing amendments to the *Child and Family Services Act*, and establishing a Yukon First Nations School Board. An example of a project launched by the Government of Canada in collaboration with Indigenous Peoples is the Collaborative Federal Fiscal Policy for Self-Government. While a collaboration between self-government Indigenous peoples and Canada, collaboration amongst the Indigenous peoples is not unanimous. Initially the Land Claims Agreement Coalition (LCAC)<sup>6</sup> was hired to organise the meetings but that ended when several members of LCAC did not wish to take part. There were also issues when the Teslin Tlingit Council (a modern treaty holder in the Yukon) took Canada to court arguing that the negotiation of their Financial Transfer Agreement should be directly between TTC and Canada, and not through a collaborative process such as the fiscal policy. The use of collaboration amongst First Nations in the Yukon and when to use it is an ongoing conversation amongst those First Nations.

Ultimately collaboration is a lot of work, eating up time, resources and the staff of relatively small governments<sup>7</sup>. As laid out in the theory of collaborative advantage common sense says that working together is better but, it asks, why does it so often fail. Authors Chris Huxham and Siv Vangen recommend: "making collaboration work effectively is highly resource consuming and often painful. My strongest piece of advice to practitioners, therefore, is 'don't

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<sup>6</sup> LCAC is a coalition of Nations with land claims agreements. CYFN is a member on behalf of MTFNYs although four MTFNYs are also members.

<sup>7</sup> The staff of one of the smallest First Nations is roughly 30 while that of the Government of Canada in 2023 was 357,247 (Treasury Board of Canada Secretariat).

do it unless you have to” (Huxham, 2003, pp. 420-421). Collaborative advantage theory is a practice based theory focusing on collaboration and the advantage arising from it between inter-organisational partnerships (Vangen & Huxham, 2013, p. 2). On the practical side, the authors assert that “using the theory of collaborative advantage to enhance serendipity implies using the conceptualizations as frameworks to help unravel the complexity and thus inform choice about action.” (Huxham, 2005, p. 255)

## **1.2 Situation**

Collaborative advantage theory references many tensions; several of which are encountered by MTFNYs. Similar to tensions shared with collaborative theory researchers, participants shared their experience with collaboration and implementation, and their concerns. These include: first, the non-Indigenous governments (Canada and Yukon) are perceived as having more power or strength in negotiations which impacts MTFNYs’ ability to implement their agreements. This strength means that non-Indigenous governments set the agenda with regards to implementation. They determine what aspects of the agreements are implemented first and set the implementation priorities.

Second, the new government structure required by the agreements stretches MTFNYs ability to implement their agreements due to the many resources required to build the new government structure, the short timeframe in which to build it, and the fact that it does not align with MTFNY values. This government structure is the third encountered by MTFNYs since contact. In order to interact with non-Indigenous governments (NIGs), MTFNYs are required to build governments that mirror NIGs (P. Nadasdy, 2017). MTFNY’s jurisdiction is a broader list of control and responsibilities than that of any other Canadian government (federal, provincial/territorial, or municipal), which divide these between them. It covers executive functions, health, education, public works, housing, infrastructure, economic development, language, heritage, lands, and resources. This massive range of responsibility requires a substantial size and breadth of expertise which is hard to meet.

Third, MTFNYs lack the resources to implement their agreements. MTFNYs spend a lot of time, energy and resources dealing with issues that are not unique to each MTFNY. The implementation issues of MTFNYs are shared by most if not all other MTFNYs since the

Umbrella Final Agreement set the template for all Final Agreements<sup>8</sup>. This means each of the eleven MTFNYs are often competing for the same experts and staff. An added complication in finding the necessary human resources is finding people with experience working with First Nations and familiarity with the agreements. This means essential position often go unfilled for long periods of time increasing the demands on those working. Also making it hard to find staff is a preference to hire Citizens over non-Citizens<sup>9</sup>. Often there are few Citizens<sup>10</sup> available and interested in working for their Nation<sup>11</sup>. Also, MTFNYs are situated in remote areas. That along with the large scope and vast number of issues in the agreements make it difficult to ensure that the expertise needed to implement the agreements are available.

Fourth, non-Indigenous governments use the lack of a common voice amongst MTFNYs as a rationale for not moving forward; NIGs often do not take MTFNYs interests into account; and their staff often lack the necessary knowledge regarding the agreements. When there is not 100% alignment on a topic by MTFNYs non-Indigenous governments use that to maintain the status quo. MTFNYs do not always work as one thus leaving it up to the governments of Canada and Yukon to prioritize MTFNY issues. Sometimes those raised by the majority of MTFNYs are prioritized higher, though not always. When FNs do not present Canada and Yukon with an agreed upon solution, non-Indigenous governments are left to figure out what the common element is along with which priorities to discuss and how quickly the implementation process proceeds meaning that Canada and Yukon determine the path forward, the goals and potentially the outcome. Due to NIGs greater power, they often set the implementation priorities and schedule rather than it being developed together. Finally, the lack of knowledge of the agreements by NIG staff means that MTFNYs use valuable resources to carry out the education of them both of what is in the agreements and progress in negotiations to date. Ultimately, NIGs have a large impact the implementation of the agreements.

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<sup>8</sup> Similarly, a template was developed for Self-government Agreements.

<sup>9</sup> Although as one participant states: “not every single Yukon First Nation Citizen may want to work with their government. And its sort of this expectation we’ve created like that’s what you must do.” [8]

<sup>10</sup> I capitalize Citizen for the same reason we capitalize Norwegian or Canadian.

<sup>11</sup> YFNs vary in size from ~250 Citizens to ~1500 Citizens.

### 1.3 Research Questions

In this research project I intend to describe how First Nations in the Yukon currently come together; what benefits and obstacles the participants saw in collaboration. I then describe the benefits and obstacles to implementation of the agreements as seen by the participants. Finally, asking how might collaboration improve the implementation of the agreements?

### 1.4 Terms

First are some thoughts on terminology including collaborate, cooperate and “working together”. Ultimately, the three are fairly interchangeable with “working together” a descriptive version of collaborate and cooperate. The Merriam-Webster dictionary used cooperate to define collaborate (Merriam-Webster). Similarly, Creighton argues that collaboration goes beyond cooperation as collaboration “produces something that individuals or organisations could not produce alone (2004, p. 45). I also see collaboration as the production of something new which only can happen because of the participants coming together. While “working together” might be more colloquial, I started this research using “collaborate”. Defining collaboration as the act of working together is similar to John Wanna definition when he states “[c]ollaboration means joint working or working in conjunction with others” (O’Flynn & Wanna, 2008, p. 3). Collaboration is also used because that was the word being used in my work for a MTFNY government as an intergovernmental official. NIGs were using the term collaboration.

Collaboration though is problematic as it is not an Indigenous word. During this research, one of the Elders interviewed immediately challenged me with “What is collaboration?” [7]. In hindsight, I believe he was highlighting the fact that it is political jargon. Similarly, trying to translate collaboration into Southern Tutchone<sup>12</sup> was challenging as no such term exists in dan k’e. Ultimately, a translation of “we work together”, ‘ Ugha jesedüda k’e’, was used for the title. Another option provided was Dáyè ajesáádla which translates to “they (dual) are working with us”. Although collaboration is challenging since it does not exist in MTFNYs’ languages, I have opted to use it since all of my participants were comfortable using it.

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<sup>12</sup> The language of the area in which this research is being carried out (Whitehorse, Yukon) is used. A fellow local, Indigenous scholar directed me in this direction. Southern Tutchone is the English name of the language while in Southern Tutchone it is called dan k’e.

## 1.5 Thesis Organisation

In this thesis I will touch on collaboration amongst MTFNYs and the implementation of the modern treaties with the goal of investigating how increased collaboration amongst MTFNYs could improve the implementation of the Final and Self-government Agreements. After providing background on who the MTFNYs are and the Final and Self-government Agreements, I will describe the methodology used centred in the ten interviews conducted. Next, I will review theories that might help to answer the research question, specifically collaborative advantage theory and implementation theory.

Based in the interviews, I will provide the participants' overall thoughts on the implementation of the agreements and the obstacles to it. Then details on the several examples of MTFNYs come together will be provided including Together Today for Our Children Tomorrow, negotiations of the Umbrella Final Agreements, and recent collaborations. The benefits of collaboration that participants see are laid out next including improved negotiation outcomes, better solutions, improved resources and strategic benefits for MTFNYs. Next obstacles to collaboration are provided according to the participants. These include the diversity of the Nations, and mistrust both of the process and in relationships. There is a lack of resources in MTFNY governments and a lack of agreement to collaborate. Another set of obstacles revolves around the colonisation of NTFNY governments. This includes how MTFNYs governments are structured today and often their governance model follows that set out in the Indian Act. Finally, outside interference by both NIGs and consultants as seen as obstacles to collaboration.

Finally, the potential impact of collaboration on implementation of the MTFNY agreements is explored. While there are benefits from collaboration there are many barriers to overcome for MTFNYs to collaborate with respect to the implementation of their agreements. The impact of collaboration on MTFNY human and financial resources is discussed. Also, the impact of non-Indigenous governments (NIGs) is explored along with the power imbalance between MTFNYs and NIGs. How colonialism impacts implementation of the agreements, along with MTFNY specific implementation challenges. The role of the courts and collaboration amongst MTFNYs in ensuring the agreements are implemented in line with MTFNYs expectations is also explored. Ultimately, as advocated by collaborative advantage theory, it is argued that MTFNYs know best when to collaborate in order to get the advantages of collaboration but avoid the obstacles when implementing the agreements.

## 2 Background

### 2.1 First Nations in the Yukon

All of the Yukon is the traditional territory of a First Nation. The Yukon is a territory<sup>13</sup> in the north-west corner of Canada to the east of Alaska (see map on next page). Starting at 60° latitude, the Yukon extends north across the Arctic Circle to the Beaufort Sea. Currently there are fourteen recognized First Nations in the Yukon.<sup>14</sup> Some of the more obvious geographical differences between the Nations include that their traditional territories are situated in remote, rural and urban areas. There are two First Nations in the Yukon capital city of Whitehorse, Kwanlin Dun First Nation, and Ta'an Kwäch'än Council. One First Nation is not road accessible, Vuntut Gwitchin First Nation. The traditional territories differ in the type and amount of natural resources available, both renewable and non-renewable resources. Tr'ondëk Hwëch'in is in Dawson City and surrounding area where a lot of valuable minerals are found<sup>15</sup> and placer mining conducted. Similarly, the First Nation of Nacho Nyak Dun has operating mines within their traditional territory<sup>16</sup>. The main industries in the Yukon are mining and the public sector.

The population of the Modern Treaty Nations in the Yukon (MTFNs) differ from the smallest, Kluane First Nation at roughly 250 Citizens to Champagne and Aishihik First Nations with 1,296 Citizens (Champagne and Aishihik First Nations, 2019). In the 2016 Census, 23.3% of Yukoners<sup>17</sup> self-identified as Aboriginal<sup>18</sup> as opposed to 4.9% of the entire Canadian population (2016). The 8,195 people self-identifying as Aboriginal in the Yukon, 81.6% identified as First Nation, 12.4% as Metis and 2.8% as Inuit<sup>19</sup> (S. Canada, 2016).

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<sup>13</sup> In Canada there are ten provinces and three territories. Provinces differ constitutionally from territories as provinces have constitutional powers while territories have delegated authority from the federal, Canadian government. The three territories are north of 60° latitude while the ten provinces are south of 60° latitude.

<sup>14</sup> Not all First Nations in the Yukon are recognized. There are some trying to be recognized by the federal government such as the Pelly Banks Indian Band ("*Part 1: Pelly Banks*," 2023).

<sup>15</sup> Dawson City was the site of a gold rush in 1902.

<sup>16</sup> Though the Minto mine in Selkirk First Nation territory recently went into receivership in the summer of 2023.

<sup>17</sup> In 2021, the Yukon had an overall population for 40,232 people ("Census Profile, 2021 Census of Population: Yukon," 2021)

<sup>18</sup> Aboriginal in Canada includes First Nation, Inuit and Metis peoples.

<sup>19</sup> It should be noted that there are only 5,910 people in the Yukon hold registered or treaty Indian status (or 16.8% of the Yukon population). (Yukon Bureau of Statistics, 2016)



## 2.1.1 First Nations in the Yukon - History

First Nations have lived in what is now called the Yukon since time immemorial. The first wave of non-Indigenous people came to the Yukon starting with fur traders and the attempted establishment of a Hudson Bay trading post, Fort Selkirk, in 1848<sup>20</sup> although they were

<sup>20</sup> For the Canadian courts the assertion of crown sovereignty for Western Canada is 1846 based on the Treaty of Oregon. From this point on the British Crown asserts ultimate law-making authority over Indigenous lands and



chased out in 1852. The second wave of outsiders came at the turn of the 20th century (1898) with the gold find in Dawson City. In response to this influx of non-Indigenous people Chief Jim Boss (Kishxóot) in 1902, at the height of the gold rush, petitioned the Canadian government for protection of his Nations land and hunting grounds from the growing non-aboriginal population. This was due to people heading to Dawson traveling from the southern border of the Yukon with Alaska north through Whitehorse to Dawson City a trip of over 700km. This exchange of letters between the Chief and the Superintendent General of the Department of Indian Affairs in Ottawa is seen as the first attempt at land claims negotiations in the Yukon. (Ta'an Kwäch'än Council).

### **2.1.2 First Nations in the Yukon political and social organisation.**

Prior to the arrival of non-Indigenous people to the Yukon, Ken Coates writes that the political organisation of First Nations in the Yukon are diverse with “important linguistic, cultural, and social dimensions [that] were not formalized through political organizations or tribal consciousness” (1991, p. 5). Using research by McClellan and others, Castillo et al describes the social organization of First Nations in the Yukon as one based on bands, clans and moiety although not all use clans (2020). The bands were usually less than 50 people, spoke the same language, were divided by mountains from each other and were attached to a specific watershed (Castillo et al., 2020, p. 57). In his book about the changes to the political organisation of today’s MTFNYs Paul Nadasdy argues that the Final Agreements have created “state-like political entities where there were none before” (2017, p. 5).

## **2.2 Modern Treaty First Nations in the Yukon**

Currently there are eleven First Nations in the Yukon (FNYs) who have each signed two agreements: a Final Agreement and a Self-government Agreement. There are three FNYs who have not signed a modern treaty and continue in the Indian Act/Band model, prevalent in Canadian provinces. This thesis is focused on the eleven Modern Treaty First Nations in the Yukon (MTFNYs). Final and Self-government Agreements in the Yukon are considered modern treaties. Modern treaties are differentiated from historical treaties in Canada meaning those signed after 1970. There was a large time frame before 1970 when the government of

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people. [<https://www.firstpeopleslaw.com/public-education/indigenous-rights-in-one-minute/what-is-the-assertion-of-crown-sovereignty>]

Canada did not sign treaties with Indigenous people in Canada<sup>21</sup>. There are currently 26 modern treaties in Canada.

### **2.2.1 The Agreements – Final and Self-Government Agreements**

The agreements in the Yukon are all based on the Umbrella Final Agreement (UFA) that was signed by the Council of Yukon Indians<sup>22</sup> on behalf of First Nations in the Yukon. The UFA lays out the amount of land and financial compensation to be provided to each First Nation. Each individual Final Agreement defines that First Nation's rights for different categories of land. It also addresses water, natural resources (both above and below grade), fish and wildlife, and co-management of lands including development assessment, heritage, financial compensation, and economic development (Mapping the Way, 2023). The Final Agreements cover how lands and resources are allocated and managed. They also cover compensation provided, taxation, economic development, revenue sharing and a dispute resolution process, among other things.

Each Self-Government Agreement (SGA) lays out the First Nation's legal status and power to administer itself. It also includes the First Nation's law-making powers, and programs and services including financial transfer agreements, taxes, etc. The SGA sets out that the Indian Act does not apply to Citizens, the First Nation or Settlement Land (Indian and Northern Affairs Canada, 2004, p. article 3.5). The Self-Government Agreements set out arrangements for signing First Nations to govern their internal affairs and law-making authority.

### **2.2.2 History of the Agreements**

There were no treaties signed between First Nations in the Yukon and non-Indigenous people or Canada before the Final Agreements, unlike other areas of Canada and the United States. In the 1960s, First Nation organisations were formed in the Yukon similar to what was happening through out Canada and the world. Formed in 1968, the Yukon Native Brotherhood was made of the twelve First Nations bands in the Yukon existing at the time (Horne, 2010). It was formed as an organisation of status Indians interested in expressing their opposition to government of Canada policies, specifically the 1969 White Paper (Mapping the Way, 2022). Established in 1971, the Yukon Association of Non-Status Indians

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<sup>21</sup> The last of the historical treaties was the Williams Treaties signed in 1923.

<sup>22</sup> The Council of Yukon Indians changed its name for Council of Yukon First Nations in 1995. (Nations & Yukon, 1997, p. 3)

came together with Yukon Native Brotherhood for a three-day conference to discuss land claims in 1972. In 1973 the two organisations became the parent organisations to the Council of Yukon Indians which would represent First Nation people at the land claims negotiations table. At the same time a petition to Canada entitled “Together Today for Our Children Tomorrow: a statement of grievances and an approach to settlement by the Yukon Indian people” authored by the “Yukon Indian People” was presented to the Canadian Prime Minister by a delegation of Yukon First Nation leaders on February 14, 1973 (1973).

By accepting “Together Today for Our Children Tomorrow” the government of Canada entered into negotiations for a modern treaty with the First Nation people of the Yukon. Although initially expected to take between two to three years to complete (Council of Yukon First Nations, 2024), negotiations ended up taking 20 years with the Umbrella Final Agreement between the governments of Canada and Yukon and the Council of Yukon Indians signed in 1993. Based on the UFA template, First Nations in the Yukon in conjunction with the governments of Canada and Yukon developed individual Final Agreement and Self-Government Agreement for each Nation. Agreements for eleven of the fourteen First Nations were completed between 1993 and 2005.

### **2.3 Indigenous People and the *Indian Act***

In 1876, the government of Canada passed the first *Indian Act*<sup>23</sup>. It authorized and continues to allow the government to regulate and control most aspects of Aboriginal life: Indian status, land, resources, education, band administration, etc<sup>24</sup>. Today the Indian Act continues to impact the lives of status Indians though not those of Metis and Inuit (two other groups of Indigenous peoples in Canada)<sup>25</sup>. Often First Nations who have signed modern treaties have done so to get out from under the Indian Act including its quasi-European style of band governance with an elected Chief and Council.

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<sup>23</sup> A note on words: Indian is used when it can not be avoided as that is not the word typically used by Canadian Indigenous people to identify themselves. Typically, this means the person referenced fulfills the definition of an Indian as set out in the *Indian Act*. Indigenous and aboriginal are used interchangeably.

<sup>24</sup> First Nations who remain under the *Indian Act* are also called Indian bands. “Citizens” of MTFNYs are like “band members” of *Indian Act* bands.

<sup>25</sup> First Nations are equivalent to Indian bands in the *Indian Act*, but that these groups have long been considered legally distinct from the two other Aboriginal/Indigenous groups in Canada, the Metis and Inuit.

## **3 Methodology**

This research attempts to answer the following questions: how might collaboration improve the implementation of the agreements? Data was collected by interviewing ten individuals in a semi-structured manner. Typically, these interviews lasted two hours. All, but one participant, are Citizens of First Nations in the Yukon who have Final and Self-Government Agreements and have worked for modern treaty First Nations in the Yukon.

### **3.1 Collection and analysis of data**

#### **3.1.1 Participants**

Ten interviews were conducted with participants including Elders, Youth and middle-aged people. All, but one participant, are Citizens of First Nations in the Yukon who have Final and Self-government Agreements and all have worked for a modern treaty First Nation in the Yukon government or organisation at some point either as a bureaucrat or an elected official. Participants work (or worked) for one at least of the following: First Nation governments (some for their own FN government), central agencies the Council of Yukon First Nations (CYFN) and the Assembly of First Nations – Yukon region (AFN), First Nation organisations (such as development corporations), and the Yukon government. Six were elected First Nation officials at some point. Three were elected chiefs with central agencies for First Nations in the Yukon; four were Councillors; and two were deputy chiefs (there is overlap between the groups). All nine Indigenous participants work or worked for their own First Nation (though sometimes this was via committee work as opposed to as a paid employee). Three are female and seven are male. Four are Elders, one Youth and three middle-aged. While all participants provided important information and insight, the Elders were incredibly generous, offering a wealth of information and insight that made this research easier.

##### **3.1.1.1 Soliciting participants**

MTFNY employees involved in implementation at a bureaucratic level and to those at a leadership level were emailed a request for an interview. When emails did not provide enough participants, I started to ask people in person. This was more successful. At the Council of Yukon First Nations' General Assembly on October 5, 2021 potential participants were approached directly about taking part. Once a few people agreed to be interviewed there seemed to be some momentum gathered and several more came forward.

### **3.1.2 Data Collection**

Though it had been hoped to carry out some interviews on the land and outside of the capital of the Yukon territory, this was not possible due to COVID restrictions and just the ease of meeting with people in Whitehorse. Seven interviews were conducted in person in Whitehorse while three interviews occurred via Zoom. Typically, these interviews lasted two hours. Nine interviews took place between July and October 2021 with the tenth occurring in March 2022. The tenth interview was conducted to include another central agency representative at the suggestion of participants. Several days were also spent in the Yukon Archives in December 2021.

Interviews started with ensuring signed consent was provided, and a general summary of the research and the intention was provided. As I knew all of the participants previously, specific questions about the research, general catching up and laughter occurred before beginning the actual interview. The interview questions were semi-structured with interview questions divided into sections on demographics, implementation of the agreements, collaboration, negotiations and other solutions<sup>26</sup>. Demographic questions included age as a Yukon indigenous person informed the interviewer that where the participant was in life (Youth, Elder or middle-aged) would impact their viewpoint. Also, determining the length of time spent with a Yukon First Nation, their roles in FN leadership, and FN governments helped to bring context to the data and situate the informant's viewpoint. Participants were asked about their roles in the implementation of the agreements and whether they had any suggestions on how to improve the process. They were asked about collaboration amongst First Nations in the past, now and the future; the role, structure and barriers/opportunities of central agencies; if the participant thought improved collaboration amongst FNYs would help or hinder current negotiations; and possible alternative solution to implement the agreements. Interviews built on the knowledge gained from those before including adding the question: "What would be gained and what would be lost with a strengthen joint body?" on the suggestion of one of my professors.

### **3.1.3 Coding & Analysis of data**

Data from the interviews was coded and analyzed using several Qualitative Data Analysis strategies as laid out by Johnny Saldaña (2014). In the initial coding, the data was divided

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<sup>26</sup> The interview guide can be found in Appendix A.

between three themes used in the interview guidelines: implementation, collaboration, and central agency. The interviews were read three times and coded in vivo (as Saldaña references A. L. Strauss, 1987). I chose this method because of the emphasis on using the participants' actual words. Then the coding was analysed to look for patterns or themes within the data. Once the themes were developed for each interview a research memo was written to capture the findings and thoughts about them. Finally, the themes from each of the ten interviews were brought together to find similar themes and another research memo written on each theme.

### **3.1.4 Ethics**

A proposal was sent to NSD<sup>27</sup> to ensure that the research and interviews would be done in an ethical manner. Permission was provided though conducting the interviews outside of Europe and out on the land created some challenges regarding how recordings were recorded and stored. Also, the use of a transcriber was worked through and approved. A proposal was also submitted to the Carleton University Research Ethics Board due to research funding flowing through Carleton. It also received sign-off. The local Yukon University and a Canadian university with an Indigenous Studies program (University of Saskatchewan which partners with UiT) were also approached about doing an ethics review. Both declined.

## **3.2 Indigenous methodology**

I used several different strategies to try to Indigenize the methodology of this research focusing on working with MTFNYs and highlighting their voices. Multiple MTFNYs were approached for feedback and support of the research. This resulted in a research agreements with Champagne and Aishihik First Nations and letters of support for the research from Council of Yukon First Nations, Kluane First Nation and an MTFNY Elder. Also, this research was carried out with funding from the Modern Treaty Implementation Research Project.

In a quest to highlight the voices of MTFNYs, numerous quotes from participants tend to be long in this thesis. This is done to let the participants' words stand for themselves. This method comes from an Elders' advice in Fyre Jean Graveline's poem Circle as methodology: "Don't talk about what you don't know" (2000, p. 362). This method of using direct quotes

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<sup>27</sup> Now called Sikt, Norwegian Agency for Shared Services in Education and Research.

as data is also used in “Decisions on cancer care by Indigenous peoples in Alberta and Saskatchewan: a narrative analysis” (Roberts, Groot, & Carr, 2020). This also follows the indigenous methodologies espoused by Jo-Ann Archibald and Margaret Kovach, two Indigenous academics researching and writing about decolonizing research (Archibald, Lee-Morgan, De Santolo, & Smith, 2019; Kovach, 2021).

We often hear that telling stories and working with stories is a universal experience across all peoples, cultures, and societies. Unfortunately, we mostly hear that version from a dominant perspective that has assumed the right to tell the stories of the colonized and the oppressed that they have re-interpreted, re-presented, and re-told through their own lens. (Archibald et al., 2019, p. xi)

I am trying to minimize re-telling the participants’ thoughts through my own lens, particularly as I am non-Indigenous. To even paraphrase what the Participants say is in my opinion to modify them to fit unknowingly inside my bias. I am already interpreting what my Indigenous participants are sharing with me, placing emphasis where I think it should be, pulling out the quotes or information I think most important. All this analysis is done viewing the world through my colonial lens, all be it a lens that tries to root out the colonialism in it. My bias will come through in my analysis but to use the words spoken by the Participants ensures that at least what is actually said is one way to minimize the amount of colonialism in the research. Finally, Aveling in her paper “Don’t talk about what you don’t know” was helpful in arriving at the decision to include Indigenous voices directly wherever possible (Aveling, 2013). Aveling talks about how being an ally is uncomfortable and that it is important that allies not speak for Indigenous peoples though we can use our privilege to highlight Indigenous voices and speaking to our “own mob” (2013, p. 205). The importance of Indigenous voices, which are often silent, was highlighted by one participant when he provided the following:

a lot of time we default to the [long time, non-Indigenous employee of an MTFNY] who are really bright and have a lot of input but it’s good to sometimes [to] check in and see what Citizens really feel, you know, not that anybody else’s opinions are valid or invalid but it’s just helpful. A lot of times those voices are pretty silent. There’s myself and [other MTFNY leader] who are pretty outspoken but there’s a lot of people who don’t engage. They feel perhaps intimidated because it is a complex arrangement and some of the issues, somethings, people have been working with for decades. [9]

While he makes the point that some Indigenous people are more outspoken, it is important to include others which I tried to do when recruiting participants though who is willing to speak to me on this research topic is an obstacle.

I am an outsider with hints of an insider due to my role working for First Nation governments, including files where MTFNYs collaborate, for over nine years, and eleven years before that working for the Yukon government. Awareness of how research in the past with Indigenous people have been “quick in-and-out interview sessions”(Kovach, 2021, p. 27), I strived to ensure there is a relationship between the participant and interviewer. As an outsider, I work hard to be aware that all people “interpret ... their observations from their own cultural stance” (Kovach, 2021, p. 27). And that “[s]ocial interaction depends on actors making sense of others’ actions and motivations from the point of view of the others, from their biographical perspective” (Richardson, 1990, p. 127). This is the rationale for gathering biographical information from participants.

As stated above, I felt that it was important to focus on First Nation voices in this research in an effort to decolonize the research. I am attempting to follow Kovach’s direction regarding my role as an ally. “Allies have a role in pushing back against an all-consuming Eurocentrism” (Kovach, 2021, p. 12). Several different First Nations people were involved in the development of this research’s focus. Discussions were held with the Executive Director of the Council of Yukon First Nations (CYFN), a past Grand Chief of CYFN, an Elder and a Youth, along with employees of Yukon First Nation governments (many who are also Yukon First Nation Citizens) when setting up this research. The research also came out of years of discussion around the role of collaboration amongst self-governing First Nations in the Yukon in achieving their goals, specifically the implementation of their Agreements. An Elder is regularly reviewing work and providing feedback. They have formally reviewed the proposal, interview guidelines, and draft thesis.

I also worked with three First Nations to develop and receive consent for the research to varying degrees of success. One Nation provided a letter of support, one a signed research agreement and the third, although supported by officials, momentum for the research request was lost somewhere on the way to Council. The signed research agreement included a commitment on the researcher’s part to provide a draft thesis for the Nation to review for one month before submission so that they can provide feedback. CYFN also provided a letter of support for a funding proposal. The researcher is committed to sharing the results with First



Nations in the Yukon, though interestingly the only actual request for the sharing of the results so far has come from an employee of the Yukon government.

### **3.3 Perceptions on data reliability & validity**

The data is intentionally one-sided with almost all participants an MTFNY Citizen and worked for an MTFNY government<sup>28</sup>. I felt it was important to set up the research this way to highlight MTFNY voices with respect to the implementation of their treaties particularly as the research is about collaboration amongst the MTFNYs (as opposed to with the Yukon or Canadian governments). The data is also impacted by those who were willing to be interviewed. While participants are diverse, there is a lack of dissenting voices. Several people who are seen as dissenters were reached out to, but they did not agree to being interviewed<sup>29</sup>. It is expected that this lack of dissenting voices will lead to a more positive description of collaboration amongst First Nations than actually exists, particularly as those dissenters reached out to were known to either live through the dissolution of a collaborative First Nation entity or left such an entity. Also, I perceived that those who are retired as being more forth coming with their opinions, positive and negative. The rest appeared to be somewhat concerned about their opinions being attributable, which, in such a small community, is a real possibility.

#### **3.3.1 Interviews**

Interviews were semi-structured which was open to me coaching the participant and my biases impacting the interview, particularly as I had lived some of the experiences the participants were discussing. This might have resulted in the participant being steered towards viewing collaboration as being an important factor in the success of implementing the agreements and negotiations in general. Strategies to avoid this, included taking a back seat in questioning, only asking what the participant thought with little editorializing on my part, and summarizing what I had heard to make sure I understood the participant's point of view. Another challenge is the lack of clarity in some statements; participants often said, "as you know" and skipped over the detail for the record. These challenges and time limits also limited the asking of clarifying or follow up questions. All of these might have resulted in

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<sup>28</sup> One participant works for a non-Indigenous government and one other participant non-Indigenous.

<sup>29</sup> One was interested until more details on the research were provided. Another thought their views were available in the local press.

participants being hesitant to bringing up the problems with collaboration or to assert that collaboration would not fix the problems with implementation of the agreements.

## 4 Literature Review

Non-Indigenous governments (NIGs) have started to use collaborative governance extensively in the development of policy, programs, and legislation including with Indigenous peoples (von der Porten, de Loë, & Plummer, 2015). Currently the Canadian federal government is collaborating with self-governing indigenous governments in the development of a federal fiscal policy (R. Nicol, Perry, Clark, & Papillon, 2019). In 2021, the Government of Yukon released Pathways: Stories of collaboration, partnership and reconciliation; “a magazine that highlights the work of Yukon public service workers to build relationships and to collaborate to advance reconciliation with First Nations” (Yukon Government, 2021). In 2022, the Yukon Government and Council of Yukon First Nations released a joint press release titled “Leaders discuss future collaboration at the Yukon Forum” (Yukon Government, 2022).

This chapter lays out research that is helpful in determining how collaboration amongst modern treaty First Nations in the Yukon (MTFNYS) might improve the implementation of the treaties. This includes research regarding the Coast Salish people views on political aggregation during modern treaty negotiations (Thom, 2010); and how modern treaties in the Yukon have changed how MTFNYS govern themselves (P. Nadasdy, 2017). Research on a so far successful collaboration amongst self-governing Indigenous governments in Canada and Canada is included (R. Nicol et al., 2019). Research specific to the implementation of the modern treaties of First Nations in the Yukon is also included. Finally, Collaborative Advantage Theory is included as it wrestles with why common sense says collaboration will help but reality often shows it does not (Huxham, 2005).

### 4.1 Collaboration and First Nations in Canada

There is a fair amount of research regarding the use of collaborative with First Nations including in research (La Salle, 2010), health care (Roberts et al., 2020), co-management (Cameron, 2019), water governance (von der Porten & de Loë, 2013), and with local governments (Alcantara & Nelles, 2016) and industry (Bullock, Kirchhoff, Mauro, & Boerchers, 2018). Also, non-Indigenous governments collaborate with First Nations in the

Yukon using collaborative governance<sup>30</sup> in the development of policy (Canada's Collaborative Fiscal Policy), legislation (Yukon's Mining Legislation), and strategies (Yukon's Mineral Development Strategy). There is the potential for additional research into the collaboration or political cooperation between First Nations themselves. I found Thom's paper on the challenges of political aggregation of the Coast Salish in British Columbia (2010) and Rice's paper on the Council of Yukon Indians' role during negotiations of the Umbrella Final Agreement (2014).

#### **4.1.1 Political Organisation of First Nations & Modern treaties**

As part of the negotiation of modern treaties the governments of Canada and British Columbia encouraged the Coast Salish people to come together or aggregate<sup>31</sup>. Brian Thom sees two reasons for the lack of aggregation, both of which are based in aggregation not reflecting how the Coast Salish currently govern themselves or wish to govern themselves. First, it moves away from culturally appropriate, local relationships to one that mirrors how the non-Indigenous state governs itself. Second, it does not allow for the politics of family based groups or as Thom puts it "the dynamic of power in kin-ordered politics among closely related First Nations people" (Thom, 2010, p. 34). To aggregate would not allow the Coast Salish to govern themselves in their own way. While Thom points to the aggregate government of the Nisga'a Lisims<sup>32</sup> (neighbours further north in British Columbia) he lays out the challenges to aggregation amongst the Coast Salish(CS) peoples including current decision-making methods (there is a lack of decision making by aggregate CS governments), and the lack of information flowing between indigenous governments, aggregate bodies and membership (Thom, 2010, pp. 39-40). These challenges continue even though non-Indigenous governments push the Coast Salish people to have aggregate self-government bodies as part of the modern treaty process. Thom describes "Coast Salish people are reluctant, hesitant and even dismissive, electing largely to stay out of political aggregations" particularly when engaging with NIGs' land and self-government policies (Thom, 2010, p. 38). Coast Salish leaders see their power as diminished when aggregation occurs as they become further from the source of their power, their relationships with family members. Thus,

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<sup>30</sup> Collaborative governance is defined by Ansell et al as "bringing public and private stakeholders together in collective forums with public agencies to engage in consensus-oriented decision making" (2008, p. 543). While it is problematic to label First Nations "stakeholders" the rest of this definition holds.

<sup>31</sup> Political aggregation being a formalization of collaboration amongst Indigenous peoples.

<sup>32</sup> Thom refers to them as the Nisga'a Nation which includes four villages.

explaining why Coast Salish people do not want to aggregate. Further to aggregate moves away from the culture of the Coast Salish by removing the communities established in the past. To aggregate “overthrows” the Indian bands which represent the ancient villages established in oral traditions thus moving away from the culturally appropriate way to govern (Thom, 2010, p. 40). By moving away from a culturally appropriate way to govern and way that connects leaders with their power base, their families. Coast Salish leaders are hesitant to form aggregate bodies no matter what non-Indigenous governments encourage.

Paul Nadasdy argues that by negotiating and signing modern treaties, First Nations in the Yukon have changed how they govern themselves. During land claims agreement negotiations, Nadasdy argues how First Nations in the Yukon governed themselves was changing, in his dissertation “Hunters and Bureaucrats” (2001). Later in 2017, Nadasdy argues that the requirement for MTFNYs to have governments similar to NIGs is an obstacle not only in that it is a new, unfamiliar system but also an obstacle in the amount of time and resources that are diverted to setting up such a government, diverted away from important tasks like implementing the Final Agreements or modern treaties. As Nadasdy states:

any effort by indigenous people to engage with settler state officials in the political arena requires them to conform to the cultural entailments of sovereignty – a set of assumptions about the nature of space, time, knowledge, and sociality that is intimately bound with the state form – or risk not being heard at all (2017, p. 4).

In order for First Nations to be heard by NIGs they must become state-like. They “must organize themselves into bureaucratic departments that correspond at least roughly with those in the federal and territorial governments” (P. Nadasdy, 2017, p. 7). This colonization of MTFNYs governments increases the challenges faced in implementation of the treaties..

#### **4.1.2 Collaborative Governance**

As stated earlier non-Indigenous governments are using collaborative governance more, particularly with Indigenous peoples. An example of collaborative governance used by the Canadian government with self-governing Indigenous governments (SGIGs)<sup>33</sup> is provided by Nicol et al in their review of the process for developing “Canada’s collaborative self-government fiscal policy” (2019). Nicol’s paper describes from the Indigenous partners point

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<sup>33</sup> SGIGs includes all modern treaty First Nations in the Yukon.

of view the development of the fiscal policy that Canada will use to guide their mandate in negotiations between SGIGs and Canada to determine the funding of SGIGs by Canada. Nicol writes that there are advantages to collaboration between SGIGs and the government of Canada including better understanding between parties, i.e. don't need to go to court; sharing of resources (both people, money and expertise); and better intergovernmental understanding between parties. Based on participation in this process, Nicol writes that collaboration can lead "to less adversarial exchanges and a higher level of trust and openness between officials of the parties" (2019, p. 34). Nicol et al assert that in this case collaboration did lead to solidarity in the process amongst the SGIGs and improved outcomes for the SGIGs. "The strength of collective Indigenous government voices and their accumulated knowledge and expertise has resulted in previously well-entrenched federal positions being challenged (although many remain)" (R. Nicol, & Papillon, M., 2019, p. 39). Challenges to the collaboration include the imbalance of power which made it difficult to have a respectful relationship, and difficult to collaborate. Collaboration increased the work for SGIGs, as collaboration in the process amounted to finding innovative solutions, normally produced by the SGIGs. Another challenge was dealing with the inclusion of new parties (new people) and Canada defining participants without input from participating SGIGs (R. Nicol et al., 2019, p. 36). Solutions for successful collaborations provided in the paper include: considering partners to be of "equal status and value" will lead to the best outcome while acknowledging the inevitability of unequal power dynamics (R. Nicol et al., 2019, p. 37); developing trust between all partners as a high level of trust is required for successful collaborative processes both by politicians and officials; focusing on mutually agreed upon goals; and finally, ensuring enough resources are available including for a high level of engagement by all. Ultimately, Nicol's paper provides advantage, challenges, and solutions of collaboration found in a so-far successful collaborative process between Modern Treaty holders in Canada and the Canadian government.

## **4.2 Yukon First Nations**

### **4.2.1 Collaboration amongst First Nations in the Yukon**

Along with researching the impact of the Final Agreements on MTFNYs governments, Paul Nadasdy also finds the negotiations of modern treaty and their implementation leads to the rise of what he calls "ethno-territorial nationalism" (2012). He ties it to the "sovereign territoriality" that is forced on First Nations due to the Final Agreements (modern treaties) in the Yukon between First Nations, Yukon and Canada governments (2012, p. 505). In order to

enter into these treaties, First Nations are forced to emulate the non-Indigenous governments of Canada and Yukon (similar to the concern raised by Thom) and move away from how First Nations governed themselves.

Whereas in the past Yukon Indian people drew on relations of kinship, reciprocity, and co-residence to enlist allies in their conflicts with one another (with the consequences that one could generally find both allies and enemies in any camp), today Yukon First Nation people are increasingly likely to view conflict as taking place between ethno-territorial entities (P. Nadasdy, 2012, p. 523)

Nadasdy argues that by drawing borders between the First Nations it saw the rise of Nations seeing themselves distinct from others leading to the division of Nations into “us” and “them” (2012, p. 522). A place where collaboration or the “coming together” of First Nations would be difficult.

#### **4.2.2 Implementation of Modern Treaties in the Yukon**

As this thesis focuses on how collaboration between MTFNYs might help in the implementation of their Final Agreements, research into the implementation of modern treaties in the Yukon must also be reviewed. Rhiannon Klein researched intergovernmental relationships between MTFNYs and non-Indigenous governments during the negotiation and implementation of modern treaties in the Yukon between 1986 and 2016 (2021). Her research identified four major findings. First, the importance of the implementation process; second, a clear understanding of the context, goals and original intent of the treaties is needed; third, that First Nations are the “co-creators of these agreements” and should be treated as such; and finally, the importance of relationships between the parties needs to be understood even though governments might change.

While not directly regarding implementation, Christopher Alcantara wrote about the negotiations of land claims agreements in Canada focusing those that resulted in an agreement and those that did not (2013). Alcantara’s case studies includes the negotiations of two Yukon First Nations, one who completed a Final Agreement and another Nation which did not. Alcantara argues that by analyzing the institutional framework in which the negotiations take part, along with determining the preferences and incentives of the parties one can determine which strategies will be successful in producing an agreement. The strategies are finding compatible goals, limiting confrontational tactics, having internal cohesion, and ensuring

positive perceptions of government (Alcantara, 2013, p. 139). Internal conflict can spill into the negotiation process and disrupt it. This research is helpful, given the understanding that implementation is a continuation of negotiations between MTFNYs and non-Indigenous governments.

### **4.3 Collaborative Advantage Theory**

Collaborative Advantage Theory was reviewed to understand why collaboration works sometimes but not all the time, and possible solutions should MTFNYs wish to collaborate more. Chris Huxham's book "Managing to Collaborate: The Theory and Practice of Collaborative Advantage" provides both the theory of Collaborative Advantage along with direction on how to improve collaboration (2005). Collaborative Advantage Theory attempts to answer the question of why collaboration often fails when common sense says it should improve outcomes. The first piece of advice is the often repeated message of "don't do it unless you can see the potential for real collaborative advantage" (Huxham, 2005, p. 257). Or make sure collaboration will help as it consumes time and resources, and often the outcome is negligible. The authors point to the "messiness" of collaboration, including the large number of challenges along with the multiple views, aims and priorities of those involved in the collaboration. Collaboration is also dynamic, continuously changing and the outcomes are not normally what is intended. The theory is based on a list of themes that are constantly changing (mostly by being added to) (2003, 2005; Vangen & Huxham, 2013). The themes, based on research by the authors and others that mirror some of those provided by participants include common aims, power, trust, and resources.

While a common aim is seen as important for collaboration the authors suggest moving forward without setting out the common aims. It is difficult to set common aims as they are impacted by ownership (individual, organisation, and collaborative entity), achievement (same three), and openness (explicit, assumed and hidden goals). For power while the common view is that the owner of the purse strings holds the power there are other types of power including the power to leave for those not funding the project, and procedural power such as setting the agenda, determining who is part of the collaboration, etc. Trust is considered important by common wisdom while reality is the there is a layer of suspicion between partners at the beginning of a collaboration (Huxham, 2005, p. 66). The suggestion is to start small so collaboration and trust can be developed. Resources as a theme was among those provided by practitioners in research conducted by Huxham and Vagen as



collaboration is often categorized as resource intensive in order to do it well (Huxham, 2003, 2005).

## **5 Implementation of Agreements**

It took modern treaty FNYs (MTFNYs) between twenty and thirty years to negotiate their Final and Self-government Agreements. Now, over thirty years since the first MTFNYs signed the implementation of these agreements is not complete. All three parties (MTFNYs, Canada and Yukon) to the modern treaties in the Yukon appear to agree that the implementation of the treaties is failing. Participants see the implementation of the agreements as too slow. Moreover, similar concerns are raised by multiple other sources, including following a multi-party implementation review, a nationwide coalition of nations with modern land claims, a new collaborative modern treaty implementation policy developed by the federal government, and other federal government bodies.

A description of the Final Agreement and Self-government Implementation Plans of just one MTFNY provides a scope of the amount of work required for implementation. The KFN Final Agreement Implementation Plan is 463 pages long and lists 229 activity sheets. Each activity sheet lists the project along with the activities required to carry out the project, who is responsible and when the activities will be carried. The projects range from the large such as making amendments to the Umbrella Final Agreement or amendments the KFN Final Agreement, to the practical, how forest fighting on Settlement Lands is carried out, to the procedural such as ensuring KFN has the first right to acquire an outfitting concession (G. o. Canada, 2003b). The KFN Self-government Agreement (SGA) implementation plan is 87 pages and includes 51 activity sheets covering the projects necessary to implement the SGA. The projects cover many activities including the 10-year review of the SGA, enactment of KFN laws, the negotiation of new terms to the agreement and dispute resolution regarding terms of the SGA, transfer of programs and services, etc. (G. o. Canada, 2003c). These plans are lengthy and comprehensive.

### **5.1 Views on the status of implementation**

#### **5.1.1 Participants**

The participants interviewed agree that the implementation of the Final and Self-government Agreements needs to improve. As one participant states: “Implementation is the hardest” [6]. While another participant states that all modern treaty First Nations in the Yukon (MTFNYs) are struggling to implement their agreements [2]. A third participant says that “some of these things can sound really good on paper and in discussion, but in practice they are quite difficult or almost impossible to implement” [1]. While some see the implementation of the

agreements as being better today than in the past, most participants see the implementation to be subpar and slow.

Implementation is seen as subpar due to the number of provisions still outstanding. Participants provide a number of provisions that continue to be outstanding. The following are just some of them. One participant references the number of recommendations from the Nine-year Implementation Review (Government of Canada et al, 2007) that continue to be outstanding [0]. Non-Indigenous governments' (NIGs) legislation<sup>34</sup> still needs to be updated to reflect the agreements [0,4]. The fact that this has not happened is hindering the implementation of the agreements [4]. Another participant highlights that no “transboundary or overlapping agreement ... has been resolved by the process outlined in Chapter 2” [7]. Also, impacting the implementation is the lack of metrics both of social indicators [0], and of implementation [1]. The social equity that the agreements strive for is still outstanding and difficult to measure due to the lack of social indicators even though recommendations on indicators is provided in *Together Today for Our Children Tomorrow* [0]. An example of subpar implementation includes the implementation of Chapter 22, Economic Development. The review of the chapter is outstanding even though it was to take place in 2010. NIGs are not “reaching any of the targets contained within Chapter 22, neither for procurement nor for their employment and training” [4]. The representative public service that was to take “into account the aboriginal/non-aboriginal and gender make-up of the population of the Yukon” (G. o. Canada, 2003a, p. 345) was only recently planned although it was to be done within a year of signing which means a delay of 29 years for those Nations who signed in 1993. As another participant says “there’s no comprehensive ongoing assessment of what the needs are” regarding implementation [7]. Leading to the question of: How do we know the status of implementation if it is not measured. While the participants provided their lived experience on the slow pace of implementation of their agreements, a review of what has happened looks to back up their frustrations.

A lot of things in the nine-year review are not complete. The recommendations, Chapter 22 for example. Pretty important chapter that speaks to how First Nations will become an equitable part of the economy. And we don’t even have any proper

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<sup>34</sup> Participants reference Yukon government legislation including Place and Quartz Mining, Fish & Wildlife, Science and Explorers Act, Civil Emergency Measures Act.

indicators, social indicators to really support an argument one way or the other, whether that chapter is working or not. [0]

Another common theme amongst participants is that implementation is happening too slowly. One participant warns that change is not happening fast enough to avoid disaster and goes on to warn that we might not be able to “salvage the environment” [3]. Another participant laments that “the federal bureaucracy is such a slow-moving machine” [4]. A third feels that implementation is moving “[v]ery slowly. And you don’t have a willing partner in Yukon or Canada. They talk the talk, but they don’t walk the walk” [7]. A fourth participant talks about implementation being done in small chunks.

I signed that [Final] Agreement in 2011, negotiations started in 1997 and it took 13 years to get agreement. Just an agreement and now they’re putting meat on a skeleton, which has been - here’s a legbone. You’re not getting the arms, ribs and all that all at the same time. You’re getting [it] in very micro size mouthfuls. [6]

Participants also acknowledge the frustration felt about slow implementation.

We are going through a lot of growing pains is the way I put it and I know a lot of First Nation people are frustrated. They complain that the promises of the agreements are not being delivered and I think that that is legitimate [3].

This frustration is due to the slow and subpar implementation of the agreements.

### **5.1.2 Implementation Plan Reviews**

For each Final Agreement and Self-government Agreement signed in the Yukon there is an Implementation Plan. The plans “identify the activities, timeframes and resources” necessary to implement the agreements (Government of Canada). The effective date for the individual MTFNY Final Agreement Implementation Plans and Self-government Agreement Implementation Plans is the same as that of the Nation’s Final Agreement. This means that for the first four Nations to sign agreements the Implementation Plans were first put into effect 28 years ago and 17 years ago for the last Nation to sign.

In 2007, twelve years after the agreements for the first four MTFNYs were signed, the “Yukon First Nation Final and Self-government Agreement Implementation Reviews” were completed. These reviews were completed by CYFN, Canada, Yukon and seven MTFNY governments. It found that some aspects of implementation were ‘frustratingly slow’ and

included 60 recommendations (Government of Canada et al, 2007, p. 8). For instance, specific recommendations were made to the Parties “to realize constitutional protection of YFN self-government; complete administration of justice agreements, clarify the intended operation of interim justice agreements; establish procedures and policies respecting traditional knowledge; and attain a representative public service” (Government of Canada et al, 2007, p. 8). Today, many of these recommendations are not fully completed. Self-government Agreements are not constitutionally protected. There is only one completed Administration of Justice Agreement (out of eleven) and the intended operation of interim justice arrangements is outstanding. While Yukon is current carrying out work on a traditional knowledge policy it is not complete. Yukon has developed a plan to attain a representative public service but the goal has not been reached (Government of Yukon, 2019, p. 2). The key findings, recommendations, and comments on implementation above continue to be raised by MTFNYs today roughly 15 years later.

### **5.1.3 Land Claims Agreements Coalition**

The Land Claims Agreements Coalition (LCAC) was started in 2003 by Nations with modern treaties. Today the mandate of the LCAC is “to ensure that comprehensive land claims (modern treaties) and associated self-government agreements are respected, honoured and fully implemented” (Land Claims Agreements Coalition, n.d.). In 2017 the LCAC, whose membership includes the majority of modern treaty holders, presented the federal government with their proposal for “A Modern Treaties Implementation Review Commission” (Land Claims Agreements Coalition, 2017). The proposal talks about how “[c]onflicts have become ubiquitous in the implementation world” (Land Claims Agreements Coalition, 2017, p. 9). The proposal also cites that the Auditor General has reported critically four times<sup>35</sup> on the implementation of modern treaties. While Canada has implemented measures to help with the implementation of modern treaties, LCAC points out that they are not always transparent, and are subject to political direction and priorities (2017, p. 10). The LCAC proposal called for an independent commission to “monitor and report to Parliament on the progress of Modern Treaty implementation matters in all parts of Canada where Modern Treaties are in place”

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35 “The 1998 Auditor General’s report was highly critical of the federal role in land claims implementation. This was followed by a second report in 2003 on implementation shortcomings relating to the Gwich’in and Nunavut agreements, in 2007 in relation to the Inuvialuit Final Agreement, and in 2015 on the Labrador Inuit Land Claims Agreement.” (Land Claims Agreements Coalition, 2017, p. 9)

(2017, p. 4). Having an independent Commissioner reporting to Parliament is seen as a way to avoid these and improve transparency.

#### **5.1.4 Non-Indigenous Governments**

The government of Canada and its entities have been most vocal about the implementation of the modern treaties signed in the Yukon with the Government of Yukon saying little.

Canada's most recent attempt at a policy regarding the implementation of modern treaties was released in February 2023. In the document, Canada acknowledges that "Indigenous Modern Treaty Partners have not realized the promises in these agreements [Modern Treaties] intended to support stable, thriving cultures and equitable levels of material well-being."

(2023, p. 6) The document goes on to lay out that not fulfilling these promises is impacting Canada. "These failures create ongoing legal, financial, and reputational risks and damages to Canada" (G. o. Canada, 2023, p. 6). In this policy, Canada committed to developing independent oversight mechanisms including the commissioner requested by LCAC (2023, p. 15). Similar statements regarding the implementation failures and the risks to Canada due to those failures have been made by the Standing Senate Committee on Indigenous Peoples and the Federal Office of the Auditor General (OAG). The Senate Committee cautioned that "failure to properly implement the provisions of modern treaties puts Canada at risk for generating new legions of broken promises" (2008, p. viii). In its report on the Labrador Inuit Land Claims Agreement (LILCA), the OAG found that while the federal government was working to implement select obligations in the LILCA, there were challenges and that

failing to consistently implement obligations in the LILCA and related side agreements jeopardizes the certainty that parties to the agreements hoped to achieve. It also affects efforts by all parties to improve the social well-being and economic prosperity of the Labrador Inuit. Moreover, the federal government risks litigation if its obligations go unfulfilled.(2015, 3.26).

Although both the OAG and Senate Committee reports were written before Canada's latest implementation policy, the theme regarding the failure to properly and efficiently implement Land Claims Agreements runs through.

The majority of implementation work is with the government of Yukon, as responsibility for land and resources in the Yukon devolved to the territorial government from the federal government on April 1, 2003. 20 years later Yukon has not developed an implementation

policy. Although, Yukon committed to “consider developing” a policy that considers the implications of the agreements on new policies and initiatives (2017, p. iv). The Government of Yukon goes on to provide direction to “finalize discussions on the possibility of Yukon government developing an internal directive/policy on implementation of the Final and Self-Government Agreements and recommend a path forward” (2017, p. 4). These commitments were made in the Yukon Forum Declaration “Working Together” (Government of Yukon, 2017). The Yukon Forum brings together leadership from all First Nations in the Yukon and the Yukon Government four times a year to “facilitate frank discussions, debate issues and learn about the positions and interests of others and have substantive outcomes.” (Government of Yukon, 2017, p. i). While these commitments were made in 2017 an implementation policy continues to be outstanding. This could be due to a lack of resources within Yukon to develop such a policy or a lack of interest in doing so. While little is found indicating Yukon’s view, Yukon took part in the Implementation Plan Reviews which concludes that while some implementation has occurred many aspects of implementation is “frustratingly slow” (Government of Canada et al, 2007, p. 8). The participants, MTFNYs, Yukon, Canada, and Land Claims Agreement Coalition have all highlighted challenges and obstacles to the implementation of the agreements.

## **5.2 Obstacles to implementation**

This section will discuss the different obstacles to implementation raised by the participants. Obstacles raised include (i) internal MTFNY challenges, including human resources and funding capacity, complexity of the agreements and the lack of agreed upon MTFNY priorities; (ii) the power imbalance between modern treaty First Nations in the Yukon (MTFNYs) and the non-Indigenous governments (NIGs) of Yukon and Canada; (iii) how MTFNY governments are structured; and (iv) the impact of NIGs on implementation through their risk-adverseness, inflexibility, and the lack of knowledge among their staff.

### **5.2.1 Internal challenges**

The most cited obstacle to implementation by participants is the shortage of human [1, 2, 3, 6, 7, 8, 9] and financial resources [0, 4, 7, 9]. Other obstacles to implementation are that the agreements are complex and work against MTFNYs; they require a large number of resources to implement due to the size MTFNYs’ jurisdiction. Also, MTFNYs’ priorities are often not all the same. As one participant states, there are “some really big issues [to the implementation of the agreements] in terms of capacity and capacity, equity, access, funding”

[8]. The lack of capacity, both of human and financial resources, makes it difficult for MTFNYs to set the priorities for implementation of the agreements. As one participant states frankly MTFNYs need more resources (both people and funds) so that they can contribute equally to the work of implementation:

Canada and Yukon are still really driving the bus when it comes to the management of...natural resources, when it comes to the development of policies and legislation when it comes to health programs, education programs, all of these important things. I mean, I think that the agreements envision that the First Nations will become partners in doing those things but that is still very much a work in progress and for that to occur, the First Nations need more human resource capacity to be able to make ...comparable contributions and part of that is to have ...more financial capacity to be able to do all the things that need to be done [3].

There was agreement amongst the participants that there is a lack of skilled human resources on the First Nations side with one participant pointing to the lack of access to technical expertise as a challenge for implementation. “The First Nations don’t have access to all of the expertise they require when it comes to research, when it comes to expert advice that might come from lawyers, consultants, researchers, biologists, etc.” [3]. Although one participant pointed to the timeframe on MTFNYs as the source of capacity issues.

I hate it when people say we don’t have the capacity because we do. What we need is everybody else to just slow the #\$K down. So that we can concentrate on one thing at a time and in a logical sequential order that makes long-term sustainable sense for all of us to be able to participate in it and with it, in a sustainable, predictable way [4].

This makes sense as MTFNY governments have fewer employees and a larger number of areas over which MTFNYs have jurisdiction. MTFNY governments have around 50-150 employees<sup>36</sup> while in 2022 in the Yukon, there were 7,329 employees in the public administration sector (including federal, territorial and indigenous governments) (Yukon Bureau of Statics, 2022). Areas over which MTFNYs have authority include those of all other three levels of government: federal, provincial/territorial, and municipal. MTFNYs

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<sup>36</sup> MTFNYs do not publish employment statistics so this is based on a rough estimate based on my experience working for MTFNYs for almost a decade.



manage their settlement lands and traditional territory, including Special Management Areas, development assessment, land use planning, water management, fish & wildlife, forest resources, heritage resources and non-renewable resources. Also, MTFNYs are responsible for the enrollment of their Citizens, economic development, implementation of their agreements, and self-government. MTFNY Self-government Agreements replace Indian Act Bands with Yukon First Nation governments that are legal entities with legislative powers and responsibility for programs and services for their Citizens.

A parallel theme amongst participants was the need for a program to fill the human resource gaps going forward with MTFNY or Indigenous people. It is not just a case of finding just anyone to work for the MTFNY governments. There is a preference to have either the Nation's own Citizens or other Indigenous people working for the Nations. One participant sees a lack of Citizens or Indigenous people prepared to carry out these roles: "You know, sometimes I look behind me and I don't see a lot of people, right? I feel a little bit odd when I go to an implementation meeting and I'm the only Aboriginal person. You know, it's a little bit odd sometimes" [9]. Developing capacity to fill the roles in MTFNY governments today is seen as important to the implementation of the agreements. Also important is developing MTFNY Citizens with the necessary expertise to carry out the roles needed by their Nations for the future.

Alongside the lack of human resources impacting the ability of MTFNYs to contribute to implementation in important ways is the lack of financial resources. The lack of funding is an obstacle to implementation as there is not enough funding available to the Nation to carry out all of its duties including their implementation duties. The lack of fund means the necessary people can not be hired, both staff and experts including lawyers, technical experts, and lobbyists. As the agreements are legal documents their implementation often requires significant financial resources to ensure the necessary access to legal counsel. Particularly as the courts are seen as a way to offset the greater power of NIGs<sup>37</sup>. Similarly, there are not funds to train the necessary people since few people have experience working with the agreements. To be successful in negotiations and by extension implementation Nations need to lobby as the Alaskan Natives shared with one participant [7]. Lobbying requires funds to hire lobbyists to strategize, and to support Nations in carrying out those strategies. When

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<sup>37</sup> More on this later in chapter nine: How collaborating more could help implementation.

Nations are faced with a lack of funds, funds are usually directed towards those areas where an immediate impact can be felt, such as into housing instead of areas where the impact takes longer to be felt, such as the implementation of the agreements. As one participant puts it: “none of this implementation money has ever really manifested through the federal government. So, implementation of course is choked by lack of resourcing” [4]. Another participant states that the lack of funding from Canada to support the implementation of Land Claims Agreements across Canada resulted in the Land Claims Agreement Coalition [0]. Demonstrating that MTFNYs and other land claims agreements holders throughout Canada saw value in working together to better implement their agreements.

Similarly, the resources of MTFNYs are impacted by the agreements themselves, their complexity, the fact that they do not favour MTFNYs [8], and differing interpretations. This complexity increases the amount of the time and level of knowledge required of staff, and the reliance on outside technical experts to implement the agreements; finding these resources and funding them is challenging and draws out implementation. While this can be viewed as a resource challenge it is more than insufficient funds to recruit the right people; the size and complexity of the agreements requires many people with experience working with and within First Nations’ governments and with the Umbrella Final Agreement; people who just do not exist. While the agreements are seen positively by the participants, there are also challenges with their size and their complexity. As one participant put it, “the breadth and scope of just trying to implement those agreements is, it’s large” [0]. Also impacting the number of resources needed to implement is that the agreements do not favour MTFNYs [8] therefore a greater effort is required by MTFNYs to ensure that implementation aligns with their expectations. Also affecting resources is differing interpretations which leads MTFNYs to take NIGs to court regularly. As one participant puts it: “we’ve been to court almost every year, for 20 years” [9]. The time required to develop the skillsets and knowledge bases in employees needed to properly implement the agreements delays implementation of them.

Another obstacle to implementation internal to MTFNYs is the lack of agreed upon implementation priorities. While participants noted the lack of MTFNY priorities mostly with respect to collaboration it also impacts the ability to implement the agreements. Particularly as NIGs are looking to work with MTFNYs as a single group. According to participants not all MTFNYs have the same implementation priorities in part due to the

differences between MTFNYs<sup>38</sup>. As one participant states MTFNYs are not united on the issues or the priorities [2]. “Some First Nations have very different priorities and that’s what makes it [implementation] so difficult. You’ll only have four or five that are really concentrated on justice, or three or four that are concentrated on fish and wildlife” [2]. Having multiple priorities and not having agreement on which to work on first makes it difficult to achieve implementation as everyone is pulled in separate directions. The lack of funding and appropriate staff for MTFNYs, along with the complexity of the agreements, and the lack of agreed upon MTFNYs’ implementation priorities all impact MTFNYs’ ability to implement the agreements along with their ability to collaborate which will be touched on later.

### **5.2.2 Power imbalance between MTFNYs and NIGs**

The greater power of NIGs versus MTFNYs impacts the implementation of the agreements because NIGs have a greater say in how implementation moves forward, what the implementation priorities are, and the implementation timeline. This is due in part to the fact that NIGs provide the majority of funding to MTFNYs to run their governments and the decision-making structure. The impact of this power imbalance is moving away from the spirit and intent of the agreements and the limiting of options available to MTFNYs.

Almost all of the funding to run the MTFNY governments comes from Canada and is set out in the Financial Transfer Agreements between the Nation and Canada. While MTFNYs raise funds through economic development it is carried out by development corporations whose revenues are typically not available to MTFNY governments. Also, the implementation of MTFNYs’ ability to tax is outstanding. Due to NIGs providing the majority of funding they also make the decisions on the how, what and when of implementation. As one participant lays out, Canada often makes decisions on what moves forward based on cost and that is a problem for the implementation of the agreements as it is a unilateral decision.

I think what’s not working well [regarding the implementation of the agreements] is that Canada still kind of cherry picks what it believes it could afford both in the policy context and in an economic context. How much is this going to cost us? What can we afford? [7]

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<sup>38</sup> The differences between MTFNYs is expanded in 8.1 Differences between MTFNYs (an obstacle to collaboration).

The participant goes on to state that not only does Canada decide on which programs move forward based on cost but also Canada sets the timeline for implementation. Implementation is

still moving along but at the convenience of Canada, I would say. If Canada says “This month, the flavour of the month is languages, we’ve got \$500,000 which we can advance but we need a scheme from you Indians in the Yukon as to how you’re going to divide that up. You could do it per capita, however you do it, but this is the timeframe,” you’ve got to accept [7].

In this description, rather than working with MTFNYs to determine the amount of time and funding needed to implement local priorities from the agreements, Canada is not only setting the implementation priorities (language) and the amount of funding available (\$500,000) but also the schedule. The participant is highlighting that Canada often sets the timelines and process to resolution without involving MTFNYs in the decision-making process on either.

The decision-making structure also often situates NIGs as the ones making the ultimate decision such as for permits, legislation<sup>39</sup> and in the following example the engagement process. NIGs often make decisions regarding the engagement process including who is involved in the process including placing constraints on MTFNY representatives in the process without agreement from MTFNYs. As one participant lays out, this includes how many MTFNY representatives can be involved in the process to collaboratively develop legislation:

We got a letter from Minister Streicker and the Minister of Environment, Nils Clark, that says that [the Nation] is allowed to have one representative on this successor resource legislation working group. So, immediately, my back’s up against the wall. Why does [the Nation]<sup>40</sup> only get to have one rep? First of all, how come you get to decide that? [4]

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<sup>39</sup> While there are bodies that make recommendations to NIGs including MTFNYs, ultimately NIGs make the decisions. For example, Yukon has decision-making authority around land use (outside of Settlement Lands) and water permits in the Yukon. Also, NIGs have decision-making authority around their own legislation including Canada’s *Yukon Environment and Socio-economic Assessment Act*.

<sup>40</sup> The actual First Nation’s name is removed here to ensure anonymity.

Final decision-making also sits with NIGs as many of the commissions developed via the Umbrella Final Agreement only provide recommendations to NIGs. While the spirit and intent of the agreements was to co-manage the land, the reality is that MTFNYs provide input to NIGs who ultimately make the decisions. A participant describes the spirit and intent of the agreements, and their outcome as follows:

The co-management of the territory was agreed upon by giving up a huge amount of our traditional territory. So, we ended up with you know, giving up rights to huge tracts of land based on a certain promise and that promise was never really [up]held [4].

An example of MTFNYs providing input to permits while the NIG makes the decisions on the issuing of the permits being recommendations to the Yukon government from the Yukon Environmental and Socio-economic Assessment Board (a committee set up through the Final Agreements). Yukon can decide to accept, reject, or vary the recommendation before issuing a Decision Document (Board)<sup>41</sup>. This decision-making authority held by NIGs impacts the implementation of the agreements as it can undermine the intent of the agreements as demonstrated by the court cases around regional land use plans and proposed amendments to federal legislation<sup>42</sup>.

The power imbalance can not only move implementation away from the spirit and intent of the agreements, it also impacts implementation of the agreements through what options are available to MTFNYs. As one participant says: “It all ties back to the idea of power and is it really our decision if it’s the only decision that we can make” [1]. NIGs use their power to limit the options available to MTFNYs. In all these ways, NIGs’ use of their power to determine the implementation priorities, the timeline, and how implementation occurs, obstacles to the implementation of the agreements in a fair and consistent manner.

### **5.2.3 MTFNYs government structure**

Another obstacle to the implementation of modern treaties in the Yukon is the need for MTFNYs to develop governments that mirror those of their non-Indigenous partners. MTFNY governments require administrations that are new to them and a governance

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<sup>41</sup> Not all YESAB recommendations go to Yukon though the majority do.

<sup>42</sup> More information on the Peel Land Use Regional Plan Court case can be found in 6.1.3 and the court case regarding proposed amendments to YESSA in 6.1.2.

structure that was not based in FNYs' values nor how they governed themselves in the past. This latest version of MTFNY government is the third version since contact with non-Indigenous people. The suggestion that land claims agreement negotiations in the Yukon were changing First Nations was put forward by Paul Nadasdy in his thesis "Hunters and Bureaucrats" (2001). The requirement for MTFNYs to have governments similar to NIGs is an obstacle not only due to the unfamiliarity of the new system but also in the amount of time and resources that are diverted to setting up such a government; resources diverted away from important tasks like implementing the agreements.

Before the signing of the modern treaties, FNYs were administered according to the *Indian Act*. FNYs were governed by elected band councils which were similar to a municipal government format that allowed them to self-administer (Catt & Murphy, 2002, p. 45). Once the agreements were signed, the jurisdiction for which MTFNY governments were responsible grew considerably and they had to set up new administrations to govern themselves<sup>43</sup>. MTFNYs were required to set up their government in a way that mirrors their significantly larger non-Indigenous partners. As Nadasdy states,

any effort by indigenous people to engage with settler state officials in the political arena requires them to conform to the cultural entailments of sovereignty – a set of assumptions about the nature of space, time, knowledge, and sociality that is intimately bound with the state form – or risk not being heard at all. (2017, p. 4)

Because of the aforementioned power imbalance, the only way for MTFNYs to interact with NIGs is to do it in the NIG manner. MTFNYs "must organize themselves into bureaucratic departments that correspond at least roughly with those in the federal and territorial governments" (P. Nadasdy, 2017, p. 7). Setting up governments that mirror NIGs is a new drain on capacity; it takes time and resources to determine, plan, develop and implement the processes necessary in order to deal with NIGs along with governing themselves. It is up to MTFNYs to determine how to carry this out and it can be challenging. One participant felt that "a challenge from a community point of view i[s] trying to implement a euro-descended model of governance successfully, based on fiscal and budgetary mechanisms introduced to

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<sup>43</sup> It should also be noted that while the agreements were signed between 28 to 17 years ago, MTFNYs are significantly younger than the NIGs which have had 155 and 125 years to develop their administrations and processes. The first four agreements were signed in 1993. The last agreement was signed in 2005. Canada was established in 1867 and Yukon in 1898.

Indigenous people by someone else” [4]. Not only is it challenging but MTFNYs must also find the staff to carry out this new administration.

Another challenge for MTFNYs is that this mirror government does not represent or align with MTFNYs’ “traditional values and practices” [1] nor does it align with the expectations that MTFNY people had regarding the outcome from the agreements. The agreements were not seen as a way to further assimilate MTFNYs. Rather, as one participant stated, implementation should be carried out in a way that is “relevant and appropriate” for First Nations [1]. A goal that the participant did not see the current model achieving. Indigenous scholars have cautioned against First Nation governments being so similar to those of non-Indigenous governments. Like Nadasdy, Coulthard warns that colonized peoples will take on the structures of their colonizers, though Coulthard goes further in stating that colonized peoples will seek recognition from their colonizers (Coulthard, 2014). Both, implementing the NIG structure and seeking NIG recognition, limit the colonized people’s freedom and will mean that they “will have failed to reestablish themselves as truly self-determining: as creators of the terms, values, and conditions by which they are to be recognized” (Coulthard, 2014, p. 39). Coulthard (2014) theorizes using Fanon’s *Black Skin, White Masks* that recognition of First Nations by NIGs has gotten in the way of First Nations using or asserting their own systems of governing. The power dynamics between the state and First Nations has led to First Nations recognizing themselves based on the State’s way of doing things. The courts, treaties, Canadian law, etc. set how colonized people govern themselves instead of Indigenous peoples using the practices they used before colonization (Coulthard, 2014). Whether due to the practical draw on resources or simply a distraction from the act of governing, when MTFNYs are forced to mirror their non-Indigenous partners’ form of government instead of using their own pre-existing systems of governance, it is an obstacle to implementing the agreements.

#### **5.2.4 Impact of Non-Indigenous Governments**

Non-Indigenous governments (NIGs) are seen to negatively impact the implementation of the agreements by participants based on how NIGs interact with MTFNYs regarding the implementation, and how NIGs work internally. NIGs are seen as unwilling to help MTFNYs implement their agreements; they will effectively withdraw from implementation processes in order to slow them down or demand unachievable outcomes such as unity of MTFNYs. NIGs also do not take MTFNYs’ interests seriously; NIGs and MTFNYs do not collaboratively

determine implementation priorities. NIGs are also seen as using negotiation strategies of dividing MTFNYs to succeed. Internally, NIGs are seen as inflexible and risk adverse which is an obstacle as NIGs are unwilling to accommodate MTFNY interests in the implementation. Also, internally NIGs do not train their staff sufficiently regarding the agreements so MTFNYs are left to do this training.

NIGs are an obstacle to implementation when they effectively withdraw from important implementation engagement, slowing down the process. In 1994, the three parties to Umbrella Final Agreement formed the Implementation Working Group (IWG) (Slowey, 2021). As time passed, implementation of the agreements became more contentious particularly after the completion of the agreements' implementation reviews. Due to the recommendations Canada started to undermine the IWG by changing out their representatives and reducing their ability to make decisions.

Both Canada and Yukon used to send really powerful people to that group [IWG] and so did the First Nations. But what happened over time is that the quality of, and this started with Canada. Canada, I think made a very conscious decision to send junior people because they didn't want their representative at that table to make binding decisions on their part. And I think that got way worse after the [agreements' implementation] reviews. Because the Canada representative signed off on that review, which I thought was a good review, but then when it worked its way up the ladder in the Canada system, Canada wanted to disavow some of those recommendations. And so, I think following those reviews, beginning in about 2008, I think they very consciously withdrew their senior people from that table and began to send more and more junior people who didn't have any decision-making authority and who could only listen and take note[s] and had to take everything back to talk to somebody else and they were basically able in that way to scuttle any progress at the Implementation Working Group table. And Yukon began to follow suit because nobody wants to send senior people into a forum where there is no progress and then the First Nations did the very same thing. So, I think what happened to the Implementation Working Group over the years is that the senior people were withdrawn, more and more junior people were assigned and now it's just kind of performed for wishy washy twiddling of thumbs, is my impression of it [3].



While the IWG was seen as positive in the beginning, Canada's actions impacted the transparency of the decision-making process and increased the timelines to decisions. While one participant saw this diminished authority being a conscious decision by one party, another participant saw it as an outcome due to the complexity of topics being discussed:

I think there was a time when there was a lot of focus on the implementation working group... That [it] was making great progress on some specific items, but I think that as the items developed and became more complex, I think that body; a lot of those items moved to other areas and made it a little more challenging for that table to really move on some of it [5].

Whether it was the complexity of implementation items or Canada's unwillingness to have binding decisions made by the IWG, the fact remains that Canada had the power to unilaterally withdraw its senior representatives from the IWG and replace them with more junior staff members. Another way in which NIGs demonstrate their unwillingness to implement the agreements is by setting MTFNYs up for failure. One participant felt the NIGs set a lot of First Nations up for failure with the foreknowledge that without assistance there were "things that we would never be able to implement or have the wherewithal to implement, such as justice, education, child welfare" [2]. The unwillingness to help MTFNYs is particularly frustrating as NIGs are seen to help each other. For example, regarding fish and wildlife enforcement, Canada and Yukon are "quite willing to help each other [enforce their laws], ... but they will not help the First Nations to implement their laws or protect their lands" [2]. How NIGs take part in the implementation process affects implementation, like when NIGs actively work to slow down the process or set up MTFNYs for failure.

Non-Indigenous governments (NIGs) are often an obstacle to MTFNY implementation because they demand unachievable outcomes such as unity amongst MTFNYs before moving forward. Since unity is not always possible, the goals sought by the MTFNYs are not achieved. Then the next time MTFNYs try to collaborate the rationale to do so is less compelling due to the failure of collaboration in the past. Participants' examples included Canada and Yukon using the lack of unity between MTFNYs to stall legislative changes. One participant provided the example of the federal government not implementing changes to Canada's *Interpretations Act* because "there were too many opposing views" and the ongoing challenge to get Yukon to implement the changes required by Final Agreements to the *Wildlife Act* [4]. A similar demand of unanimous views was used by Yukon to not sign a

resource revenue agreement with MTFNYs. Although all MTFNYs were involved in the negotiations in the end one MTFNY declined to sign which caused Yukon to not sign the agreement with the remaining MTFNYs [3].

Yukon government is seen as taking advantage of the break down in unity amongst First Nations as a negotiation strategy since the signing of the UFA and the beginning of the individual negotiations of the Final Agreements. As one participant put it, the Yukon government was playing one First Nation off another because the First Nations allowed it.

You could see it all the time, especially right after the land claim and the early 2000's. You could see how YG was asserting itself and how it was kind of, working with this group over here, but not that group and it used to strike me as like-we never would have allowed that back in the day, where you could just pick off Kluane First Nation from the rest of the group, right. We never would have allowed that to happen [0].

Yukon government is also seen as benefitting from this negotiating strategy of playing MTFNYs against each other to draw out implementation of the agreements.

So, you get into these situations where people are realizing that they need to have more resources to do this and we [Yukon government] don't have an infinite amount of resources and YG often does benefit from that disruption caused by a lack of synergy amongst First Nations about how they want money to be rolled out. And so, you know, I've got a couple files that sit waiting for First Nations to identify how they want to have that money be allocated. And we [Yukon government] benefit by saying, "Well, you guys just tell us what you want, we'll do it". Knowing that is a long drawn-out, protracted conversation. So, the money it literally just sits in accounts [5].

Yukon government's agenda of wanting to look as though they are doing something while not is upheld as First Nations are blamed for the holding pattern, all while discouraging collaboration amongst MTFNYs. Another participant provides an example of the Yukon government using differences between MTFNYs to separate them and achieve Yukon's goals in the land claims negotiations and continues to do so today occasionally [0]. Not sharing information amongst MTFNYs can have negative consequences and is seen as a strategy used by NIGs.

It's governments' strategy of isolating us from each other. [It] has definitely been a tactic ... They'll give some information to one Nation about a funding agreement and then they'll tell a[nother] Nation that they're going to get something totally different and it's so unhelpful [8].

This outside interference not only impacts relationships between MTFNYs is also impacts the implementation of the agreements because NIGs are using a divide and conquer strategy between MTFNYs diminishing trust which is an important need for collaboration. "That's a Yukon [government] thing. If [they] can divide and conquer, [they] get further ahead. When 14 First Nations come together and say, "We will not tolerate this", they [Yukon government] don't like to hear that." [2] By separating MTFNYs, distracting them from working together, NIGs are in a better position to determine the implementation priorities.

Another obstacle to implementation is the unwillingness of NIGs to take into account the interests of MTFNYs in implementation. MTFNYs' interests are not included due to NIGs' reactions to those interests and unwillingness to include the MTFNY interests in the implementation of the agreements. This can be categorized as risk aversion or inflexibility. Yukon is seen as risk adverse and prefers solutions based on past precedent which might not be based as forward-thinking as MTFNYs wish. One example comes from the collaboration in drafting of federal *Yukon Environmental and Socio-Economic Assessment Act* (YESAA) legislation. A participant felt that NIGs expressed unnecessary reticence toward innovations like co-drafting and sharing. NIG representatives told the participant:

"Well, that's not how we do it" [and his response was] "I don't give a shit how you used to do it". To be frank, one of my biggest obstacles is that advice often is based on precedent and what we've done in the past. .... And that continues to be a limitation on big change on some of this stuff. If you wander too far off an existing path, lots of people throw up flags, including our legal advisor on some of that stuff. And that can be a limiter to doing something different [5].

Participants see the actions of NIGs to not include MTFNYs' interests, whether they be timelines, agreed upon recommendations, or innovative solutions, in the implementation of the agreements as a large obstacle to the actual implementation of the agreements.

Another obstacle to implementation is NIGs' staff, their lack of knowledge and paternalism. A common theme with respect to implementation by participants is the frustration with the lack of knowledge displayed by NIG staff members. As one participant puts it, there remains "a lot of learning and understanding of our agreements and specifically the rights we've defined in our agreements, and abilities in our agreements that still aren't quite broadly understood across various government departments" [8]. This lack of knowledge impacts implementation timelines.

Even when there's senior officials that transition into roles, they need two or three years to get up to speed on some of the issues and so I do find that there's definitely gaps in terms of just general understanding with federal partners. [8]

Educating NIG staff also takes time and resources away from MTFNYs' own work on the implementation of the agreements.

We're also spending a lot of our time as Nations getting people up to speed, informing, helping people to understand and so that becomes I think a real barrier to actual implementation because a lot of the time is spent educating people [8]<sup>44</sup>.

The lack of knowledge of MTFNYs and the agreements makes implementation difficult by slowing down the implementation process and using up the small amount of MTFNY resources to train NIG staff.

One potential cause for the lack of knowledge demonstrated by NIG staff is the high turn over amongst staff. Often staff are assigned a file for a couple of years and then reassigned somewhere else within the government. This happens more often within the federal government versus the territorial government. As one participant lays out, intergovernmental cooperation is challenging in part,

because the names, places and faces change. You have to wait for the next election cycle and then they have to get their mandate in place, and then they have to get their house in order. So, we wait for our counterparts to get organized again and then we

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<sup>44</sup> In an effort to try to alleviate the need for individual modern treaty holders to educate others, the Land Claims Agreements Coalition developed free courses on modern treaties that are available online. Each course is an hour long. There are six modules covering land, environment, Modern Treaty governments, regional economies, and self-government, along with an overview of modern treaties in Canada.

can pick up where we left off, re-educate a new batch of people and hope that they agree with our interpretations [4].

Despite their lack of knowledge, there is a feeling that the NIG staff often display paternalism, that the NIG staff know better how to do things. This also undermines the inclusion of MTFNYs' interests as they are seen as secondary or not as important as the interests of the NIGs. One participant felt that the Yukon government still feels they

are the best ones for the job and sometimes I think it is a lack of understanding of how First Nations govern, how First Nations people think, cultural differences. Because somebody doesn't have three different degrees doesn't mean they don't understand the issues and the challenges in the community. And how [the community's] services can be adjusted to support them. At the same time, I think that the converse can be true sometimes that just because somebody isn't from the community, doesn't mean that they don't have value too [5].

While the knowledge of MTFNYs is important in the implementation of the agreements, all party members are important to the implementation. Members of all three parties bring important input to finding ways to implement the agreements which means all three need to understand the agreements.

### **5.3 Conclusion**

The implementation of the agreements is failing as laid out by the participants, the Implementation Plan Reviews, the Land Claims Agreement Coalition, and the non-Indigenous governments of Yukon and Canada. There are many obstacles to implementation including challenges internal to MTFNYs, the power imbalance between MTFNYs and non-Indigenous governments, how MTFNY governments are organized post-agreements, and the impact of NIGs on implementation. They are obstacles as they affect how implementation occurs; which issues are prioritized and how they are chosen; and the timelines of implementation.

## 6 Examples of collaboration

First Nations in the Yukon collaborate regularly and have collaborated in the past. This section attempts to lay out the strongest examples of collaboration provided by participants. These examples are divided into those before the signing of the Umbrella Final Agreement (UFA) and those after. This is because participants highlighted the work before the signing of the UFA as examples of successful collaborations, including the development of *Together Today for Our Children Tomorrow* and the negotiations of the UFA. Post UFA, participants provided a more diverse group of successful collaborations with members of the collaborations ranging from a few MTFNYs to a group of Canada wide self-governing Indigenous governments. Examples of post UFA collaborations include a small group of MTFNYs taking non-Indigenous governments (NIGs) to court, a larger group negotiating Financial Transfer Agreements with Canada, and a group of Canada wide self-governing Indigenous governments working with Canada to develop a new federal fiscal policy. Pre-UFA collaboration examples include the majority of First Nations in the Yukon coming together to develop negotiation mandates and negotiating the UFA. Work done pre-UFA to develop collaborative entities, including developing community caucuses, continues to help collaboration occur today.

### 6.1 Post Umbrella Final Agreement (UFA) collaborations

These post UFA collaborations amongst First Nations in the Yukon with modern treaties (MTFNYs) tend to be around specific issues or projects as opposed to long-term cooperation in setting up umbrella organisations as happened during the negotiation of land claims agreements in the Yukon. Although those umbrella organisations set up in the past make collaboration today easier. Those issues might be ongoing such as fiscal negotiations which can be project based in the case of the federal fiscal policy or ongoing in the case of the ongoing negotiations of Financial Transfer Agreements (FTAs). Also, the group of First Nations collaborating might be smaller or Yukon wide, or larger or Canada wide. Or the collaboration might be regarding specific projects with a limited timeline such as the court cases launched by MTFNYs around changes to the Yukon Environmental and Socio-economic Assessment Act (YESSA) or Bill S-6 which sought to undo changes made by the Yukon government to the Peel Land Use Management Plan. With respect to both the court cases, participants talked about the importance of community caucuses to collaboration.

### 6.1.1 Fiscal Negotiations

Negotiations are a venue where collaboration often happens. MTFNYs organize caucuses for the negotiations of Financial Transfer Agreements<sup>45</sup>. At the Financial Transfer Agreements negotiation table MTFNYs share in the funding of experts, and develop a common position through consensus, compromise, and accommodation [3]. There is also a national “Self-governing<sup>46</sup> Indigenous Governments” caucus for the development of a federal fiscal policy (often called “the new Collaborative Federal Fiscal Policy for Self-Government”). This policy sets out what Canada funds and how much with respect to self-governing First Nations. The caucus includes many self-governing First Nations nationally and several from the Yukon. While the policy’s title refers to collaboration between self-governing Indigenous groups and the federal government; collaborations between self-governing Indigenous groups also occurs.

### 6.1.2 Bill S-6 – amendments to YESAA

The notable thing about collaboration on Bill S-6 is that it was an organized, ad-hoc, defensive reaction to a government proposed plan rather than a future looking Indigenous-proposed plan like *Together Today*. The collaboration started out as simply defensive (to stop Bill S-6), but it ultimately produced something better and Indigenous supportive. Between 2014-2015, MTFNYs fought against Bill S-6 which amended the *Yukon Environmental and Socio-Economic Assessment Act* (YESAA). The Umbrella Final Agreement’s twelfth chapter, Development Assessment<sup>47</sup>, aims to provide a development assessment process. Objectives for the process include providing guaranteed participation by First Nations and providing certainty regarding the process to all parties including proponents. The chapter sets out how legislation consistent with the chapter should be developed. In 2003, this legislation was established by the federal government, YESAA. It came into force in November 2005 (Yukon Environmental and Socio-economic Assessment Board, 2020). Chapter 12 also contains a requirement to carry out a five-year review of YESAA by the parties to the

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<sup>45</sup> A significant portion of the funds to run self-governing First Nations’ governments are transferred from the federal government to First Nations through the Financial Transfer Agreements between the individual Nations and the federal government. These agreements are renewed typically every five years and are an obligation found in section 16 of the Self-government Agreements.

<sup>46</sup> Self-governing is used here as not all the First Nations included in this process have land claims agreements but rather all have self-government agreements. There is sensitivity around categorizing those without modern treaties as not self-governing, so I categorize FN’s in the Yukon with final and self-government agreements as modern treaty holders.

<sup>47</sup> This chapter is found both in the Umbrella Final Agreement, the template for each First Nation in the Yukon’s Final Agreement, and each individual Final Agreement.

Umbrella Final Agreement: Council of Yukon First Nations, Canada and Yukon<sup>48</sup>. The review started in 2008. While some recommendations for changes were agreed to quickly, there remained some First Nation issues that were not addressed in YESAA (Council of Yukon First Nations, 2014). In 2012, without input from Yukon or First Nations, Canada created a Draft Interim Review Report and presented it to Yukon government and First Nations for their support (Council of Yukon First Nations, 2014). Canada then finalized the report, without CYFN and First Nations' support, and considered the review completed in October 2012. In June 2014, the federal government introduced Bill S-6, "Yukon and Nunavut Regulatory Improvement Act: Proposed Amendments to the Yukon Environmental and Socio-economic Assessment Act (YESAA)". In Bill S-6, Canada added four new amendments<sup>49</sup> not previously shared with First Nations in the October 2012 report, amendments that First Nations saw as seeking to "undermine Aboriginal rights and breach [their] agreements" (Council of Yukon First Nations, 2014, p. 7).

Collaboration amongst First Nations in the Yukon helped ensure that legislation to enact the Development Assessment Chapter of their Final Agreements was done following the spirit and intent of their agreements. To ensure that the new amendments did not undermine this MTFNYs launched a media strategy that included letters sent to the Governor General, numerous press releases and presentations to the House and Senate. Despite that, the bill passed into law in 2015. In response, three Yukon First Nations, Teslin Tlingit Council, Little Salmon/Carmacks First Nation, and Champagne & Aishihik First Nations filed a petition with the Yukon Supreme Court (Thomson, 2015).

Although the court case was filed by three First Nations, all eleven and their collaborative entity (CYFN) were involved in the court case. As reported by CBC at the time, "the petition [to the Yukon Supreme Court] was accompanied by affidavits from a total of 11 Yukon chiefs. [Little Salmon/Carmacks Chief Eric] Fairclough says all First Nations which belong to the Council of Yukon First Nations are helping to pay for the cost of the lawsuit" (Thomson, 2015). One of the participant describes the process and feelings of the day:

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<sup>48</sup> Found in provision 12.19.3 of the Umbrella Final Agreement.

<sup>49</sup> The amendments added included: "delegation of federal powers to Yukon government; policy direction to the YESAA board; timelines for assessments; and exemptions from renewals and amendments" (Deuling, 2017).



the federal government, the Harper [federal] government decided they were going to unilaterally amend the YESAA legislation and there were four really contentious issues that were dealbreakers for us. We had worked with Canada for years to develop the legislation and regulations, right from square one with their legislative drafters until the very end, and then you know, in mid 2014, 2015 the federal government proposed changes.

The court case ended when the Conservative federal government who introduced Bill S-6 was not re-elected in October 2015. The new Liberal federal government removed the troublesome amendments and passed a new bill on December 14, 2017 (Cameron, 2019, p. 8). Changes in direction by the federal government on how YESAA would be amended, including removal of the four contentious amendments is seen as an example of a successful outcome for First Nations in the Yukon. When the First Nations come together and collaborate, they achieve outcomes that were not possible individually.

Not only is collaboration amongst the First Nations important but also how that collaboration is carried out, including with community caucuses. As stated by one participant,

I think collaboration is really, really important. A lot of the files I've worked on over the years, were all about collaboration and of course this is my bias because of CYFN right, like, things that we did for YESAA was we had a community caucus [9].

Community caucuses are a long-standing practice of collaboration between MTFNYs. During the land claims negotiations, the importance of community caucuses to the success of the negotiations is highlighted by one participant [7]. Along with caucuses to carry out collaboration successfully, the fact that the First Nations came together to launch their petition in court and provided funding to support the collaborative process were important to the success of repealing Bill S-6. It shows the importance of the development assessment process and its implementation to First Nations. The coordinated work by First Nations in the Yukon against Canada's Bill S-6 ultimately led to it being replaced with a bill that First Nations, Yukon and Canada agreed on. A bill that reflected the work done by the three parties. Collaboration often pushes non-Indigenous governments to implement the agreements.

### **6.1.3 Peel Land Use Regional Plan Court Case**

Similar to the Bill S-6 court case, MTFNYs took an NIG to court to ensure the proper implementation of the agreements. In 2014, several First Nations in the Yukon came together

and took the government of Yukon to court over changes made to the proposed Peel Watershed Regional Land Use Plan. The First Nations, joined by others along the way, ultimately took the fight to the Supreme Court of Canada where they were successful in getting the Yukon government plan thrown out.

The Peel Watershed Planning Region covers 67,431 km<sup>2</sup> in northeast Yukon (Peel Watershed Planning Commission, 2019, p. 1). It falls within the Traditional Territories of Tr'ondëk Hwëch'in, the First Nation of Nacho Nyak Dun, and Vuntut Gwitchin (MTFNYS), and the Tetlit Gwich'in from the Northwest Territories. As stated by the Supreme Court of Canada, the Umbrella Final Agreement sets out a “collaborative land use planning process” between the three parties to the agreements: the governments of the First Nation, Canada and Yukon (“First Nation of Nacho Nyak Dun v. Yukon,” 2017, p. 576). In 2004 planning began for a regional land use plan for the Peel region. A Final Recommended Plan was presented to the Yukon government in 2011. Without support from all relevant First Nations, the Yukon government then “proposed and adopted a final plan that made substantial changes to increase access to and development of the region” (“First Nation of Nacho Nyak Dun v. Yukon,” 2017, p. 577). The Final Recommended Plan presented to the Yukon government had been developed following the process set out in Chapter 11, Land Use Planning, of the Umbrella Final Agreement, the template for Final Agreements in the Yukon.

In 2014, the First Nations of Nacho Nyak Dun and Tr'ondëk Hwëch'in took the Yukon government to court, arguing the Yukon government approved Peel River watershed land use plan contravened their respective Final Agreements (“First Nations, environment groups sue Yukon over Peel plan,” 2014). The Gwich'in Tribal Council, although headquartered in the Northwest Territories, was an intervenor to the proceedings due to their having Traditional Territory in the Peel Watershed. Over the course of the next two years, collaboration continued to grow. In November 2015, the Vuntut Gwitchin First Nation had joined the plaintiffs. When the case was then taken to the Supreme Court of Canada (SCC) in March 2017 the Council of Yukon First Nations also joined as an intervenor. In December 2017, the SCC unanimously ruled that the process should return to the Final Recommended Plan (“Supreme Court rules in favour of Yukon First Nations in Peel watershed dispute,” 2017). In August 2019, the five governments (Yukon and four First Nations) finalized the Peel Watershed Regional Land Use Plan at a signing ceremony in the Traditional Territory of the First Nation of Nacho Nyak Dun (Yukon Government, 2019).

In this case, three First Nations, along with two Councils, the Council of Yukon First Nations (a body with representatives from most First Nations in the Yukon) and the Gwich'in Tribal Council (made up of four Gwich'in Councils in the Northwest Territories) came together to ensure the implementation of their Final Agreements. As this example demonstrates collaboration is not just between First Nations but can also be between individual First Nations and collaborative bodies. This multi-level collaboration is important. While it is probable that the addition of plaintiffs and intervenors to the court case as it progressed through the system is due in part to the success that the plaintiffs were experiencing, the need for additional voices and resources probably helped to see the additional participants embraced.

The importance of collaboration in implementing the Agreements, with the Peel Land Use Plan as a specific example is laid out by several participants. One references the caucuses built up by First Nations, specifically the northern First Nations (Vuntut Gwitchin, Tr'ondëk Hwëch'in, First Nation of Nacho Nyak Dun, and Little Salmon Carmacks First Nation) in the Northern Tutchone Tribal Council. As shared by a participant, these caucuses take on a regional perspective and move issues forward together.

I think about the northern Chiefs and the caucus that they have and how they're able to, again from a regional perspective, some of the issues that [they] may be dealing with from a geographical or implementation in terms of mining territory, mining rich traditional territory. You've seen some really interesting movements there, especially with the Peel watershed for example [8].

The Northern Tutchone Tribal Council was once a formal entity with a budget and staff. Today the Nations continue to work together although in a more informal manner now as it is no longer funded as an entity. As described by a participant it is still an important entity for collaboration.

[T]he activity at the [Northern Tutchone] Tribal Council level has not diminished. At all. Like the collaboration is still as much as it ever was. We still meet in Pelly regularly; we still meet in Carmacks. We still share the hosting of events, camps, meetings [4].

The Peel court case and the ruling by the Supreme Court of Canada ensured that the implementation of the Final Agreements is upheld. This ruling is due in part to the

collaboration amongst a group of MTFNYs including the Council of Yukon First Nations, a lobbying body for FNYs.

## 6.2 Pre-UFA Collaborations

When discussing recent collaboration, participants stated that collaboration in the past was easier particularly around the land claims negotiations that led to the Umbrella Final Agreement (UFA). The following will discuss the collaboration involved in both *Together Today for Our Children Tomorrow (Together Today)* and the land claims negotiations. Participants suggested that the reasons for the ease of this earlier collaboration were a common vision and closer relationships back then.

### 6.2.1 Together Today for Our Children Tomorrow

*Together Today for Our Children Tomorrow* was raised by seven (of the ten) participants as an example of successful collaboration that happened in the past. Authored by the Yukon Indian People in 1973, *Together Today* is credited as starting land claims negotiations in the Yukon (Council of Yukon First Nations). *Together Today* was initially written by the Yukon Native Brotherhood (YNB), an organisation representing status Indian established in 1969 (Council of Yukon First Nations, 2005). In 1970, the Yukon Association of Non-Status Indians (YANSI)<sup>50</sup> was established (Council of Yukon First Nations, 2005) and developed a response to *Together Today* shortly after it was submitted by YNB to Prime Minister Elliot Trudeau (Rice, 2014, p. 4). First Nations in the Yukon came together after the Supreme Court released on January 31, 1973 their Calder case ruling that Aboriginal title existed<sup>51</sup> and presented *Together Today* to the Prime Minister in February 14, 1973 (Council of Yukon First Nations, 2024).

Among other things *Together Today* proposes that First Nations in the Yukon governance include central, regional and local components. The document anticipates collaboration on a large scale with “the setting-up of a permanent Central Organization, both for political and administrative purposes” first (Yukon Indian People, 1973, p. 28). In the end, it is not clear

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<sup>50</sup> For more on the difference between status and non-status Indians refer to the section in the Background chapter.

<sup>51</sup> In Calder case the Supreme Court of Canada ruled that Aboriginal title existed before colonial law due to the *Royal Proclamation of 1763*. The federal government reacted to the ruling by setting up the land claims process and issuing the Comprehensive Land Claims Policy.

whether this central organisation envisaged in *Together Today* was established in the Council of Yukon First Nations.

Some participants emphasized that the level of collaboration resulting from *Together Today* went beyond the collaboration that happens today in part due to the common vision of the document.

I think they did better before. When they all had one goal: *Together Today*; Let's become self-governing. They were all driven towards the UFA [Umbrella Final Agreement] and reaching Final Agreements. So, 30 years ago, 40 years ago they were more collaborative than they are now [2].

Another participant sees *Together Today* as providing a common strategic vision:

As individual Chiefs, they couldn't get [their] voice[s] recognized but collectively there was a difference. And that came from that collective strategic view and the manifesto, the manifesto that they created *Together Today for Our Children Tomorrow*. It set a vision, a common strategic vision of how they were going to do something and how they were going to accomplish it. That was catnip to the federal government of the day. It never seen that before [5].

Collaborating, working together for a common goal, was a big part of *Together Today* which set off the land claims negotiations [7].

Another participant sees relationship and partnerships between MTFNYs being different during the development of *Together Today* [6]. They advocate for following the “integrity” of *Together Today* as being important to the legacy they wish to leave behind and encourage MTFNYs to return to the “simplicity of the vision” of *Together Today* [6]. Although they connect that simplicity to having nothing back then and how that impacted the relationships then and the difference to relationships today [6]. “We had nothing... that was the difference” [6]. Today MTFNYs have a lot which makes them more independent than in the past and less willing to undertake the work required to collaborate [6].

### **6.2.2 Land Claim negotiations**

The land claims negotiations that resulted in the Umbrella Final Agreement were a collaborative effort by First Nations in the Yukon. The negotiations started when *Together Today* was presented to the Prime Minister. “It wasn't about trying to get more, we just

wanted to have our fair shake because a lot of this stuff wasn't happening back then" [5]. In 1973, the Council of Yukon Indians was formed with a mandate to negotiate a land claims agreement. One of the first negotiations involved who was to be involved in the negotiations. Initially the government of Canada insisted negotiations only cover status Indians and the programs and benefits they were entitled to (Council of Yukon First Nations, 2005). The Government of Canada took the position that it would only negotiate with status Indians while CYI took the position that they were negotiating on behalf of all Indians, status and non-status (Council of Yukon First Nations, 2024). In a show of collaboration status and non-status Indians in the Yukon came together to negotiate their land claims agreements. The merging of YNB and YANSI in the 70s helped to make UFA possible according to one participant.

I think when they recognized and they merged the Native brotherhood with the non-status group, that really made a difference in the strength of those bodies' way back in the seventies. And that was what that body did. It actually created a strategic collective view of how do we get our voice recognized because as individuals, you know, Chief Jim Boss<sup>52</sup> couldn't do it on his own, other Chiefs have tried that as well [5].

This led to land claims negotiations being led by two YNB appointees and two YANSI appointees from 1973 to 1975 when the Council of Yukon Indians was established with a mandate to negotiate land claims on behalf of all First Nations in the Yukon (Rice, 2014). In 1975, YNB and YANSI were both represented by CYI with a mandate to negotiate a land claims agreement on behalf of fourteen First Nations with the Government of Canada (Rice, 2014). In 1980, YNB, YANSI and CYI amalgamated to make a new CYI negotiating land claims agreements and delivering programs and services to First Nations in the Yukon (Council of Yukon First Nations, 2005).

Collaboration continued to play an essential role during land claims in the Yukon, particularly in the Umbrella Final Agreement (UFA) negotiations. Some participants see the level of collaboration back then as being higher than it is today. As one participant says:

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<sup>52</sup> Chief Jim Boss sent a letter to the government of Canada in 1902 regarding the impact of non-Indigenous people on the territory of his people (TA'AN KWÄCH'ÄN Council).

I'll be brutally honest; the measure of collaboration today falls far short than the collaboration when I first got involved in this business. I got involved in 1987, back then, every single First Nation, we had no Final Agreements then, every single First Nation was a member of this organization [CYI], they collaborated and worked together on all these chapters that ultimately were in the UFA. There was, I remember as a young man, I was in my early twenties, how caught up I got up in it. It was like, Kaska, Gwitchin, Han, Tutchone, Tlingit were all together. It was a really exciting time [0].

It is notable that the participant points out that all First Nations were members of CYI as that is not the case today, thus backing up the belief that collaboration occurred amongst a larger group of First Nations during UFA negotiations than it does now. CYI's role has since been taken over by the Council of Yukon First Nations and not all First Nations in the Yukon are members. Nine of the eleven MTFNYs are members<sup>53</sup> and none of the three First Nations in the Yukon who have not signed a Final Agreement are members.

In the examples provided by participants regarding successful examples of collaboration, participants also highlighted that for such collaborations community caucuses, a common vision, and strong relationships between First Nations helped. Community caucuses help to move issues forward such as the Peel Watershed Land Use Plan court case. A common vision helps as it draws in the federal government. And finally, strong relationships brought on by having less supports MTFNYs working more closely together.

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<sup>53</sup> List the two SGNs which are not, as well as the three FNs without FAs? Although VGFN rejoined CYFN as an "associate member" in 2019 after leaving in 2008. Add citation.

## **7 Benefits of collaboration**

All ten participants see value in collaboration to achieve improved outcomes for modern treaty First Nations in the Yukon (MTFNs). As one participant puts it, “the more that we can collaborate, the better” [9]. Another participant sees collaboration as “what I thought would be the perfect system” [0]. The benefits of collaboration fall into four categories according to the participants. The most cited benefit of collaboration was improved negotiated and legal outcomes. Second, collaboration encourages the sharing of knowledge which can lead to more ideas and better solutions. Third, collaboration improves community capacity not only for negotiations but also for general governance and policy development. It helps by providing resources and knowledge to the community that might not otherwise have been available particularly where interests are shared between Nations. Capacity and efficiency are also improved as formal collaboration can make more funding available as non-Indigenous governments are supportive of First Nations organizing themselves. Finally, collaboration provides a strategic response to the governments of Yukon and Canada, and non-Indigenous entities. Strategic benefits for MTFNs include increasing their power and offsetting their smaller size.

### **7.1 Improved negotiated outcomes**

According to participants, collaboration helps MTFNs to achieve their goals and priorities through improved outcomes in negotiations and the courts. When First Nations come together, they have a stronger voice [0,1,7,8,9] providing a better, stronger bargaining position [1,3,9] which leads to better outcomes in negotiations. Collaboration results in negotiation gains that are not possible as individual Nations [3,9]. These improved outcomes are because the collaboration and its resulting stronger voice offset the power imbalance between First Nations and non-Indigenous governments (Canada and Yukon in this case). Non-Indigenous governments benefit from greater power due to their roles as the decision maker and funder. It also can improve the power First Nations bring to tables with industry. Participants provided several examples of what this strength has achieved including the signing of the agreements, particularly the Umbrella Final Agreement. “There is no doubt that there would be no land claims settlement here had they not been collaborating to begin with. That unified front was what it took” [0]. This strength was also used when planning the implementation reviews.



In 2003 the *Yukon First Nation Final and Self-government Agreement Implementation Reviews* were started by the first seven First Nations in the Yukon to sign Final and Self-government Agreements (*Yukon First Nation Final and Self-Government Agreement Implementaiton Reviews: October 3, 2007*).<sup>54</sup> The implementation reviews were required by the Implementation Plans to the Final and Self-government Agreements. While there are three different types of implementation plans (one each for the Umbrella Final Agreement, Final Agreements, and Self-government Agreements), initially the government of Canada refused to include the Self-government Agreements (SGAs) in the implementation reviews. The SGAs specifically called for these reviews in provision 6.6 where it states: “Unless the Parties otherwise agree, the Parties shall review this Agreement within ten years of the Effective Date” (G. o. Canada, 1993). A participant explains that the unity of the MTFNYs got the Federal government to change its position and included the SGAs in the reviews. This change was due to “all of the First Nations jointly [making] that request in the intergovernmental forum”<sup>55</sup>[3]. Thus, demonstrating the strength of MTFNYs working together to achieve their goals. The participant goes on to say: the MTFNY request for Self-government Agreement to be included in the implementation review “is just another example of a situation where the united voices of the First Nations are much more powerful, much more influential than a single voice could ever be” [3]. In this case it was not all MTFNYs collaborating but rather seven demonstrating that multiple voices together can also increase MTFNYs power. MTFNYs coming together in a way that suits them can push NIGs to cede to MTFNY requests.

When MTFNYs come together with a common voice they are able to achieve things which individually they are not able to achieve. One participant states: “there is no doubt that communications that go to Canada and Yukon from all eleven [MTFNYs] jointly, carry a hell of a lot more weight than communications that come from one or two singly” [3] pointing to the impacts gained by working together. Another participant provides the work done on Yukon mining legislation as an example of MTFNYs working together and achieving results that would not have been possible if MTFNYs worked alone.

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<sup>54</sup> The First Nation parties to this review include: Champagne and Aishihik First Nations, First Nation of Nacho Nyak Dun, Little Salmon/Carmacks First Nation, Selkirk First Nation, Teslin Tlingit Council, Tr’ondëk Hwëch’in, and Vuntut Gwitchin First Nation.

<sup>55</sup> The intergovernmental forum is a place where leaders representing the federal, territorial and Modern Treaty FN in the Yukon governments come together to discuss common priorities.

The work we did on the mining MO[U] [Memorandum of Understanding] to finally get us in the position [that we] have many, many decades of requesting, the Yukon's mining legislation be overhauled, was only achieved as a result of collaboration. You know, despite the best efforts of communities that were directly impacted by mining, like the TH [Tr'ondëk Hwëch'in], it took everybody to come together. In that case, all the First Nations coming together to sign on to that 2017 mining MOU, which ultimately led to a commitment for new legislation. Because they made a series of recommendations, including a mineral development strategy, and a key component of the mineral development strategy was new legislation to be developed, modern legislation for the Yukon for management of mineral resources and for First Nations to be part of that development [9].

By working together MTFNYs were able to change non-Indigenous governments strategies, achieve the inclusion of the SGAs in the implementation reviews, and change NIG legislation, including Yukon's oil & gas, and mining legislations.

## **7.2 Better solutions**

Collaboration can take the form of MTFNYs working together sharing knowledge and information which can result in better solutions. The larger the group attempting to find solutions, the more ideas will be presented, leading to a better solution.

I always believed that inclusivity is better, and I will never change my mind. Because the minute you have a broader group spit balling on ... certain ideas, more ideas will manifest as a result of the group energy. And so, for those reasons I think that collaboration is important [4].

The sharing of information and working through solutions is a popular way to collaborate demonstrated by the many caucuses MTFNYs use to prepare for negotiations. These caucuses often share information, discuss solutions, and develop negotiation strategies. Participants provided examples of MTFNY caucuses including the caucus for the development of the Yukon government procurement policy [4] and community caucuses for the YESSA court case [9]. Caucuses were successfully used during the land claims negotiations, particularly when negotiations pivoted from the failed 1984 Agreement in Principle to the drafting of the Umbrella Final Agreement. In order to make this pivot,

there was a lot of talking to achieve that [the pivot]. We had big meetings, lots of caucuses, huge caucuses in which we'd gather, and we'd just talk about concepts, ideas, what could go into the agreements. [7]

While caucuses are a structure which supports collaboration and are used to develop negotiation strategies, they also often used to develop consensus (often as part of the negotiation strategy).

Participants shared that striving for consensus is important when collaborating. Common priorities must be built based on consensus [4] and that collaborative endeavours must be committed to consensus and consensus must be strived for wherever possible [9]. Also, as part of collaboration the group must understand that “all of us have to compromise at least to a degree to reach consensus so that we can present a common position to Canada” [3].

Caucuses are also used to try to get to a consensus viewpoint, as unity is seen as a powerful tool to use with NIGs. While a powerful tool, consensus is different from the common, non-Indigenous method or majority-rules. It is also more difficult to achieve than a simple majority. The benefit of the added work to achieve consensus is that consensus is more inclusive.

[M]ore thinkers are better than one, but that doesn't mean that each individual thinker on their own contributes an idea and then we choose the best idea. It means that everyone contributes to creating the idea and formulates it together so that everyone is on board as soon as the idea takes shape. [1]

So, by working together MTFNYs benefit by arriving at better solutions and sometimes reach consensus.

### **7.3 Resource Sharing**

Following from the benefit of better solutions is resource sharing including the sharing of people and increased funding for MTFNYS. Resource sharing could also lighten the load of all First Nations. Participants see collaboration as a specific solution to the lack of capacity felt by MTFNYs and useful in negotiations with others through the better solutions is provides.

People need to understand that we don't have the capacity to individually do a lot of this work, but if we come together, we can come up with a really good product [9].

Collaboration could help with human resource challenges, providing important technical expertise and resources, reducing the funding needed in some instances due to a reduction in overlapping work, and offsetting the resourcing challenges of some of the smaller First Nations. “[A]s a young person, I would really like to see these Nations come together and fill in each other’s holes” [1]. Another participant raised the fact that collaborating was a good way to deal with the lack of capacity and time.

Given their challenges with resources and capacity, I think it’s absolutely incumbent on the YFNs to combine resources because given their small size. I don’t think they will ever have the capacity to do everything that needs to be done. So, you can improve on that by pooling resources and undertaking you know, common endeavors, common initiatives [3].

MTFNs could also share information such as what has been successful or failed for a Nation, or the hiring of an expert by a group of Nations with a similar goal [2]. Resource sharing is also important as it ensures there are multiple people informed so progress doesn’t hinge on one person, and they can support each other.

There was very close collaboration among the seven on financial matters. And that was a brain trust. I think that was really beneficial to all of the seven because none of us individually I think had the capacity to engage with the government of Canada and Yukon, you know, kind of mano-on-mano. One on one. But combined, we did have that capacity.[3]

Resource sharing is also more efficient, saving MTFNs time and money.

When it comes to doing careful analysis of issues for example, it doesn’t make sense for each of [the] 11 First Nations to do their own independent analysis. It’s inefficient when it comes to time, it’s inefficient when it comes to money. It would be much better to have more of a unified approach.[3]

Increased funding is available since collaboration amongst MTFNs helps non-Indigenous governments. NIGs make funding available for collaborative entities including for projects that cannot be tied to a specific Nation and are politically interesting. The federal and territorial governments make funding available for Indigenous organisations that bring together multiple Indigenous groups like CYFN [6] and tribal councils [5]. In the Yukon

there are several tribal councils including the Southern Tutchone Tribal Council<sup>56</sup> and Northern Tutchone Tribal Council though it has disbanded, and its members now work together in a more informal way [4]. These tribal councils tend to focus on language and cultural programming. There are also other, larger collaborative Indigenous organisations like the Assembly of First Nations (AFN), including the AFN Yukon Region<sup>57</sup>, that receive funding from the federal government. Similarly, NIGs fund projects that have a collaborative component or are not tied to any one specific MTFNY [6].

We get a pot of money coming from the government to offer a culture camp to the 15 kids that are not in a First Nation family, they're all in foster care with [a] non-First Nation family. We can now offer these youth and children an opportunity to reflect on who they are too [6].

Similarly, when the CYFN Chiefs' Committee on Economic Development asked for an economic advisor the government of Yukon provided funding for such a role. As one participant states: "if there is a political interest in doing something, money is not a problem" [5]. In each of these examples, collaboration between MTFNYs benefits NIGs so they make funding available to MTFNYs. With the sharing of people, and increased funding participants saw the MTFNYs being better off.

## 7.4 Strategic benefits

Collaboration provides MTFNYs with a strategic advantage. The strategic benefits of collaboration cited by participants include offsetting the small size of individual Nations and MTFNYs in general<sup>58</sup>; amplifying the voice of MTFNYs, to focus on MTFNY priorities when working with non-Indigenous governments and to develop strategies for dealing with non-Indigenous governments; and finally, to learn, specifically from other Indigenous peoples in their relations with NIGs.

Sometimes collaborating is done out of practicality due to the small size of the Nation and the probability of success on the Nation's own. Not just due to the size of their voice but also due to the size of their government and the capacity it has. "I think KFN as one of the smaller

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<sup>56</sup> <https://www.facebook.com/SouthernTutchoneTribalCouncil/>

<sup>57</sup> AFN Yukon Region's mandate is to work with all fourteen Yukon First Nations both those with modern treaties and those without.

<sup>58</sup> First Nations in the Yukon (while not all Citizens of modern treaty nations) only make up 0.5 % of Canadian First Nation people according to the 2016 census.

[Nations], often times, as a strategy, has to collaborate with a larger Nation to get that same political leverage or affect” [1]. Any real gains made by First Nations, according to one participant, have been made as a group. “Anything that we’ve really done and done well, we’ve done collectively. You know either regionally or territorially. That’s been our strength” [9]. They provide the examples of proposed changes to *Yukon Environmental and Socio-economic Assessment Act* (YESSA Act) and the devolution of federal powers to the territorial government in the 1990s [9]. Another example of MTFNYs collaborating strategically is when they did so to bring the Yukon government to the table to discuss changes to mining legislation in the Yukon. It was only possible because many modern treaty First Nations in the Yukon came together to sign the 2017 Mining Memorandum of Understanding (Government of Yukon, 2021) . As one participated said: “the value of working together, we talked a lot about it. I think it’s preferable, I think we are more effective. We certainly are more influential, more powerful” [9]. This increased power also helps to enhance MTFNYs’ ability to push back on non-Indigenous governments. While NIGs often push for consistency across MTFNYs and wish to have a single relationship with multiple First Nation, there are separate Final and Self-government Agreements for each MTFNY because that is how the MTFNYs wanted it. While First Nations in the Yukon sometimes strive to have an individual relationship with non-Indigenous governments, or government-to-government relationships, they are sometimes willing to make concessions to the governments of Canada and Yukon. “Whether we like it or not, government wants to sort of go to one spot” [8]. Another example of MTFNs from across Canada pushing Canada to respond to modern treaty holders in the way they wanted is through pushing Canada to accept their terms. The government of Canada implemented a “distinctions-based approach”<sup>59</sup> where Canada separates Indigenous peoples into three groups: Inuit, Metis and First Nation. In order to have Canada recognize modern treaty holders separately, the Land Claims Agreement Coalition fights to have a fourth group, modern treaty Nations, recognized. In Canada’s recent “United Nations Declaration on the Rights of Indigenous Peoples Act Action Plan”, LCAC (on behalf of modern treaty holders) successfully argued for a separate chapter on Indigenous Modern Treaty Partner priorities alongside, First Nations, Inuit and Metis priorities (Government of Canada, 2023). By collaborating MTFNYs were able to push non-

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<sup>59</sup> Principle 10 of “Canada’s Principles respecting the Government of Canada’s relationship with Indigenous peoples” lays out “A distinctions-based approach is needed to ensure that the unique rights, interests and circumstances of the First Nations, the Métis Nation and Inuit are acknowledged, affirmed, and implemented.” (G. o. Canada, 2021)

Indigenous governments to have individual agreements and for Canada to recognize modern treaty holders as a distinct group from First Nations in general.

Another benefit of collaboration is learning from those who have gone ahead. Participants provided examples both within the Yukon and outside with Alaskan Natives. MTFNYs reached out to Natives in Alaska to learn from their experience in dealing with the American government and ask for advice in preparation for land claims negotiations.

We met the Americans after all of their Native title was extinguished in 1972, a year after that all happened. And we met them in Anchorage because we were beginning to draft our “Together Today” document and we met with them and spent about a week with them in Anchorage Alaska. We stayed at the Old Mush Inn, and we asked them “What advice would you give us?” And they looked at us and they said, “You guys have to lobby”. And we said “What?” “Lobby.” And we were “Like hotel lobby? What are you talking about?” And they were like “No. You have to go to the corridors of power. In our case, both houses of Congress and talk to the people that are passing the laws and get them to change the laws so that it reflects what you more closely want. And you have to do it consistently. You can’t just go once a year; you have to be out there consistently. Every month you’ve got to show your face, you have to make your rounds”. And so, we took that, that piece of advice and we did lobby. We met with the NDP, the Conservatives, the Liberals, with the Bloc and got their support. We went back, not just for one bill, not just for the land claims bill, but for bills that were averse to our interests, and we learned that technique quite effectively for Yukon First Nations because of the advice that we got from our Alaskan friends and yeah, now it’s quite common to go to Ottawa and see all of the Indian groups who are out there on Yukon Days<sup>60</sup> trying to talk to the people in power. Saying, “With respect to this program or that law, you should change this, change that, we need more money, etc. etc.”. So, it’s a constant which was not in vogue for us because it was only 20 years that we were allowed to talk to the politicians before. We were allowed to lobby or learn the art of lobby [7].

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<sup>60</sup> Yukon Days are an annual meeting between the governments of Canada, Yukon, and First Nations in the Yukon.

The sharing of knowledge like that held by the Natives in Alaska is important strategically and helped in the land claims negotiations. It is important to share the knowledge of what is going on whether that be in negotiations or agreements so that all MTFNYs know the funding formulas, powers and authorities being negotiated [8]. Another participant highlighted the importance of learning from other MTFNYs who signed earlier when negotiating their own Final Agreement [1]. Working together is important strategically as it helps to improve MTFNYs' standing in relations with NIGs, to develop effective strategies and to achieve movement in the direction desired by MTFNYs.

## **7.5 Conclusion**

Participants provided many reasons for why modern treaty First Nations in the Yukon (MTFNYs) collaborate, many benefits. These include improved negotiated outcomes due to the power that comes from unity and consensus when available. Collaboration is seen to provide better solutions and strategies through the sharing of information and knowledge. Also, the sharing of resources helps to fill the gaps in personnel and knowledge. Non-Indigenous governments benefit from collaboration among MTFNYs, so they are willing to fund it either through collaborative entities like CYFN and tribal council or for projects that are politically interesting or have no one specific MTFNY attached to them. Finally, there are strategic benefits to collaborating such as learning from the negotiations of other Indigenous peoples. As one participant said:

I think that when people see the benefits of collaboration and see the strength that we have across the board, particularly when we can pull people together and bring those voices, perspectives, views, experience together. We make a pretty formidable team [9].

Collaborating in the past has helped MTFNYs to get the individual agreements they wished instead of one global treaty.



## 8 Obstacles to collaboration

There are five obstacles that stand in the way of increased collaboration between Modern Treaty First Nations in the Yukon (MTFNYs) according to participants. First, the differences between MTFNY resources and circumstances make similar priorities difficult impacting the ability to collaborate. Second, a lack of trust between MTFNYs is an obstacle as there is the fear that collaboration will be used to undermine individual Nations and their sovereignty. Third, the fact that there is not agreement to collaborate makes collaboration difficult. During land claims negotiations there was agreement to collaborate documented in *Together Today for Our Children Tomorrow*. Fourth, the amount of work to implement the agreements is an obstacle. As one participant says, there is “Too much to do, too little time and everybody’s flat-out” [2]. Finally, outside interference by non-Indigenous governments (NIGs) and consultants impacts MTFNYs ability to collaborate. Consultants are not directed to collaborate with other Nations while NIGs use the lack of unity to undermine MTFNY priorities. While some of these obstacles are immovable, some of these obstacles ebb and flow.

### 8.1 Differences between MTFNYs

Almost all participants (eight of the ten) raised the differences between First Nations as an obstacle to collaboration. Differences between MTFNYs include their resources, circumstances, and where they are in the implementation of their treaty. These differences can drive differences in priorities which makes collaboration difficult since collaboration is often based on a common set of issues or priorities.

The Traditional Territory<sup>61</sup> of each First Nation determines both the resources available to them and some circumstances. Geography determines which natural resources are available which often also drive the economic opportunities available. Resources include both renewable such as forest, wildlife, fish, and plants, and those which are non-renewable such as oil, gas, and minerals. Examples of how different resources determine different priorities include First Nations with a lot of mining activity are focused on updating mining legislation to be in line with the Final Agreements (for example Tr’ondëk Hwëch’in and First Nation of

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<sup>61</sup> Traditional Territory is a defined term in the individual Final Agreements that identifies the geographical area of each First Nation.

Nacho Nyak Dun). One participant reflects on how geography can determine a Nation's priorities:

Old Crow is completely separate in what their priorities are, their needs, and their wants compared to anywhere else in the Yukon ... mining is not the biggest priority in Whitehorse, whereas in Dawson it is and for [Kluane First Nation] it is. Champagne and Aishihik somewhat. So, because of the geographical areas, it makes the priorities so much different. Hunting's not an issue for Kwanlin Dun. You don't have people hunting in your backyard (...) in Whitehorse. You don't have mining....[2].

MTFNYs also have differing circumstances. These are often determined by whether the Nation is urban, rural, or remote, the overall size of the Nation's population and the size of the Nation's community and how far the community is from the capital. These circumstances drive their responsibilities and priorities. Urban Nations such as those in Whitehorse often are expected to deal with issues regarding all First Nations residents of the city such as the homeless shelter. Unlike urban Nations, rural and remote First Nations are sometimes not connected to a municipal government and are therefore responsible for providing community services such as water, sewage, and road maintenance. Another important difference driving differing priorities is the total population of the Nation, and how many Citizens live in the First Nation community as they help determine the resources available to the Nations. For example, the overall size of the community often impacts the amount of funding available, the more Citizens the more funding available for housing. The size of the community also impacts the Nation's responsibilities including whether and when the territorial government provides a Nation with a school, a health centre, or other resources. The Kluane First Nation (KFN), the smallest MTFNY has neither a school nor health care centre in their administrative centre. The size of the Nation also drives how many people it can pull from to employ in its government. Smaller Nations can have more problems staffing their government as can the distance from Yukon's capital city. The further from Whitehorse<sup>62</sup> the more challenging to find staff due to the lack of amenities in smaller communities. The size of the Nation's community can also impact the economic opportunities available as a larger

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<sup>62</sup> Whitehorse is Yukon's largest community with 78.5% of Yukon's population (Statistics, 2021).

community has more potential customers for a local store or café. Where the community is located, and its size impacts its priorities.

Another key difference affecting each First Nations' priorities is where the Nation is with regards to the implementation of their agreements. Due to the staggered way in which the agreements were signed, there is a spread of over a decade between the signing of the first Final and Self-government Agreements to that of the last, from 1993 to 2005. The Nations who signed first have had 10 more years to set up their governments and implement their agreements and the experience that comes with that. This is reflected, for example, in the fact that the two Nations furthest along with implementing their Administration of Justice Agreements are two of the first four to sign. Also, signing in 1993 has allowed Champagne and Aishihik First Nations to substantially revise their government in the last thirty years. The many differences between MTFNYs lead to differing priorities highlighted by participants which ultimately makes collaboration difficult.

## **8.2 Lack of trust**

The level of trust that existed during negotiations of the land claims agreements does not exist today according to participants and is an obstacle to collaboration between Nations. Today this mistrust is driven by weaker personal relationships (especially among MTFNY leaders) and by the fear of surrendering newly acquired sovereignty to a central body. A high point in trust according to participants was during the lead up to the signing of the Umbrella Final Agreement, including the drafting and presentation of *Together Today for Our Children Tomorrow*, and during land claims negotiations. During this period, collaboration was high possibly due to the fact that there was formal agreement to collaborate through the mandate given to the Council of Yukon Indians (CYI), the negotiators of the Umbrella Final Agreement (UFA). Similar to collaboration, trust between First Nations in the Yukon ebbs and flows. Prior to land claims negotiations First Nations in the Yukon had gone to war against each other. As one participant puts it:

Historically, Indians weren't all "You're brown, you're cute, let's be friends". They used to fight like hell. And those stories still exist in the folklore of those individual First Nations and that's a barrier because it speaks to trust, it speaks to common goals, and it speaks to a commitment [7].

Since the signing of the UFA, mistrust between Nations has grown as has the belief that collaboration can be used as a tool to undermine or reduce the authority of the individual First Nations.

The strength of relationships between First Nation leaders and with their communities impacts the trust between them and their ability to get other leaders and communities to collaborate with them. Participants talked about how the relationship between MTFNY leaders today is different and not as strong as in the past. Also, that their relationships with the communities they represent are not close, and the level of trust in them is not strong. One participant noted that in the past when trust was high, many of the leaders and negotiators involved in the Umbrella Final Agreement negotiations grew up together.

[W]hen you think about Dave [Joe] and James Allen and Ken Kane and Richard Sidney, you think about all these old guys, Darren Taylor, all these guys went to school together, they went through some tough times together, they all knew each other, and they all trusted each other [5].

FNY leaders during the 70s to 90s attended residential school together. They trusted each other and thus collaborated more. It is worth noting that over half of these men continue to be in leadership positions today potentially highlighting that trust alone is not enough to ensure collaboration. As the participant goes on to connect trust to believing other are committed.

[T]hey all trusted each other. When somebody committed to doing something, they all felt comfortable with it [5].

It is possible that trust was easier back then due to a narrower set of shared experiences and knowledge in dealing with non-Indigenous people and governments that no longer exists today due to the experiences with NIGs since *Together Today*.

Another example of the impact of personal relationships on collaboration is found at the fiscal negotiating table. One participant saw a division between the first seven who signed agreements and the four who signed near the end. The original seven are seen as having stronger relationships: working together closely, sharing the funding of consultants, and caucusing regularly [3]. Representatives from the last four Nations to sign were invited to join but never worked with the group in quite the same way [3]. It is possible that this difference arises from the higher turnover amongst the negotiators of the four Nations.

Negotiators for the original seven Nations have worked with their respective Nations for a long time [3]. The higher turnover and shorter time frames weaken the personal relationships between the last four negotiators making collaboration more difficult. These weaker relationships, like those between MTFNY leaders today (when compared to the past), may result in a lack of trust and form an obstacle to collaboration.

Another obstacle to collaboration provided by participants that touches on trust is the fear that if MTFNYs were to collaborate or work with a collective body requires giving up some of their sovereignty and authority. The Nations fought for decades, long and hard, to negotiate their individual Final and Self-government Agreements, to empower their community, to have the power to enact laws, and to negotiate their own financial agreements [9]. Therefore, they are loath to now give up the power and jurisdiction that comes with their agreements. One participant talked about the need to assure people that their Nation's authority was not being surrendered when collaborating. "We need to provide assurances to people that again they're not surrendering any authority or power from their government to a collective body" [9]. There is a lack of trust in the Council of Yukon First Nations, a centralized body encouraging collaboration amongst the First Nations in the Yukon (FNYs). Though a CYFN employee felt that the organization had "always taken [its] marching orders from the communities" [0], there remains a "deep-seated mistrust of CYFN" [0] based on past experience with the Council [3]. For some, this mistrust of CYFN came from the fact that they did not see the process of reaching the Final and Self-government Agreements as positive and felt the agreements "were shoved down their throats" [0]. Moreover, when CYFN and its precursor CYI negotiated on behalf of FNYs during the development of the Umbrella Final Agreement, there were concerns that CYFN was trying to control everything [0]. One participant stated that the lack of trust in CYFN is why there are still First Nations in the Yukon who have not signed a Final Agreement [6]. Today, some remain mistrustful of CYFN's need for so many employees and questioned why CYFN is involved in land-based areas which are covered in the Final Agreements since, CYFN does not have a Final Agreement nor is it a land holder [2]. The fact that the UFA and Final Agreements went forward without everyone agreeing highlights concerns that by collaborating or joining a central body the Nation might get out-voted which is a trust issue. Some Nations feel that they cannot trust that they will be "comfortable" [5] with all decisions made based on experiences in the past.

[P]eople ... saw that they weren't satisfied with the decisions that were being made and really felt that the central body wasn't listening to them. People still today think that, and I understand why, that they'll get outvoted at the central body [9].

Participants highlighted the important of trust to collaboration including the role it has played in the past and how today the level of trust has diminished along with the level of collaboration.

### **8.3 Lack of agreement to collaborate**

Although only mentioned by one participant, their observation that MTFNYs do not collaborate because there is not agreement to collaborate sums up a major barrier to collaboration. As laid out by one participant: "I think there has to be one agreement, that is 'let's collaborate' first. I don't think we have that yet, in my view" [7]. While MTFNYs collaborate regularly today as discussed before it is not on the same level as during the land claims agreement negotiations and the lead up to those negotiations. Then there was a mandate for one organisation to speak on behalf of First Nations in the Yukon to Canada and Yukon. Leading up to land claims negotiations, in *Together Today for Our Children Tomorrow*, the mandate to negotiate on FNYs' behalf is given to the Yukon Native Brotherhood (YNB).

The Yukon Native Brotherhood has been authorized by all Twelve<sup>63</sup> Indian Bands to negotiate a Settlement on their behalf. This authority was given to the Yukon Native Brotherhood by the Bands when it was formed in 1968 (Yukon Indian People, 1973, p. 25).

Initially YNB only represented status Indians. Later, the actual entity mandated to negotiate land claims expanded to include non-status Indians. YNB came together with the Yukon Association of Non-Status Indians to make the Council of Yukon Indians (CYI) and the negotiation mandate was transferred to CYI.

While the organisation that was initially the Yukon Native Brotherhood has gone through several iterations and exists today as the Council of Yukon First Nation, its mandate is no longer to negotiate a land claims agreement. Today The Council of Yukon First Nations

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<sup>63</sup> Although there are fourteen First Nations in the Yukon today, in the 1970's there were twelve bands recognized by the Government of Canada.

mandate is to serve as a political advocacy organization for First Nations in the Yukon holding traditional territories, to protect their rights, titles and interests (Yukon Council of Archives, 2024). While CYFN remains, an organisation attempting to represent all First Nations in the Yukon, it has gone through several iterations with changes to membership, name and mandate. A major turning point was in 2002 when the questions of “Should there be a CYI or something like CYI after land claims and what should it do?” was asked [0]. This launched a full constitutional review that was ultimately not accepted by membership.

Over the course of years, 2002, I think it was, we tried to do a soul-searching exercise, where we did a constitutional reform. \$1.3million is spent, we bring 20 people in from across the territory, a lot of big people, if you will, high honoured people, to come and do this constitution reform, which ended up with five or six different recommendations, never even hit the floor. What a waste of money. 2008 we went through another exercise, 2010 or 2011 [6].

The constitutional changes recommended were not agreed to. The fact that the constitution does not include agreement to collaborate but rather a process to do so if Leadership wants it is telling.

Today MTFNYs agree to collaborate on a smaller scale than that achieved during UFA negotiations. For example, the tribal councils whose work ebb and flow and their mandates differ. Under the umbrella of a tribal council Nations come together to work specific issues such as language and cultural programming or regional issues. These are not the range of issues covered by the UFA with its 28 chapters. Nor do these groups include all MTFNYs. They tend to focus on a language group such as the Southern Tutchone Tribal Council and Northern Tutchone Brotherhood. While the current CYFN and AFN, Yukon Region might be the closest to CYI during the UFA negotiations they do not have the mandate to be the sole voice for MTFNYs to NIGs. Ultimately, there is not an agreement to collaborate today on a large scale which is an obstacle to such collaboration.

## **8.4 Strained resources**

Similar to the obstacle to implementation, strained resources are an obstacle to collaboration amongst MTFNYs. Half of the participants explicitly mentioned that the large amount of work faced by the small number of MTFNY governments’ staff made collaboration difficult. Not only was the workload of staff considered high but also that of leadership. Nearly half of

the participants raised the lack of capacity or “so much going on” [8] as a barrier to collaboration. The large amount of work carried out by MTFNY governments is due in large part to the number of areas over which MTFNYs have jurisdiction<sup>64</sup>. Also straining resources is the work of developing and implementing a new government.

Along side this large amount of jurisdiction, one participant listed the current projects in their Traditional Territory including two mines, telecommunications infrastructure, energy infrastructure, and highway infrastructure, all requiring engagement and negotiations with differing entities [4]. There are many existing commitments and projects along with the general running of the First Nation government that leave little capacity for expanded collaboration. There is no time to spend on planning for and implementing collaboration building measures. Self-governing First Nations are trying to “figure out their own community priorities and dynamics” [8], surely a prerequisite to collaboration, but in order to determine the community’s priorities “you need to be able to get together but the barrier to that is that we’re already so busy.” [4]

I think everybody’s just so busy trying to keep ahead and keep up to the demands of [the governments of] Yukon and Canada and meet their goals and objectives that they don’t have the time and resources anymore to be laid back and helping each other and reaching out to each other. It’s such a busy world now [2].

All of these demands on MTFNYs’ resources leaves little room for them to collaborate.

The structure of First Nation governments under modern treaties is different than those under the *Indian Act* and represents a third major restructuring of governance and a structure not of MTFNY’s making. Modern treaty First Nations in the Yukon went from Indian Act bands to Nations in a day when their Final and Self-government Agreements came into effect. Developing a new way of governing and administering the Nation in line with NIG’s desires and the agreements became the main priority of MTFNYs. In order to function on “effective date”, First Nations took the existing *Indian Act* model as their starting point since that was what they knew, and the governance and administration infrastructure was already there. This post Final Agreement governance structure being the third iteration since contact with non-

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<sup>64</sup> A more expanded discussion of MTFNY authority can be found in section 5.5.1 Internal MTFNY resources challenges (to implementation).



Indigenous people. At contact First Nations in the Yukon organized themselves in bands; highly mobile groups of several households (usually less than 50 people) that foraged for subsistence (Castillo et al., 2020). In 1876, the Chief & Council model, based on a colonial western model, was forced on First Nations through the *Indian Act*. The Chief & Council model continues, though with the authority of a modern treaty Nation, to exist today in the majority of First Nations in the Yukon. In an attempt to make this post-agreements government structure reflect MTFNYs it includes new branches. Laid out in their respective constitutions, new governance entities typically include a General Assembly, and Councils of both Elders and Youths<sup>65</sup>.

Today MTFNYs' governments continue to be in flux as MTFNYs attempt to reform their government to better represent how their Citizens wish to govern themselves, to be more in line with their values. One example is the Champagne and Aishihik First Nation who started the Dän tän gà dījäl (or Citizen Services) Initiative to “mov[e] away from the colonial legacy of DIA [Canada's Department of Indian Affairs] and INAC [Indian and Northern Affairs Canada<sup>66</sup>] and taking steps to integrate Dän K'e (Our Way) into our self-government” (Champagne and Aishihik First Nations, nd). There is hope for this new model as stated by one participant:

I appreciate what CAFN has done in terms of really trying to not just take over administratively what government used to offer for First Nation programs and services but redefine what that looks like from a Nation sort of lens [8].

Once the new governance structure is determined it needs to be implemented which requires a new administration. An administration that is also tasked with implementing the agreements, a large undertaking. As a participant says developing a post-agreement government and collaborating with other FNs at the same time is too much:

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<sup>65</sup> While each Nation sets out the powers of their branches differently, the General Assembly typically includes all adult Citizens and “has overall responsibility for government powers and responsibility” (First Nation of Na-Cho Nyak Dun, 2023). The Teslin Tlingit Council likens their Elder's Council to the Senate of Canada (2020). And the Kluane First Nation tasks their Youth Council to “recommend programs for Youth” (2018, p. 14).

<sup>66</sup> INAC replaced DIA. INAC is now call Crown-Indigenous Relations and Northern Affairs Canada.

the demands that are put on the First Nation to deliver all these programs and services, to keep their head above water but also collaborate your nearby neighbours is pretty difficult. Too much to do, too little time and everybody's flat-out [2].

The constant state of flux MTFNY governments and changes to governance and administration that MTFNYs have gone through impacts their ability to cooperate and collaborate due to resources being diverted to deal with not only running their government but also building it up.

## **8.5 Outside interference**

Non-Indigenous governments of Canada and Yukon, along with consultants are seen by participants as negatively impacting collaboration between MTFNYs. Interference by those outside of MTFNY governments can result in the manipulation of MTFNY priorities either inadvertently by pushing their own priorities without listening to those of the First Nations, or expressly by refusing to include First Nation interests in projects going forward. While maybe not a direct obstacle to collaboration the side-effect of hindering the implementation of MTFNY priorities by demanding unity, negatively impacts MTFNYs' desires to collaborate in the future. Non-Indigenous governments (NIGs) insist on unity or are seen to play Nations against each other and NIGs taking advantage of the break down in unity between MTFNYs. An obstacle to collaboration amongst MTFNYs is outsiders amplifying the differences between MTFNYs such as drawing out the signing of agreements over more than a decade which results in individual MTFNYs being at different points in the implementation of their agreements. Outside interference also includes the involvement of non-Indigenous consultants and the advice provided by them. The agendas of NIGs and consultants can actively interfere with MTFNYs' ability and interest in collaborating.

### **8.5.1 Impact of NIGs on MTFNY collaboration**

Another impact caused by NIGs that impacts collaboration between MTFNYs is the increase of differences between MTFNYs. In this case the differences are caused by the differing amounts of time MTFNYs have been implementing their agreements. As noted earlier being at a different point in time with regards to implementation of their agreements often causes there to be differing priorities for Nations. Another participant cites Canada's unwillingness to negotiate all the Final Agreements at once as an example of Canada trying to separate First Nations in the Yukon. Once the UFA was signed Canada stated they could not negotiate all

Final Agreements at once<sup>67</sup>. Instead, the four First Nations who were ready to complete their Final Agreement (CAFN, VGFN, TTC and NND) moved ahead.

Canada helped the First Nations make that decision to go with the first four, based on what they said was their inability to have enough capacity to [negotiate] 10 or 11 Final Agreements at the same time. Which I thought was a lame argument, that was ridiculous [0].

The first four signed in 1993, LSCFN and SFN in 1997, TH in 1998, TKC in 2002, KFN in 2003 and KDFN and CTFN in 2005. By stringing out the signing of Final Agreement over twelve years, implementation of those agreements was also strung out over twelve years which along with many other factors leads to different priorities based on where the First Nation is in the implementation process [0].

### **8.5.2 Impact of consultants on MTFNY collaboration**

Several participants raised the impact of consultants on the implementation of the agreements [4,5,7,9]. While consultants were seen as necessary to help deal with capacity issues and seen as a benefit when working with First Nations for the greater good of First Nations [9], there were concerns that some consultants are an obstacle to collaboration. This could occur due to self-interest, and the mandate given to them. Also, participants mentioned that consultants often collaborate more than the Chiefs [7] begging the questions of why.

With respect to self-interest, there is a perception that some consultants do not want collaboration amongst the First Nations as that would reduce the impact of their advice.

I know the consultants, I heard their arguments that “No, that’s not our perspective”. They wanted to have... as an individual they have much more say over one group than having to have their voice part of a collective group [5].

This is a very real possibility due to the economic incentive for consultants to continue working and not work themselves out of a job. While the above quote points to self-interest impacting the advice provided by consultants, the consultant works for the Nation. It is also possible that consultants are not given a mandate to collaborate. Council ultimately approves

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<sup>67</sup> Underlining the power imbalance which allowed Canada to dictate how the Final Agreement negotiations would be carried out.

the mandate given to consultants and they might be directing the consultant to represent the community not the collective. Although, rarely are negotiation mandates and strategies made without the input of consultants<sup>68</sup>. This highlights the importance of some participants' comments that the First Nation needs to take control and determine what is best for them in terms of collaboration.

[I]n some cases, people are not supportive of it [collaboration], maybe some of the advice that First Nations are getting are not supportive of working collectively, but I think First Nations need to objectively evaluate whether that's in their best interests sometimes [9].

It might be argued that the mandate to consultants does not include working collectively because to do so is not recommended to the First Nation by the consultant setting up a cycle difficult to break out of.

An interesting insight from one participant is that they see non-First Nation consultants collaborating more with each other than the Chiefs do.

The people that we hire [collaborate] more but those people who work for us are not all Indian so there is a lot of collaboration amongst our consultants, I guess and our legal counsel but the Chiefs who hire them don't talk as comprehensively as the agents who are working for them talk amongst themselves [7].

Consultants can impact the amount of collaboration that takes place either due to the mandate they are given by their client Nation or due to their self interest. But ultimately consultants are needed in MTFNY governments to fill out the capacity needs of the Nations.

## **8.6 Conclusion**

There are five obstacles that stand in the way of increased collaboration between Modern Treaty First Nations in the Yukon (MTFNYs) according to participants. Obstacles making collaboration difficult include the differences between MTFNYs, a lack of trust and lack of agreement to collaborate. Also, the resources required to collaborate and outside

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<sup>68</sup> This input often includes the drafting of the mandate and strategy.

interference by non-Indigenous governments (NIGs) and consultants impacts MTFNYs ability to collaborate.

## **9 Could increased collaboration improve implementation?**

### **9.1 How collaborating more could help implementation**

Increased collaboration amongst modern treaty First Nations in the Yukon (MTFNs) could help improve the implementation of the agreements. Collaboration between MTFNs can help to both offset capacity challenges and power imbalances between MTFNs and non-Indigenous governments (NIGs). Also, the courts can help support MTFNs in the implementation of their agreements, particularly when MTFNs work together. And, there are indirect benefits of collaboration that might help with implementation including improved relationships, increased trust and better solutions. Although collaboration could help improve the implementation of agreements, MTFNs must evaluate the pros and cons of collaborating and whether it is worth it.

#### **9.1.1 Collaboration provides more resources.**

Increased MTFNs collaboration could help improve the implementation of the agreements by providing additional human and financial resources. Collaboration amongst MTFNs provides additional resources to MTFNs through the sharing of resources, and additional financial resources from NIGs. These additional resources improve the implementation of the agreements as it removes one of the obstacles to implementation cited by participants: “too much to do” [2]. The sharing of resources reduces the number of human resources needed as multiple people are not doing the same thing in each Nation; an example being the drafting of legislation. The Self-government Agreements (SGAs) of each MTFN are based on the same template including the legislative powers listed in the SGAs, they are the same for all MTFNs. As proposed by two participants, rather than having multiple people writing legislation with similar goals, a template legislation could be written, and each Nation could individualize it as needed [5,9]. Rather than starting at the very beginning, MTFNs would be starting more in the middle, individualizing the template legislation to their needs. The drafting of template legislation was proposed by the CYFN during their constitutional review as an example of finding efficiencies [0]. Where common tasks are required by MTFNs reducing it down to one place can reduce the workload on everyone.

Another benefit of collaboration cited by participants was increased financial resources. There is value for non-Indigenous governments when First Nations decide amongst themselves to cooperate and collaborate. Collaboration amongst MTFNs creates

efficiencies for NIGs since it is easier for them to deal with one group versus multiple groups. This leads NIGs to encourage collaboration amongst FNs by funding coordinating groups [5]. Overall, the sharing of resources through collaboration reduces the implementation workload and improves the amount of financial resources available through the additional funding of collaborative entities. Together these improve implementation by making more financial resources available and using human resources more strategically on those areas of importance to MTFNYs.

### **9.1.2 Collaboration helps balance power.**

NIGs and MTFNYs do not have the same amount of power. For the most part, NIGs are the decision-makers and control funding. NIGs are the decision makers for permits, legislation, and engagement processes. With respect to implementation this often means that NIGs set the process by which implementation is carried out, the implementation priorities and timelines. By collaborating, MTFNYs increase their power to better implement the agreements as collaboration increases the power held by MTFNYs, leading to improved negotiated outcomes achieved including ensuring that implementation is carried out in a way that MTFNYs and NIGs agree on. Collaboration, when it achieves a unity position, also undermines a negotiation strategy used by NIGs.

A benefit of collaboration cited by participants is that collaboration amongst MTFNYs improves the negotiated outcomes achieved by MTFNYs. In part this benefit is due to the fact that together the MTFNYs are more powerful which offsets NIGs' power. NIGs prefer (and sometimes demand) unity amongst MTFNYs before moving forward on projects such as the distribution of funding or making changes to legislation. Examples of what is possible when MTFNYs collaborate include adding the review of the Self-government Agreements to the 2007 Implementation Reviews [3]<sup>69</sup>. When MTFNYs work together they do not decrease the power NIGs have but rather increase the power MTFNYs have. An obstacle to implementation cited by participants was that NIGs do not take MTFNY's interests seriously, that NIGs often set the implementation priorities. Increased power for MTFNYs means they can dictate or at least have more input into the implementation priorities worked on by both MTFNYs and NIGs. Conversely, when collaboration doesn't happen MTFNYs don't get the

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<sup>69</sup> See section 7.1 Improved negotiated outcomes for further detail on the 2007 Implementation Reviews.

results or outcomes they seek. Their power is diminished resulting, at least in the example provided below, in a less progressive outcome.

I can understand why people are reluctant to do that [collaborate], but I've also seen the results of that which often takes power away from our positions ... We had a process for co-developing the child and family services act with YG [Yukon government] and we just weren't able to keep our group tight... We ended up with legislation that I think is out of date. Legislation that wasn't as progressive as it possibly could have been. It didn't have the commitment with collaboration with First Nations [9].

Another benefit of balancing the power between MTFNYs and NIGs is that implementation is more likely to be carried out in a way both partners agree on. Collaboration helps, particularly if it leads to a unified position, as this undermines a more passive strategy used by NIGs where they will not do something or implement, citing a lack of collaboration which they as decision-makers, give themselves the power to define. In these cases, NIGs are defining collaboration to mean unity. Participants put forth that the implementation of the agreements as an important goal for MTFNYs. So, not collaborating impacts relationships between MTFNYs; it reduces the power of MTFNYs in interactions with NIGs; it allows NIGs to maintain the status quo; and it leads to less progressive outcomes.

### **9.1.3 Potential indirect benefits of collaboration**

Indirect benefits of collaboration amongst MTFNYs are improved relationships, increased trust and better solutions. All have the potential to improve the implementation of the agreements. When MTFNYs work together it leads to better relationships that may help further implementation. Participants characterised trust and relationships between Indigenous leaders during the negotiations of the land claims agreements as being higher than today. While it is hard to say which came first, trust, relationships, or collaboration it is likely that increasing one increased the others. Participants pointed to higher trust and improved relationships as an important factors to the accomplishments of *Together Today* and the Umbrella Final Agreement. One participants stated that to get back to the high level of collaboration experienced during *Together Today for Our Children Tomorrow* MTFNYs “need to reemphasize the importance of relationships and take the time ... to do that and to re-establish that sense of trust” [5]. If the trust and relationships between MTFNY leaders and



Nations were improved, it is likely it would lead to improved implementation of the agreements similar to what happened during land claims negotiations.

Conversely, when MTFNYs do not work together it diminishes relationships between MTFNYs which ultimately reduces the amount of collaboration which can make the implementation of agreements more difficult. Recently the Teslin Tlingit Council (TTC) took the federal government to court regarding the negotiation of their Financial Transfer Agreement (FTA) and how those negotiations interacted with Canada's Collaboration Self-government Fiscal Policy. While TTC was successful in taking the federal government to court to ensure the proper implementation of the TTC Final Agreement with respect to funding of TTC, it ultimately led to a disruption in collaboration and a pulling away by TTC.

TTC, because of that litigation, has a slightly different Financial Transfer Agreement ... [before that] the seven [MTFNYs negotiating together] were not exactly walking in lockstep but collaborating nicely. TTC had this idea for litigation. The others didn't bail on. TTC got a result and I think that has created a little bit of a chasm there. But I will say, as I said earlier, that TTC is still participating in all of the caucuses of the seven, so there is still a fairly tight relationship, but not as tight as it used to be [3].

Ultimately the TTC court case impacted the relationships between the seven MTFNYs who negotiated their FTA together. They were not working together as collaboratively as before. And Canada by not extending TTC's wins to the rest of the MTFNYs was introducing a wedge between them leading to differing implementation of their very similar agreements.

Collaboration amongst MTFNYs develop better solutions which can be used to remove obstacles to implementation such as MTFNYs government structures and internal MTFNYs challenges. MTFNY government structures are colonized and not based on MTFNYs' values. These new structures require resources to implement yet another, different structure due to the agreements. Internal challenges for MTFNYs are a lack of resources, both human and financial, and the complexity of the Final and Self-government Agreements which makes implementation of the agreements difficult. By working together MTFNYs can develop better solutions to offset these obstacles including how to find the larger number of resources needed for implementation. As one participant lays out MTFNYs can create good solutions:

if the federal government were transparent in what they want as outcomes [from negotiations], I honestly think we could meet those objectives. Because we have

creative and inventive ways of getting there. It's not just "Give us the money, give us the money, give us the money". We have creative solutions to get to a better collective society generally [4].

MTFNYS have successfully worked together to develop solutions and strategies to negotiations, including both initial land claims negotiations, and court cases. Similarly, working together could help to develop solutions to potentially decolonize MTFNY government structures and find creative innovative ways to deal with the lack of resources and the complexity of the agreements leading to improved implementation of the agreements.

#### **9.1.4 The courts' role in supporting implementation.**

Another way collaborations between MTFNYS can improve the implementation of the agreements is by offsetting the power imbalance between them and NIGs through the courts. Using the courts as an alternative to the implementation process with NIGs often provides MTFNYS with better implementation outcomes as demonstrated by the Peel Land Use Regional Plan court case and the proposed amendments to the YESSA Act court case<sup>70</sup>.

MTFNYS have collaborated in taking NIGs to court in order to have their agreements implemented in line with the agreements themselves and MTFNY thinking. The courts are used to level the playing field between MTFNYS and NIGs by bringing in a third party to interpret the agreements which often leads to better implementation. While the agreements often set out that NIGs have decision making powers, there are procedures in the agreements (such as land use planning) to ensure that First Nations in the Yukon are consulted and accommodated in the decisions. The legal system has been used successfully by MTFNYS to offset the power imbalance between them and NIGs. The Peel Land Use Regional Plan and the proposed amendments to the YESSA Act courts cases both demonstrate that when MTFNYS collaborate together by taking NIGs to court they are able to ensure that the agreements are implemented in accordance with the spirit and intent of the agreements and in accordance with the agreements. By doing this MTFNYS are improving the implementation of the agreements. They are ensuring that NIGs are not backtracking on what was agreed to, and it helps to ensure that future NIG decisions are made in line with the agreements.

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<sup>70</sup> More information on these two court cases can be found in 6.1.2 Bill B-6 – amendments to YESSA and 6.1.3 Peel Land Use Regional Plan court case.

Conversely, when MTFNYs do not work together and only one MTFNY takes an NIG to court there are consequences. Using the TTC court case above, the TTC was successful in some areas, but Canada made it clear to the other MTFNYs that these “wins” by TTC would not be provided to them.

[TTC has] language in their Financial Transfer Agreement that none of the other 10 [MTFNYs] have and it’s not that the others didn’t ask for it, we did but we couldn’t get it... [Canada’s negotiator said] “Well, as far as we’re concerned [the] TTC judgement applies solely to TTC so we’ll abide by that judgement when it comes to TTC”, which was of course totally ridiculous because all the other [MTFNYs] have the very same agreements and all of the facts are virtually the same [3].

Once the court case was finalized, TTC started to go off in its own direction [3] which leads to the impact that not collaborating can increase the differences between MTFNYs making it more difficult to collaborate which can impact the implementation of the agreements.

## **9.2 When to collaborate?**

Ultimately, it is up to MTFNYs to decide when to collaborate. They know best whether it will result in the outcomes desired and whether they have the resources to carry it out. Even though participants were able to come up with many benefits of collaboration along with examples of collaboration helping MTFNYs implement their agreements, they also were able to list many obstacles to collaboration and implementation. There is not an easy way to remove all the obstacles to collaborations. Similarly, removing the obstacles to implementation is not easy, nor is collaboration going to remove them all. As Huxham warns: “making collaboration work effectively is highly resource consuming and often painful. My strongest piece of advice to practitioners, therefore, is ‘don’t do it unless you have to’” (2003, pp. 420-421). The implementation of the agreements requires a lot of MTFNYs’ time, energy, staff, and money. The implementation of the agreements is failing as laid out by the participants, the Implementation Plan Review, the Land Claims Agreement Coalition, and the non-Indigenous governments of Yukon and Canada. There are many obstacles to implementation including internal MTFNY challenges, the power imbalance between MTFNYs and non-Indigenous governments, how MTFNY governments are organized post-agreements, and the impact of NIGs on implementation. Collaboration amongst MTFNYs could help the implementation of the agreements by increasing human and financial resources ,offsetting the power imbalance, and providing the indirect benefits of

improved trust, relationships and solutions. The courts have been used by MTFNYs as a collaborative group to help implement the agreements according to their “spirit and intent”. Conversely, there are also impacts of not collaborating. Not collaborating can negatively impact relationships and allows NIGs to use a strategy of divide and conquer to the peril of MTFNYs and the implementation of their agreements. Overall, participants saw collaboration as a useful tool to implement the agreements but saw many obstacles to collaboration.

## 10 Conclusion

While participants provided several benefits of collaboration, they also provided several obstacles to collaboration for modern treaty First Nations in the Yukon (MTFNYS) to overcome. Participants also provided obstacles to the implementation of their Final and Self-government Agreements. While some of the benefits of collaboration appear to offset the obstacles to implementing MTFNY agreements, ultimately it is up to MTFNYS to decide when it will be beneficial for them to collaborate. This research sought to determine if increased collaboration between MTFNYS could improve the implementation of the Final and Self-government Agreements. Ten participants, who work to implement the agreements, (nine of which are Citizens of MTFNYS) were interviewed in a semi-structured way to gather their thoughts on the implementation of the agreements and collaboration between MTFNYS. This includes documenting their feedback on the benefits and obstacles that MTFNYS face when collaborating and implementing the agreements.

Non-indigenous governments<sup>71</sup> (NIGs) in Canada use collaborative governance with Indigenous peoples. NIGs encourage First Nations to develop a single point of view whether it be on the division of funding (Financial Transfer Agreements), negotiations (Nickel, 2019), policy direction (R. Nicol et al., 2019), or legislation (Yukon's *Wildlife Act*, and Canada's *Interpretation Act*). While it is understandable that non-Indigenous governments would rather deal with one party rather than several it does not always reflect the way that modern treaty First Nations in the Yukon wish to govern themselves.

The implementation of the modern treaties in the Yukon is challenging. MTFNYS and multiple NIG bodies have reported on the difficulties of implementing modern treaties. The obstacles provided by the participants include internal challenges including the financial and human capacity shortages of MTFNY governments, the unequal assignment of power between MTFNYS and NIGs, the colonial structure of MTFNYS' governments, and the impact of NIGs on the implementation. Some obstacles to implementation are similar to those of collaboration including resource constraints, and MTFNY governance and administration structures.

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<sup>71</sup> Government of Canada and Government of Yukon.

Although the push by NIGs for MTFNYs to collaborate might make it appear that MTFNYs do not collaborate, MTFNYs do collaborate and often are very successful. MTFNYs were successful in submitting the first land claims to the federal government in 1973. To do so First Nations in the Yukon (FNYs) drafted *Together Today for Our Children Tomorrow*. When Canada wanted to only negotiate with status Indians, FNYs set up one organisation representing both status and non-status Indians, the Council of Yukon Indians, and gave it the mandate to negotiate land claims. CYI delivered the Umbrella Final Agreement to FNYs which became the template for the Final Agreements of eleven FNYs. Most participants provided *Together Today* and the land claims negotiations as examples of successful collaboration on the part of FNYs. More recently MTFNYs have been successful in collaborating, particularly in court cases where they push back on the non-Indigenous governments. Examples include successful court cases regarding the Peel Regional Land Use Plan and amendments to the *Yukon Environmental and Socio-economic Assessment Act*. The examples provided by participants provided background for the benefits and obstacles to collaboration by MTFNYs.

The ten participants interviewed provided several common themes regarding the benefits and obstacles of working together. Participants laid out the following as benefits of collaboration: improved negotiated outcomes due to improved strength and power; better solutions through the sharing of information; improved capacity through resource sharing and improved funding; and finally strategic benefits. Seven of the ten participants spoke to either improved power, strength, or negotiated outcomes as a benefit of collaboration, a way to offset the power imbalance between MTFNYs and NIGs. Obstacles to working together included First Nations are different from each other including geographically and in their priorities; a lack of trust amongst MTFNYs; lack of agreement to collaborate; a lack of capacity; and interference by outsiders (both NIGs and consultants). The overlap of the benefits of collaboration with obstacles to implementation of the agreements point to areas where MTFNYs might want to collaborate more.

While it is up to MTFNYs to decide on when, where and how to collaborate, increased collaboration amongst them could help improve the implementation of modern treaties in the Yukon. Collaboration could provide the additional human and financial resources currently needed for improved implementation. Collaboration could increase the power held by MTFNYs and offset the power imbalance between MTFNYs and NIGs and thus improved negotiated outcomes. It could strengthen the courts' role in supporting implementation.

Conversely, not collaborating could negatively impact the implementation of the agreements. Not collaborating reduced the power of MTFNYs in interactions with NIGs; it allows NIGs to maintain the status quo; and it leads to less progressive outcomes.

Collaborative Advantage theory (CAT) recommends not collaborating unless it is important due to the number of resources required to collaborate and the uncertainty of it being successful (Huxham, 2005, p. 257). The theory of collaborative advantage tries to deal with the issue of common wisdom saying collaboration is good while the reality is that collaboration is difficult, time and resource consuming, and the output often negligible (Vangen & Huxham, 2013, p. 2). This was the finding of this research too, that while collaboration is put forward, particularly by NIGs, as the goal, there are many obstacles to collaboration. MTFNYs do collaborate and achieve great things though there are other areas where either individual MTFNYs or NIGs want MTFNYs to collaborate, but they do not. Ultimately, it is up to MTFNYs to decide whether, when and how to collaborate to improve implementation of their agreements. MTFNYs must set the priorities regarding when they collaborate and on what.

Implementation of the agreements could benefit from collaboration between MTFNYs, but it needs to be done in a manner set by MTFNYs themselves. The obstacles to implementation laid out by participants are ones that collaboration can help to manage. Finally, NIGs should be more supportive of MTFNYs when they wish to collaborate and when they do not wish to do so. Not only does this support reflect the Nation-to-Nation relationship the government of Canada says it values, it follows from the Prime Minister's assertion that "no relationship is more important to me ... than the one with Indigenous Peoples" (Trudeau, 2017) as partners respect the wants and needs of each other. Also, NIGs benefit when MTFNYs collaborate amongst themselves and with NIGs. These collaborations have the same benefits of collaboration provided earlier by participants. NIGs benefit in the reduction of the resources needed (staff, time, energy, and funding) due to one negotiation occurring instead of multiple similar negotiations. Often NIGs also benefit with a single solution instead of multiple solutions which is easier administratively for NIGs. The one solution approach also follows the template approach of the Umbrella Final Agreement which remains a preferred solution of NIGs. A solution that was a compromise following the failure of the 1984 Agreement in Principle. Similarly, compromise is required for the implementation of the agreements. Although collaboration might help MTFNYs to improve implementation of their agreements, they are the only ones who know if collaboration is worth the effort.

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## Appendix A – Interview Guidelines

Potential questions for the interviews include asking participants for their thoughts and ideas regarding:

**Note:** If possible specific examples are much appreciated, i.e. implementation barriers/challenges, implementation success, collaboration successes.

**Demographics** (to be able to situate people (?) and see themes based on generation? [old school/UFA leaders vs new post-FA negotiations generation])

- Roles in leadership and government, dates
- Roles in implementing agreements, dates

### Implementation of agreements

- What are your impressions of how FNY agreements are being implemented?<sup>72</sup>
- What are the challenges/barriers to implementing the agreements? (pls provide specific examples if possible)
- What is working well/what is not working well regarding the implementation of the agreements? (pls provide specific examples if possible)
- How could FNY's investment in CYFN and implementing the agreements yield better returns? What would those returns look like?
- Would increased collaboration lead to improved implementation of the agreements in your opinion? Why or why not?

### Collaboration

- CYFN's current role as a central agency
  - What is CYFN's mandate? (provide CYFN's viewpoint of their mandate<sup>73</sup>)  
Discuss
  - Do you see CYFN's mandate to include improving collaboration amongst FNYs?
  - What is CYFN doing well with regards to implementing FNY agreements? (pls provide specific examples if possible)
  - What could CYFN do better or add to their mandate regarding the implementation of FNY agreements?

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<sup>72</sup> I am following Chilisa's direction here to allow "indigenous knowledge [in this case the participant] to guide interview question structures, types of questions asked, and data analysis procedures." (2012, p. 223).

<sup>73</sup> The Council of Yukon First Nations mandate is to serve as a political advocacy organization for Yukon First Nations holding traditional territories, to protect their rights, titles and interests. (Council of Yukon First Nations, 2021)

- Collaboration
  - What does collaboration between FNYs look like to you?
  - Do FNYs collaborate well today? In the past [during UFA or FA negotiations]? (pls provide specific examples if possible)
  - Are there any areas where FNYs could collaborate better?
  - What are the barriers and supports to collaboration between FNYs? (pls provide specific examples if possible)
- Central Agency format
  - What do you think about the establishment of a centralized agency to help FNYs to implement their treaties?
  - How should a central agency to implement FNY agreements work?
    - What goals could the agency have?
  - How should a central agency not work?
  - What are the stumbling blocks/barriers for a central agency?
    - What will prevent them from doing their job once established?
    - What are the obstacles to establishing a central agency?
  - What are the opportunities for a central agency?
  - Should the agency be separate from CYFN? What are the pros and cons of status quo or separation?
- What would be gained and what would be lost with a strengthen joint body?

## Negotiations

- Did you take part in UFA and/or FA negotiations?
  - When?
  - What role(s)? What area(s)?
  - Was there a lot or little collaboration?
  - Did the collaboration help or hinder negotiations? How?
- Do you take part in negotiations with respect to the agreements today?
  - How long? When?
  - What role(s)? What area(s)?
  - Is there a lot or little collaboration?
  - Does the collaboration help or hinder negotiations? How?
- What are your impressions of the negotiations?
  - Are they successful? Frustrating?
  - Achieving their goals in your opinion?
    - The Nation that you represent's opinion?
    - Canada's?
    - Yukon's?
- How could negotiations be improved?
- Do you see a power imbalance between Canada and FNYs? Yukon and FNYs? Why or why not?
- Could/would collaboration be used to offset some of the power imbalance between Canada/Yukon and FNYs in negotiations?

## Other Solutions

- Could you provide an alternative solution for FNYs to implement their agreements more appropriately?
- What would be the factors in determining if other solutions are successful, a failure, or somewhere in between?

