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Thomas Berger  
Steven A. Kennett  
Hayden King



# CANADA'S NORTH

## What's the Plan?

THE 2010 CIBC SCHOLAR-IN-RESIDENCE LECTURE





# Canada's North: What's the Plan?

THE 2010 CIBC SCHOLAR-IN-RESIDENCE LECTURE

*by Thomas Berger, Steven A. Kennett, Hayden King*

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## THE AUTHORS

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# Preface

*by Dr. Anne Golden*





For many years, Canadians have witnessed a long history of land claims—and land use planning negotiations, protests, and discussions—in the North come and go in the headlines. Some have asked: Why should Canadians in all parts of this country, not just the North, care about land use planning in Northern Canada?

The answer lies in the importance of the North to all of us. The North covers approximately 80 per cent of Canada's landmass. It is rich in potential, holding most of the nation's natural resources, including forests, metals, minerals, hydroelectric sites, oil, and natural gas. Many of these are not yet fully developed; some have scarcely begun to be tapped. Future development of these resources, however, must be approached with due concern for important social and environmental considerations, particularly as they relate to Canada's Aboriginal people.

For these reasons, The Conference Board of Canada chose to make the topic of land use planning in Canada's North the focus of its fourth CIBC Scholar-in-Residence program. This year's program is also a unique joint venture with the Board's new Centre for the North initiative. The Centre for the North is a program of research and dialogue intended to help Northerners and Southerners alike to identify challenges and opportunities, and ultimately to enhance a shared vision of sustainable prosperity in the North.

For this important research undertaking, we invited three nationally renowned scholars to assess the effectiveness of land use planning in Canada's North. We were honoured to have Thomas Berger, Steven Kennett, and Hayden King as our sixth, seventh, and eighth scholars. Each scholar examined this issue from a very different perspective, encapsulated in the titles of their essays.

Their efforts have produced the truly thought-provoking essays collected in this volume. The scholars assessed the effectiveness of land use planning in Canada's North from three unique positions:

- Keep it up—Mr. Berger argues that land use planning in Canada's North is crucial to sustainable economic development and to the self-determination of Canada's Northern Aboriginal Peoples.

- Fix it up—Mr. Kennett contends that Northern land use planning needs substantial fixing in order to overcome regulatory, institutional, and legal complexities, but that the process will be valuable and workable once changes are made.
- Give it up—Mr. King maintains that land use planning in Northern regions is a flawed and inappropriate concept that has failed Northerners in practice, even as it has been implemented increasingly over the past decade.

We were delighted to have Regional Chief Eric Morris of the Assembly of First Nations, Yukon Region, moderate the public lecture held in Whitehorse, Yukon, on May 12, 2010. The event, which took place on the traditional territory of the Kwanlin Dün First Nation and the Ta'an Kwäch'än Council, was extremely well received by the community, attracting a standing-room-only audience of over 250 people.

The Conference Board is deeply grateful to CIBC for its vision and generosity in providing 10-year funding for the Scholar-in-Residence series, which made possible the present volume and will continue to fund future ones.

With its mission of advancing thought leadership for a better Canada, the Conference Board is proud to present this collection of remarkable essays. We hope it will help leaders at all levels of our society, and in all parts of the country, to develop new perspectives that will help us move forward on this important topic.



# Keep It Up:

LAND USE PLANNING: LAND CLAIMS  
AND CANADA'S NORTH

*by Thomas R. Berger*





## INTRODUCTION

It was safe enough, I suppose, to ask me to write on behalf of current land use planning in Canada's North, because there the modern era of land use planning has coincided with the modern land claims era. This is not mere coincidence; in fact, the principal vehicle for land use planning in the North has been land claims negotiations and land claims settlements. Canadians are not entirely aware of the important place of land claims agreements in our polity. I was an advocate in the *Calder* case, in which the Supreme Court's 1973 decision,<sup>1</sup> recognizing that Aboriginal title was part of Canadian law, was instrumental in persuading the Government of Canada to adopt a policy of settling comprehensive land claims.

That policy, adopted in 1973, has resulted in land claims agreements with Canada's Aboriginal peoples in Quebec, the Northwest Territories, Nunavut, Yukon, British Columbia, and Newfoundland and Labrador.

I am, however, focusing on our three Northern territories: the Northwest Territories, Yukon, and Nunavut. The process of negotiation, the contents of the agreements, the scope of the agreements, and their continuing significance are worth examining. The land claims story is, I believe, one of remarkable Canadian achievement.

Land claims agreements are, in fact, the principal vehicle for land use planning in Canada's North. In a sense, land use planning is what land claims are about. They are, after all, *land* claims. But, more than anything else, they affirm the special place of First Nations, the Inuit, and the Métis in Canadian life. Land claims agreements have been a positive force for re-establishing the political relationship—indeed, establishing a new relationship—between the Government of Canada and the Aboriginal peoples of the North.

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1 *Calder v. Attorney General of B.C.*, [1973] S.C.R. 373.

## ORIGIN OF TREATIES AND LAND CLAIMS

Does Canada enter into land claims agreements with any of Canada's peoples except Aboriginal peoples? No. Land claims arise out of Aboriginal title. They exist because, as Chief Justice Antonio Lamer said in the *Delgamuukw* case,<sup>2</sup> speaking of Canada's Aboriginal peoples, "[T]hey were here first."

There was an earlier history of treaty-making between Canada and its Aboriginal peoples. It extended from the 18th century through the early part of the 20th century. In that earlier history, first Britain's and then Canada's concern was to obtain a surrender of Aboriginal title. This was understood to be an essential condition before white settlement could take place.

Aboriginal title has a lengthy pedigree in North America. Its greatest exponent in the 19th century was John Marshall, chief justice of the United States from 1803 to 1836. The most famous of the cases he decided arose out of Georgia's annexation of the lands of the Cherokee Nation. Georgia had adopted legislation purporting to annul Cherokee tribal laws and requiring imprisonment of tribal officials. In 1832, Marshall, in *Worcester v. Georgia*, held that Georgia's laws were "repugnant to the Constitution, laws and treaties of the United States" and could not be applied to the Cherokee Nation.<sup>3</sup> Marshall, in magisterial language, raised the issue that lies at the root of land claims. By what right did Europeans occupy a continent that the Indians had held for centuries?

Marshall said, relying on Britain's Royal Proclamation of 1763 and the policy the British had adopted toward the Indians in the years before the American Revolution:

The Indian nations had always been considered as distinct, independent political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial, with the single exception

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2 *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010.

3 *Worcester v. Georgia* 31 U.S. (6 Pet.) 515 (1832).

of that imposed by irresistible power, which excluded them from intercourse with any other European potentate than the first discoverer of the coast of the particular region claimed.

Marshall's judgments are still followed in the United States. In that country, treaties blanket the lower 48 states. In Alaska, Congress imposed a land claims settlement, the *Alaska Native Claims Settlement Act*, in 1971. In Hawaii, the issue of land claims remains outstanding.

In Canada, following Britain's policy (as Marshall had done), we made treaties. These treaties were, I suppose, a kind of early land claims policy. They were, at all events, specific recognition of Aboriginal title, on the footing that a surrender of Aboriginal title had to be obtained for white settlement to proceed.

In fact, treaty-making began long before Confederation. A few treaties were made in what is now Southern Ontario in the 18th century and the early years of the 19th century. Two very important pre-Confederation treaties were the Robinson Superior and Robinson Huron Treaties of 1850–52. The process continued after Confederation, as settlement moved westward in the 1870s, with the signing of the numbered treaties on the Prairies; indeed, it was extended into Northeastern British Columbia when Treaty No. 8 was signed in 1899. But in the early years of the 20th century, treaty-making was discontinued. Treaties 8 and 11 were signed with the Dene and Métis of the Northwest Territories, in 1899 and 1921, respectively. Under these treaties, the Aboriginal groups ceded tracts of land to the Crown in exchange for a variety of benefits and rights, but no reserves were ever set aside. No treaty whatsoever was signed with the Inuit.

This hiatus, however, came to an end with the *Calder* case, the suit brought in 1967 by the Nisga'a Nation of Northwestern B.C.

When the Nisga'a filed their lawsuit in the Supreme Court of B.C.—in the name of Frank Calder, president of the Nisga'a Tribal Council—much of our country was still without treaties. Treaties had not been made in Quebec. There were treaties in the Northwest Territories, but under them no reserves had been set aside for the Indians. The same was true

of Yukon. In the Eastern Arctic, there were no treaties with the Inuit. The Indians and Inuit, not to mention the Métis, could make claims to Aboriginal title in these vast territories. If *Calder* succeeded, all of these claims would have to be dealt with.

In British Columbia, no treaties had been made, apart from pre-Confederation treaties made in the 1850s by or on behalf of the Crown with Indians on southern Vancouver Island, and the aforementioned extension of Treaty No. 8 into the province's northeastern region. The old colony of British Columbia entered Confederation in 1871. From that time, the province took the position that it was under no obligation to negotiate with the Indians, denying that there was any such thing as Aboriginal title.

At the time that the Nisga'a filed their suit, many Canadians believed that modern claims to Aboriginal title were nothing more than make-believe. Prime Minister Pierre Trudeau, speaking in Vancouver on August 8, 1969, said: "Our answer is no. We can't recognize Aboriginal rights because no society can be built on historical 'might have beens.'"

Calder went to the Supreme Court of Canada. The arguments were heard late in 1971; judgment was handed down in February 1973. Justice Wilfred Judson, writing for himself and two other judges, held that the Nisga'a had Aboriginal title before the coming of the Europeans. However, he went on to say, their title had been extinguished—before British Columbia entered Confederation in 1871—by the old Colony of Vancouver Island and, later, the Colony of British Columbia. Justice Emmett Hall, writing for himself and two other judges, found that the Nisga'a had Aboriginal title before the coming of the Europeans, that it had never been extinguished, and that it could be asserted in our own time. On this reckoning, the court was tied, three to three.

But all of the six judges who had addressed the main question supported the view that English law in force in British Columbia when colonization began had recognized Indian title to the land. The seventh judge held against the Nisga'a on a technicality. Nevertheless, for the first time, Canada's highest court had unequivocally affirmed the concept of Aboriginal title. Judson, in describing the nature of Indian title, concluded:

The fact is that when the settlers came the Indians were there, organized in societies and occupying the land as their forefathers had done for centuries. This is what Indian title means . . . What they are asserting in this action is that they had a right to continue to live on their lands as their forefathers had lived and that this right had never been lawfully extinguished.

Thus, Aboriginal title arises from Aboriginal use and occupation of the land. It could, of course, be extinguished by competent legislative authority. It was on the latter point that Judson and Hall disagreed: Judson held that the title of the Nisga'a had been extinguished before Confederation, whereas Hall held that their title was still good today.

Hall, writing for the three judges who were prepared to uphold the Nisga'a claim, urged that the courts should adopt a contemporary view and not be bound by past and mistaken notions about Indians and Indian culture. He concluded that the Nisga'a had their own concept of Aboriginal title before the coming of the Europeans and were entitled to assert it today. He said:

What emerges from the . . . evidence is that the [Nisga'a] in fact are and were from time immemorial a distinctive cultural entity with concepts of ownership indigenous to their culture and capable of articulation under the common law . . .<sup>4</sup>

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4 In 1997, in *Delgamuukw v. British Columbia*, the Supreme Court broke the tie in the Nisga'a case in unmistakable fashion, coming down unanimously on Hall's side. Aboriginal title, they said, was never extinguished in B.C.

The *Calder* decision catapulted the question of Aboriginal title into the political arena.<sup>5</sup> On August 8, 1973, Jean Chrétien, Minister of Indian Affairs, announced that the federal government intended to settle Aboriginal land claims in all parts of Canada where no treaties had yet been made. Chrétien announced that the government had accepted the principle that there ought to be compensation for the loss of an Aboriginal “traditional interest in land.” This statement applied especially to claims in British Columbia, Quebec, Yukon, and the Northwest Territories (which, at the time, included what is now Nunavut).

I have so far discussed developments on the legal and political front. It should not be forgotten that, at the time, there were land claims movements of Aboriginal people in the North. Chief Elijah Smith, in early 1973, led a delegation to Ottawa representing Yukon Indians. He met with Trudeau and made the case for recognition of land claims. To the Aboriginal land claims movement on the ground, Aboriginal title was not an abstraction, but the patrimony of Aboriginal peoples. Together with developments in the courts, these movements brought about the change in federal policy.

Thus, the modern land claims era opened. After the decision in *Calder*, governments reached land claims agreements with many peoples. In Canada’s North, these agreements were the foundation of modern land use planning.

The James Bay and Northern Quebec Agreement, settling Inuit and Cree claims in the province of Quebec, was signed in 1975. In 1984, the Inuvialuit signed the first comprehensive land claims agreement in the Northwest Territories. The Gwich’in, the Sahtu, and the Tlicho agreements followed. In 1992, the Yukon Umbrella Final Agreement was reached in Yukon. In 1993, the Nunavut Land Claims Agreement was signed. In British Columbia, the Nisga’a Treaty was signed in 2000. The Inuit of Nunatsiavut (Labrador), along with the governments of

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5 See G.V. La Forest, “Reminiscences of Aboriginal Rights at the Time of the *Calder* Case and Its Aftermath.” In Hamar Foster, Heather Raven, and Jeremy Webber, eds., *Let Right Be Done: Aboriginal Title, the *Calder* Case, and the Future of Indigenous Rights* (Vancouver: UBC Press, 2007).

Canada and Newfoundland and Labrador, signed the Labrador Inuit Land Claims Agreement on January 22, 2005. The Nunavik Inuit Land Claims Agreement was signed on December 1, 2006. These agreements now cover something like half the Canadian land mass.

Two profound concerns have motivated Aboriginal peoples in seeking land claims agreements. Their concern all along, articulated in these land claims agreements, is to affirm their Aboriginal title and their distinct place as political entities under the Canadian Constitution. That is why land claims agreements have included provisions for a measure of self-government or, if not, have led to negotiations for self-government.

## **ABORIGINAL PEOPLES OF THE NORTH**

I have discussed the origins of Aboriginal rights in the North because it is the Aboriginal title of First Nations, Inuit, and Métis that gives rise to their status as distinct peoples. It gives them standing to negotiate.

Modern land claims agreements cover land, hunting, fishing, trapping, land use, and surface and subsurface resources, and may include new forms of governance. They have been the principal means of land use planning in the North for 30 years.

For Aboriginal peoples, these land claims agreements have constituted the first phase of decolonization—that is, the process by which Aboriginal people can regain control over their lives, largely by regaining control over the use of their land and resources. This process has taken a long time and is still not complete. This is because land claims in Yukon, the Northwest Territories, and Nunavut had to cover many peoples and a vast area, and had to take into account a complex range of indigenous cultures, each with its own distinct history.

In the past, Northern peoples were always hunters and gatherers, and most lived with a high degree of mobility. Small groups travelled over large areas, hunting and gathering what they needed but without altering the environment itself.

It is not always easy to remember, as you fly over the unbroken boreal forest, the tundra, or the sea ice, that the Canadian North has been inhabited for thousands of years. Extremely slow rates of northern plant growth and of decay mean that it is possible to see almost everywhere in the North signs of ancient occupation—old house remains, tent rings, fire-cracked rocks—and for archaeologists to find, on or close to the surface, a wealth of artifacts and other evidence to show the richness, diversity and wide extent of northern aboriginal society.<sup>6</sup>

The history of land use is etched in the land in Canada's North. The Indians of the Mackenzie Valley and Western Arctic are part of the Athabaskan (Dene) group. The Athabaskan people are one of the most widely dispersed groups of Indians in North America. In addition to the Indians of the Northwest Territories and Northern Yukon, they include the Koyukon and Tanana of Alaska, the Tutchone of Southern Yukon, and the Beaver and Carrier of British Columbia; they also include the Navaho and Apache of the Southwestern United States. These Indian peoples migrated from Asia perhaps 20,000 years ago.

Later migrations, perhaps 5,000 years ago, brought the Inuit. The dominant Inuit culture was the Thule. Superbly equipped for life on the barrens and on the sea ice, the range of the Thule people in what is now Canada eventually included all the coastal areas and most of the Arctic Archipelago islands. It extended as far east as the Gulf of St. Lawrence and Newfoundland. The Inuit of today are their descendants.<sup>7</sup>

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6 John U. Bayly, "North," *The Canadian Encyclopedia*. [www.thecanadianencyclopedia.com/Print-Friendly.cfm?ArticleId=A0005792](http://www.thecanadianencyclopedia.com/Print-Friendly.cfm?ArticleId=A0005792).

7 The Inuit language, with comparatively minor variations, reaches from Siberia to eastern Greenland—a spread of some 8,000 kilometres.

Each of these peoples had their own way of hunting, of making clothes, of raising children, of dealing with one another, and of regarding the environment and the spiritual powers they saw as integral to their world. Each people's knowledge of the land and its life constitutes a distinctive ethno-scientific tradition.

During the past 175 years, the Métis have joined the Dene and Inuit of the Mackenzie Valley as one of the Aboriginal groups in the North. The first Métis, who moved into the North in the early 19th century, settled around Great Slave Lake, and they trace their ancestry to the unions between *coureurs de bois* and Indian women in the early days of the fur trade. Other Métis are the descendants of unions between Hudson's Bay Company men—mainly of Scottish origin—and Dene women. The children of these unions usually intermarried with the original Dene inhabitants, so that in most Aboriginal communities in the North there are close family ties between the Dene and the Métis.<sup>8</sup>

Given this background, it would have been virtually impossible, and certainly unwise, for planners in Ottawa or in Northern capitals to sit down and develop land use plans as if they had a blank sheet of paper before them. Land use planning in the North has had to take into account these complex and distinctive cultures, occupying vast areas of our country.

About the time that Ottawa began to think about land use planning in the North, it confronted a growing land claims movement. At the same time, in the wake of *Calder* in 1973, Canada had agreed to negotiate these land claims. So it is not surprising that land use planning in the North, to a great extent, emerged from these negotiations and the land claims settlements that followed.

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8 Bayly, "North."

## NORTHWEST TERRITORIES

In 1977, as commissioner of the Mackenzie Valley Pipeline Inquiry, I completed a year and a half of hearings in the Mackenzie Valley and the Western Arctic.

In my report, *Northern Frontier, Northern Homeland*, I recommended that the land claims of the Dene and the Inuvialuit be settled and measures be taken to protect the environment before a Mackenzie Valley gas pipeline was built. I recommended that Northern Yukon be designated wilderness to protect the caribou and the snow geese. I recommended a 10-year moratorium to enable land claims agreements to be negotiated. Well, it has taken some time, but they have been negotiated. There are three existing land claims agreements—with the Inuvialuit (1984), Gwich'in (1992), and Sahtu (1993)—along with one combined land claims and self-government agreement, with the Tlicho (2003). Currently, the Inuvialuit and Gwich'in—as well as several Sahtu communities, including Deline, Tulita, Norman Wells, and Fort Good Hope—are in various stages of negotiating self-government agreements. The Dehcho First Nation, the Northwest Territories Métis Nation, and the Akaitcho First Nations are each engaged in a combined land and governance negotiation.

The land claims settlements in the Mackenzie Valley have protected the hunting, fishing, and trapping rights of Aboriginal peoples and have made the Dene, Inuvialuit, and Métis owners of hundreds of thousands of hectares of land, as well as surface resources and subsurface resources. Funding for economic development has been provided. Moreover, the Dene and Inuvialuit have led the way, in their land claims agreements, in the protection of wilderness areas. In their land claims agreement in 1984, the Inuvialuit established Ivvavik National Park on the Arctic coast of Yukon to protect the calving grounds of the Porcupine caribou herd. The Gwich'in, in their land claims agreement, established Vuntut National Park in 1995, south of and contiguous to Ivvavik; Vuntut mainly protects the staging grounds of 500,000 snow geese. These are land use planning achievements that would not have happened in the absence of land claims agreements.

The Dehcho have not yet signed a land claims agreement, but they have reached a number of interim arrangements with Canada. The most remarkable of these interim arrangements has resulted in the seven-fold expansion of Nahanni Butte National Park. This is as good an example as you will get of the impact of land claims negotiations on land use planning in the North, even before the completion of a final agreement.

The Nahanni National Park Reserve, in the Northwest Territories, draws adventure visitors who are attracted to the spectacular whitewater of the South Nahanni River. It is framed by dense boreal forests and four deep canyons. The name Nahanni comes from the Dene language and can be translated as “spirit.” In 1978, the park became one of the world’s first UNESCO World Heritage Sites. Nine years later, the South Nahanni River was designated a Canadian Heritage River.<sup>9</sup>

When Prime Minister Pierre Trudeau established the park in 1972, it comprised 4,766 km<sup>2</sup> (1,840 sq. mi.). The park was in “reserve” status pending settlement of outstanding Aboriginal land claims in the region. In 2003, an agreement between the Dehcho First Nation and Parks Canada gave temporary protection to 23,000 km<sup>2</sup> (8,880 sq. mi.). In August 2007, the federal government added 5,400 km<sup>2</sup> (2,085 sq. mi.).<sup>10</sup> The park now encompasses an area four times the size of Prince Edward Island.

As Prime Minister Stephen Harper has said, “This is arguably the most important act of environmental protection in a generation.”<sup>11</sup> And it emerged from land claims negotiations.

Key features of land claims and self-government agreements include measures to ensure local control and stewardship of natural resources and to improve the participation of Aboriginal communities in economic and industrial activity. Certainty over land ownership and use, and specific provisions in land claims agreements, enable Aboriginal

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9 Wikipedia, “Nahanni National Park Reserve,” [http://en.wikipedia.org/wiki/Nahanni\\_National\\_Park\\_Reserve#cite\\_note-parcan-0](http://en.wikipedia.org/wiki/Nahanni_National_Park_Reserve#cite_note-parcan-0).

10 Ibid.

11 CBC News, “Harper Announces Expansion of N.W.T. Park” (August 8, 2007). [www.cbc.ca/canada/north/story/2007/08/08/nwt-nahanni.html](http://www.cbc.ca/canada/north/story/2007/08/08/nwt-nahanni.html).

groups to pursue natural resource protection and economic development; protection of land and water are specific objectives behind the negotiation of the agreements.

The Gwich'in, Sahtu, and Tlicho comprehensive land claims agreements specify that government economic development programs should help support, maintain, and strengthen the traditional economy of each community. Support for traditional economies is important because activities such as hunting, trapping, and fishing are not only a way of life; they also directly offset a higher cost of living.

In the Northwest Territories, land claims agreements have not only set aside surface and subsurface lands for First Nations—for hunting, trapping, and fishing, and for wilderness and other protected areas—they have also provided the machinery for ongoing land use planning.

There are two regulatory jurisdictions in the Northwest Territories: one in the Mackenzie Valley, which represents most of the Northwest Territories mainland; and one in the Inuvialuit Settlement Region, which covers the northernmost regions of the Northwest Territories, including islands in Beaufort Sea. Both regulatory environments were developed under land claims agreements and are structured around co-management boards.

The *Mackenzie Valley Resource Management Act, 1998* (MVRMA) established an integrated co-management system to manage public and private lands and waters, as provided for in the land claims agreements in the Mackenzie Valley. The MVRMA is designed to ensure that Aboriginal people and other Northerners can participate meaningfully in decision-making processes. The Minister of Indian and Northern Affairs has primary responsibility for implementing the MVRMA, and Indian and Northern Affairs Canada has specific responsibilities for carrying out this mandate through land use planning, environmental monitoring, enforcement of development permits, and support for all co-management boards. Environment Canada also has environmental monitoring responsibilities in the Northwest Territories.

Co-management boards develop land use plans, review development proposals, and issue land and water permits. It is not, I believe, too much to say that where land claims agreements are in place, development

decisions are being made in local communities, and that where land claims have not been settled, the environmental regulatory system in the Northwest Territories is incomplete.

In her spring 2010 report to the House of Commons, the Auditor General of Canada wrote the following.

The Government of Canada (represented by INAC), the Government of the NWT, and Aboriginal groups have finalized land claim agreements in the Inuvialuit, Gwich'in, Sahtu, and Tlicho regions of the NWT. INAC has made progress toward finalizing the four comprehensive land claim settlements and ten self-government agreements still being negotiated in the NWT. However, significant delays in the Department's provision of agreed-upon funding to some First Nations have hindered their participation in the self-government negotiations process.

An environmental regulatory system is mostly in place in regions with settled land claims—co-management boards have been established, development decisions are being made, and land use plans are being developed. INAC has improved its support to co-management boards since 2005 and has supported the development of land use plans in these regions. However, key components of the environmental regulatory system are missing in regions where land claims have not been settled and where regional co-management boards have thus not been established. In many cases, there is no clear requirement for land use plans or a mechanism

for community involvement in decision-making, and consequently decisions on development applications take longer than in regions with settled land claims.<sup>12</sup>

In regions where land claims have not been settled and there is no local co-management board, decisions regarding development permits are made by the Mackenzie Valley Land and Water Board, which contains little or no representation from those regions. In the absence of land claims agreements, the federal government has been unsuccessful in establishing a regulatory system that satisfies the needs of all parties.

However, areas that do have co-management boards established under land claims agreements differ distinctly from provinces in terms of community authority for decision-making. While local communities affected by large industrial developments are not consulted in most provinces, in the Northwest Territories, local communities have extensive decision-making power. They can decide whether an investment can proceed and place conditions or restrictions on the operation.

Land use planning in the Northwest Territories is an indigenous development, in every sense of the word.

## **YUKON**

I have already pointed out that, under the Inuvait Agreement of 1984 and the Gwich'in Agreement of 1995, two wilderness parks—Ivvavik and Vuntut—were established west of the Firth River in Northern Yukon. The Council of Yukon First Nations (formerly the Council of Yukon Indians) and its 14 members have been responsible for negotiating land claims in the rest of Yukon.

A long, intensively negotiated process began in 1973, when Chief Elijah Smith's delegation to Ottawa requested commencement of land claims negotiations. Those negotiations ultimately led, in 1989, to a

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12 Office of the Auditor General of Canada, *Spring 2010 Report of the Auditor General* (Ottawa: Office of the Auditor General of Canada, 2010), Chapter 4, 2.

comprehensive land claims agreement in principle with the Council of Yukon Indians. Following extensive negotiations, the Council, the Government of Canada, and the Government of Yukon signed the Umbrella Final Agreement on behalf of 14 Yukon First Nations in 1993.

The Umbrella Final Agreement is a lengthy and detailed document that sets out the exchange of Aboriginal claims, rights, titles, and interests for defined treaty rights regarding land tenure and settlement land, access to non-settlement or Crown lands, fish and wildlife harvesting, heritage resources, financial compensation, and participation in the management of public resources. The Umbrella Final Agreement is the foundation on which the treaty of each First Nation in Yukon is built. Each treaty contains all of the provisions of the Umbrella Final Agreement, as well as specific provisions that may vary depending on the individual First Nation.

For instance, Little Salmon/Carmacks reached a final agreement and a self-government agreement in 1996. Ratification took place over five days in April 1997. The final agreement came into effect in October of that year under federal and territorial legislation.<sup>13</sup>

To date, 11 of 14 Yukon First Nations have signed a final agreement under the Umbrella Final Agreement.

## **NUNAVUT**

In 1976, the Inuit Tapirisat of Canada presented a land claim to the Government of Canada. From the beginning, the Inuit insisted that any comprehensive settlement of this land claim must include the establishment of a territorial government of Nunavut (“our land” in Inuktitut). The Inuit did not wish their claim to be subsumed within the then-existing Northwest Territories, which was demographically dominated by the more densely populated (and largely non-Inuit) Western Arctic.

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13 *Yukon First Nations Land Claims Settlement Act*, S.C. 1994, c. 34 and *Yukon First Nations Self-Government Act*, S.C. 1994, c. 35; and *An Act Approving Yukon Land Claim Final Agreements*, R.S.Y. 2002, c. 240 and *First Nations (Yukon) Self-Government Act*, R.S.Y. 2002, c. 90.

Nor, however, did they insist on Aboriginal self-government: Nunavut was to be a public government, with full enfranchisement of both Inuit and non-Inuit residents.

The Tunngavik Federation of Nunavut, the Government of Canada, and the Government of the Northwest Territories entered into an agreement in principle in 1990 to resolve the claim. After the Inuit ratified the agreement in principle, a final agreement was successfully negotiated and the Nunavut Land Claims Agreement (NLCA) was signed in Iqaluit on May 25, 1993. Parliament accordingly passed the *Nunavut Land Claims Agreement Act*.<sup>14</sup>

The NLCA included a promise that a predominantly Inuit territory, to be known as Nunavut, would be established in the Eastern Arctic.<sup>15</sup> Prime Minister Brian Mulroney, speaking at the signing ceremony, said:

We are forging a new partnership, a real partnership. Not only between the Government of Canada and the future Government of Nunavut but between Aboriginal and non-Aboriginal Canadians.

Article 4 of the NLCA contained an undertaking by Canada to recommend legislation to Parliament to establish the Territory of Nunavut. In 1992, a plebiscite was held to confirm the boundary between the Northwest Territories and the new territory, and a political accord was developed under Article 4 outlining the types of powers, financing, and scheduling involved in establishing the new territory.

On April 1, 1999, Nunavut came into being as Canada's third and newest territory. Canada was proud of this achievement—one distinctly Canadian and exemplifying our nation's ideal of unity in diversity. Canada took several bows on the international stage. Prime Minister Jean Chrétien said:

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14 *Nunavut Land Claims Agreement Act*, S.C. 1993 c. 29.

15 Nunavut Land Claims Agreement, 1993, Article 4.

Canada is showing the world, once again, how we embrace many peoples and cultures. The new Government of Nunavut will reflect this diversity, incorporating the best of Inuit traditions and a modern system of open and accountable public government.

Nunavut was to be an expression of Inuit self-determination. For the Inuit of Nunavut, it would be their place on the map of our country. As Chrétien said, “Fifty years from now, schoolchildren will be reading about this day in their textbooks...when we redrew the map of Canada and helped achieve the long-promised destiny of the people of the Eastern Arctic.”

The NLCA that led to the creation of Nunavut is by far the largest of the land claims settlements in the modern land claims era. The territory is vast, extending south to James Bay (further south, in fact, than the northern tip of Ontario), and north to the waters off the northern coast of Ellesmere Island. If Nunavut were an independent country, it would be the 15th largest in area in the world.

The Inuit were expected to be full participants in their own governance at all levels within the Nunavut Settlement Area. As a consequence, through Article 23, the parties agreed to work toward a level of Inuit employment in the federal, territorial, and municipal governments that would be equivalent to Inuit representation (about 85 per cent) in the population of the new territory.

The Government of Nunavut is now up and running. There have been three general elections in the territory. The elected government represents all the people of Nunavut. Nunavut Tunngavik Incorporated (NTI) represents the Inuit of Nunavut, the beneficiaries of the lands and resources they now hold under the NLCA. NTI manages the funds received under the settlement on behalf of the Inuit and, along with Inuit regional organizations, safeguards Inuit interests regarding implementation of the NLCA.

The NLCA’s terms are set out in 41 articles. The NLCA recognizes the collective title vested in the Inuit of Nunavut to 352,240 square kilometres of land (known as “Inuit-owned lands”) in what was, at the time, the eastern part of the Northwest Territories, and Inuit subsurface rights

to over 38,000 square kilometres in those same lands. Inuit beneficiaries have priority rights to harvest wildlife for domestic, sport, and commercial purposes throughout all the lands and waters covered by the NLCA. The Inuit also received financial compensation in the form of capital transfer payments of \$1.148 billion, payable over a 14-year period.

Under the NLCA, the Inuit share in royalties on non-renewable resources. The NLCA also contains an obligation on the part of developers to conclude impact and benefit agreements; provisions for a \$13-million training trust fund; and a federal commitment to establish three national parks in Nunavut.

It requires no imagination to appreciate the extent to which these measures determined land use over much of Nunavut. However, the NLCA also provided for ongoing land use planning. Under the agreement, Ottawa-funded institutions of public government were established.

These institutions of public government, covered by Article 10.1.1(b), were created to manage the land and resources that were the subjects of the Inuit land claim. They provide for co-management by the Inuit and the federal and territorial governments of lands and resources within the Nunavut Settlement Area. The Nunavut Planning Commission is responsible for land use planning (Article 11), the Nunavut Impact Review Board for environmental impact assessment (Article 12), the Nunavut Water Board for regulation of water use and management (Article 13), and the Nunavut Wildlife Management Board for management of wildlife and wildlife habitat (Article 5). These bodies are joint management boards with representation from the Inuit, the Government of Canada, and the Government of Nunavut. The Nunavut Surface Rights Tribunal, while not a co-management board, is another institution created under the NLCA (Article 21), with jurisdiction mainly over disputes regarding access to lands and related matters, including compensation payable for access and consequent environmental harm.

NTI, which represents all Inuit beneficiaries, and the federal government nominate the members. They make recommendations to the Minister of Indian Affairs and Northern Development.

Arrangements must be made for the ongoing funding of the boards and commissions that manage land and resources in Nunavut, and that engage in land use planning and environmental impact assessment. Theirs is an immense task.<sup>16</sup>

## **THE NUNAVUT LAND CLAIMS AGREEMENT AND ARCTIC SOVEREIGNTY**

The settlement of land claims in Yukon and the Northwest Territories has had an even wider reach than land use planning and self-government. The resulting agreements, particularly the NLCA, have played an important part in buttressing Canada's claim to Arctic sovereignty.

The presence of the Inuit, their occupation of the land since time immemorial, the surrender of their Aboriginal title to Canada, the establishment of Nunavut, and their participation today in the Canadian Rangers, keeping watch on our Northern fastnesses, have strengthened Canada's identity and its sovereignty in the Arctic.

The melting of polar ice has brought the world's attention to the fact that the Northwest Passage and the other passages through Canada's Arctic Islands may, in the quite foreseeable future, be navigable for substantial periods each year. Ownership of the resources of the Arctic Islands and the seabed, and authority over the sea routes—in short, sovereignty over Canada's Arctic—is a topic of increasing discussion.

Effective occupation is one of the keys to sovereignty under international law. The immemorial presence of the Inuit in Canada's Arctic, as much as British and Canadian voyages through the Arctic Islands, is fundamental to Canada's claim. For centuries, the Inuit were the sole occupants of the Arctic Islands and most of Canada's Arctic coastline. They lived on the land and on the ice; they harvested the resources of the land and the sea. They were the first cartographers of the Arctic. In

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16 This section about Nunavut is drawn from Thomas R. Berger, *Conciliator's Final Report: "The Nunavut Project"* (March 2006) 5–6, 35–37. [www.ainc-inac.gc.ca/al/ldc/ccl/fagr/nuna/lca/nlc-eng.pdf](http://www.ainc-inac.gc.ca/al/ldc/ccl/fagr/nuna/lca/nlc-eng.pdf).

Canada we now know, through Aboriginal mapping projects conducted in recent years, that before Europeans came, the Inuit had already mapped the Arctic with their hunting patterns.<sup>17</sup>

Canada was established in 1867. It did not then include the vast territory it encompasses today. It consisted of four provinces extending from Nova Scotia to the head of Lake Superior. It did not include Northern Ontario or Northern Quebec. Its borders did not reach James Bay or Hudson Bay, let alone the Arctic and the Arctic Islands. At Confederation, therefore, Canada did not include the traditional territory of the Inuit.

The United Kingdom formally transferred Rupert's Land and the North-Western Territory to Canada in 1870, and then the Arctic Islands in 1880. The Inuit still held Aboriginal title over much of this area. But, more importantly, the Inuit used and occupied their traditional territories in ways that Canada could not. Canada's gradual assertion of control over the Arctic was achieved not through conquest but, rather, through a remarkable partnership. Joint RCMP and Inuit dogsled patrols and oceanic voyages (such as the famous voyages of the *St. Roch*<sup>18</sup> in 1940–42 and 1944) helped to secure Canadian sovereignty in the High Arctic.

A special reservist unit, the Canadian Rangers, was established in 1947 to provide a permanent Canadian military presence in even the remotest communities. To this day, the almost entirely Inuit Canadian Rangers constitute a full-time military presence in Nunavut. They continue the tradition begun by the RCMP/Inuit patrols, but with snowmobiles instead of dog teams.

Canada's desire to establish its sovereignty in the High Arctic also led to the federal government's 1953 decision to resettle some Inuit families from Quebec in the Far North. Seven families from the

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17 See Terry Tobias, *Living Proof* (Vancouver: Ecotrust Canada, 2010), which outlines a scientific method of mapping Aboriginal land use—hunting, fishing, trapping, and gathering. The book contains a remarkable chapter illustrating the scope and intensity of Inuit traditional land use.

18 At Vancouver's Maritime Museum today, you can visit the *St. Roch* and see the quarters provided for Captain Henry Larsen and his RCMP crew, and the tent on the foredeck occupied by the Panipakoocho family, who accompanied Larsen on his 1944 voyage through the Northwest Passage. They hunted on the ice to feed Larsen's crew.

Inukjuak (Port Harrison) area of Northern Quebec and three families from Pond Inlet in what is now Nunavut were resettled in communities at Resolute Bay on Cornwallis Island and at Grise Fjord on Ellesmere Island. Over the next three years, the number of resettled families rose to 17. These Inuit communities remain the most northerly Canadian presence apart from the military personnel who staff a remote listening post at CFS Alert on the northern tip of Ellesmere Island, about 800 kilometres from the North Pole.

The preamble to the NLCA recites the considerations that impelled the parties to enter into it in 1993. One of the considerations is stated in this way:

AND IN RECOGNITION of the contributions of Inuit to Canada's history, identity and sovereignty in the Arctic.<sup>19</sup>

This provision is unique in Canadian relations with Aboriginal peoples. No other comprehensive land claims agreement or historic treaty acknowledges the contribution of an Aboriginal people to Canada's sovereignty in this way.

In signing the NLCA, the Inuit formally ceded to Canada their Aboriginal title to Nunavut.<sup>20</sup> Only with this formal cession was Canada's claim to the Arctic and the Arctic Islands complete, unburdened by Aboriginal title. According to author Michael Byers, the signing of the NLCA was a vital step in strengthening Canada's claim of sovereignty.<sup>21</sup> For Canada to assert sovereignty over the Arctic and the Arctic Islands, while the Aboriginal people who have always inhabited

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19 This same acknowledgement is repeated in the Partnership Accord signed in 2004 with Inuit Tapiriit Kanatami, which represents Inuit from *all* regions of Canada.

20 The Nunavut Land Claims Agreement was preceded in 1984 by the Inuvialuit Land Claims Agreement, ceding the Aboriginal title of the Inuvialuit in the Western Arctic to Canada.

21 Michael Byers, *Who Owns The Arctic?* (Vancouver: Douglas and McIntyre, 2009).

them had not yet freely ceded their title, would have been more than an embarrassment; it would have impaired Canada's claim of sovereignty against those of other nations.<sup>22</sup>

Today, because the Inuit still use and occupy the Arctic, they continue to contribute to Canada's "history, identity and sovereignty in the Arctic."

In years to come, Canada will be dependent on international law in asserting its claim. The Inuit presence in the Arctic, their occupation of the land, and their use of the sea and sea ice are the surest proofs of Canada's claim. As the ice melts, shipping lanes open, and resources become accessible, their long-standing occupation of the land and the waterways (every one of Nunavut's 27 communities is on tidewater) will work to Canada's advantage.<sup>23, 24</sup>

## A CANADIAN ENTERPRISE

Canada might have pursued a quite different policy of land use planning in the North. Indeed, a policy of assimilation was proposed in the federal government's white paper of 1969.

But the belief of Aboriginal peoples that their future lay in asserting their common identity and defending their common interests proved stronger than any of us had realized. Policies worked out by the practical men and women in Ottawa were annulled as events on the ground impinged on bureaucratic constructs. The policy of the government was overthrown by the determination of Canada's Aboriginal peoples to reject it. As we have seen, a principal instrument in that overthrow was the suit brought by the Nisga'a people to establish their Aboriginal title.

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22 To be sure, once sovereignty is asserted by a nation over lands occupied by an Aboriginal people, the courts of that nation must act accordingly, whether Aboriginal title has been surrendered or not. In the international arena, however, the issue is not so easily resolved.

23 Shelagh Grant, *Polar Imperative* (Vancouver: Douglas and McIntyre, 2010).

24 This section about the Nunavut Land Claims Agreement and Arctic sovereignty is largely drawn from Berger, *Conciliator's Final Report*, 14, 91–92.

With the decision in the *Calder* case in 1973, followed by the government's change of policy that year, Canada was well and truly set on the path that has brought us to where we are today.

I have, I think, said enough about land claims agreements to indicate their roots in the early settlement of our country, the means they have provided for recognizing the distinct place of Aboriginal peoples under our Constitution, and what has been achieved thus far. Certainly in the North, the agreements have made Aboriginal peoples major landowners and significant players in the economy. As well, they have been vehicles for establishing new forms of Aboriginal self-governance.

Moreover, I believe land claim agreements have been *the* major vehicles of land use planning—planning that has taken place during negotiations, sometimes extending over many years, in which Aboriginal and non-Aboriginal Northerners have played a major part. And they have, to a great extent, created the institutions for future land use planning in the North.

There are distinctively Canadian features to our land claims settlements. They follow a collective model of ownership, not a corporate model. Moreover, they are entrenched in the Constitution.

Our modern Canadian land claims agreements were preceded by the *Alaska Native Claims Settlement Act* (ANCSA) of 1971. There can be no doubt that the settlement of Aboriginal claims in Alaska caught the eye of Aboriginal peoples and of the Canadian government.

The Alaska settlement<sup>25</sup> was eye-catching. At the time in Alaska, there were 64,000 Indians, Aleuts, and Eskimos (as they are known in Alaska). They received \$1 billion in cash and 10 per cent of the land in the state. In this statute, Congress imposed a corporate model on ownership of Aboriginal land and rights. The assets received were to be held by 200 village corporations and 13 regional corporations. In each village, all those living at the time of the settlement were made shareholders of their regional corporations, which held much of the money

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25 Once ANCSA was passed, Congress passed the *Alaska National Interest Lands Conservation Act*, 1980, which categorized all federal lands in Alaska.

and all of the subsurface resources. Villagers were also shareholders in their local village corporations, which would own the land and the village's share of the money received under the settlement.

It will be seen at once that there are two difficulties in this corporate model:

- Once shares in the village or regional corporations could be sold, they could be sold to non-natives. Village and regional corporations could easily cease to be held by native shareholders. And traditional native land would pass out of native ownership. So Congress provided that shares could not be sold for 20 years.
- The only shareholders would be those who were alive at the time of the settlement. After their deaths, their shares would go to their heirs, known in Alaska as the “afterborns.” Given that 64,000 shareholders—men, women, and children—did not arrange to have exactly the same number of children, the shareholders of each succeeding generation of Alaska natives are anything but equal. Moreover, after several generations, the shareholdings would become fractionalized, emulating what happened to individual allotments in the U.S. in the 19th century when Congress passed the *General Allotment Act* of 1885.

As commissioner of the Alaska Native Review Commission, 1983–85, I reviewed the settlement, critiqued it, and recommended that the land be brought back into tribal ownership. Congress did not do so, but it did, in 1988, pass amendments to ANCSA that continued the ban on the sale of shares, unless the shareholders of a native corporation voted to eliminate the ban when the 20-year ban on the sale of shares ran out in 1991.<sup>26</sup>

Now, the Alaska land claims settlement model still has its adherents and its opponents. What is important to understand is that *all* modern Canadian land claims settlements have rejected the model of the shareholders' corporation.

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26 It is fascinating to note that none of the native regional corporations in Alaska has voted to allow the sale of shares, and now the shareholders in six of them have voted to issue 100 shares (the number of shares issued to each shareholder in 1971) to each newborn child descended from the original shareholders. In this way, so long as the shareholders maintain the ban on the sale of shares, these regional corporations will more closely resemble the membership corporations that Aboriginal people have adopted in Canada.

All of the settlements reached in Canada, since the James Bay and Northern Quebec Agreement in 1975, have established institutions to ensure that Aboriginal land remains in Aboriginal ownership. However, they have used the idea of setting up a corporation to go into business, to acquire land, and to engage in transactions regarding Aboriginal assets. Notably, though, these corporations are membership corporations, not shareholders' corporations. All the members of the Aboriginal group are members of the corporation. When they die, they cease to be members. As children are born, they become members of the band, the nation, and the corporation. This structure avoids the two problems of the sale of shares to non-Aboriginal people and the creation of afterborns.

Moreover, the rights acquired under Canadian land claims settlements are protected under sections 35 and 36 of the *Constitution Act, 1982*. They cannot be taken away by Parliament or a provincial or territorial legislature, though there is some scope for limited impingement on them.<sup>27</sup> This means, for instance, that the parks established by the land claims agreements—such as Ivvavik and Vuntut—are protected under the Constitution. As a result, as these land claims agreements are signed, they entrench in the Constitution a new relationship between Canada and its Aboriginal peoples.

When land claims agreements have been negotiated, they have been more than a series of trade-offs worked out among lawyers. They have been a national project, in which all parties—and, indeed, the entire country—have sought the success of Aboriginal peoples. Today, implementing the land claims agreements remains a national project. The parties must work together to fulfill the idea that is reflected in each of the land claims agreements, recognizing that they could not have anticipated every step necessary to their full implementation.

Although, like most constitutional instruments, land claims agreements may contain very specific provisions, their central purpose is to describe an *idea*. The framers were, in each case, drafting a document to establish a new relationship between Canada and Aboriginal peoples

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27 See, for example, *R. v. Sparrow*, [1990] 1 S.C.R. 1075.

that would last for generations; they were not simply setting out performance requirements in a contract. And we must be as constructive and creative in implementing land claims agreements as the visionary men and women on both sides of the negotiating table who drafted them in the first place.

With the development of land claims and Aboriginal self-government in Canada, our country has been very much in a leadership role. The land claims movement in Canada is part of a worldwide movement for recognition of the rights of Indigenous peoples.

However, Canada has recently forsaken this leadership role. The UN Working Group on Indigenous Peoples played a key role in drafting the Universal Declaration on the Rights of Indigenous Populations.<sup>28</sup> After 22 years, the UN General Assembly adopted the declaration in September 2007, but Canada has declined to sign it. By such gestures, Canada has sent mixed signals to the international community. This refusal will, I think, suffer the same fate as the white paper of 1969.

## THE FUTURE

The Government of Canada has highlighted the North as a key development frontier of importance to all Canadians. The 2007 Speech from the Throne declared that “the North needs new attention” and outlined the government’s commitment to developing “an integrated Northern strategy focused on strengthening Canada’s sovereignty, protecting our environmental heritage, promoting economic and social development, and improving governance, so that Northerners have greater control over their destinies.” Since then, the federal government has made several announcements regarding new initiatives for the North, including the creation of the new Canadian Northern Economic Development Agency and a Northern Major Projects Office.

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28 Canada’s Constitution, s. 35(2), defines the Indians, the Inuit, and the Métis as the “Aboriginal peoples of Canada.”

Land claims agreements have given Northern Aboriginal peoples the means to achieve a great deal of influence over these developments.

Some may think we have given too much authority to Aboriginal peoples under land claims agreements to determine land use today and tomorrow. Well, to start with, it isn't like that. There are federal fail-safe mechanisms. But how could it be wrong to seek to develop a land use map based on true reconciliation between the desire for industrial development and the concerns of the original inhabitants—the people who were born there, will spend their lives there, and will die there? For them, the North is the dwelling place of generations.

In the modern era of land claims, we are moving from treaty making to treaty implementation. These are distinct but not strictly isolated concepts.<sup>29</sup>

Implementation is premised on three underlying considerations: the status of land claims agreements as constitutional instruments; the principle that the honour of the Crown must be observed in all the Crown's dealings with Aboriginal peoples; and the terms set out in the land claims agreements themselves.

It is obvious that the parties to land claims agreements cannot predict how events will unfold over a decade or more in lands as vast as those that have been the subject of these agreements. It is my firm view that to try to reduce a land claims agreement to a document consisting of no more than a list of legal obligations would be altogether a mistake. And it would be equally mistaken to regard the signing or renewal of an implementation contract as foreclosing a review of the objectives agreed to in the land claims agreements, or exhaustive of the parties' obligations in fulfilling those objectives.

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29 By "treaties," we usually mean treaties with the First Nations of Canada. Modern land claims agreements, beginning with the James Bay and Northern Quebec Agreement of 1975, are properly described as land claims agreements in the *Constitution Acts, 1982 and 1985*. I think it is appropriate to refer to the NLCA as a land claims agreement to distinguish it from treaties with First Nations. I refer to "treaties" in my discussion here of implementation because it is in keeping with the vocabulary more often used in the jurisprudence, and it encompasses land claims agreements.

Our relationship with the Aboriginal peoples of the North and throughout the country is still unfolding. Settlement of land claims was the first major step in decolonization. I think the emphasis must now be on education and employment.

Aboriginal peoples in the North face new challenges today—challenges magnified by the advent of global warming in the Arctic. For them, the advance of the industrial frontier, coupled with the possibility of the loss of traditional resources, reveals how important it is for the Inuit to equip themselves with education and training for employment. Climate change shows no sign of abating; its impact on the Aboriginal homeland, and therefore on Canada, will continue—perhaps at an accelerated pace.<sup>30</sup>

I think the issues of Aboriginal employment and Inuit education in Nunavut, writ large, symbolize the difficulties that face Aboriginal peoples across the country. Nunavut has its land claims agreement. It has self-government. But that is not the end of the story. Aboriginal peoples must inhabit these agreements, populate their own governments, and truly administer their land and resources. They must intelligently exercise the authority over land use planning in the North that they have achieved under their land claims agreements.

As Shawn Atleo, the National Chief of the Assembly of First Nations, wrote in *The Globe and Mail*:

Our agenda is about building strong First Nations that will see Canada fulfill its economic potential. The centre of this agenda is education. First Nations youth are the youngest and fastest-growing segment of our population. Their share of the labour force will triple over the next 20 years. First Nations youth who complete

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30 I have made recommendations in my report on the Nunavut Project to deal with these issues, but they are beyond the scope of this paper. Berger, *Conciliator's Final Report*.

high school are twice as likely to be employed, and those who get university degrees triple their earning potential.<sup>31</sup>

The same holds true for the Inuit and the Métis.

Land claims agreements have mapped out the future of the North regarding land use. Now a new generation must map out the next steps—education and employment—to enable the planning that has taken place and will take place to work fully to the advantage of Aboriginal peoples of the North and all Northerners.

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31 Shawn Atleo, “Education is the Key to Aboriginal (and Canadian) Potential,” *The Globe and Mail*, February 20, 2010.





# Fix It Up:

WHY AND HOW TO PUT NORTHERN LAND USE  
PLANNING ON TRACK FOR SUCCESS

*by Steven A. Kennett*





## INTRODUCTION

**T**he North embodies many characteristics of Canada that are central to our identity and core values: abundant renewable and non-renewable natural resources, the boreal forest and Arctic ecosystems, immense landscapes and scattered communities that are the homeland for Northerners and resonate strongly in the lives and imaginations of many other Canadians, and new institutions of government that give Aboriginal people a real say in key decisions affecting their lives and the lives of others. Associated with each of these attributes are tremendous opportunities and daunting challenges.

How the North will change in the coming decades is uncertain, but change is inevitable. Northern Canada faces a period of rapid transition driven by factors such as increasing demand for natural resources, demographic changes, and the effects of global warming. Regional land use planning offers an opportunity to respond to those changes in order to seize new opportunities, minimize adverse effects, ensure orderly development, and identify and protect the values that are important to Northerners and other Canadians.

My section of the book identifies the challenges to regional land use planning in Canada's Northern territories and the reasons why we must overcome those challenges. It then discusses recommendations for improving Northern planning. While acknowledging the mixed record of planning to date, my argument is that Northern planning can and should be fixed.

Since an examination of planning across the North would be a monumental task, research for this section focused primarily on planning in Yukon and the Northwest Territories. The analysis and recommendations presented here draw heavily on insights obtained through interviews with planning practitioners and experts in Northern resource management and regulatory issues.

## **NO-ONE SAID IT WOULD BE EASY**

Framing the discussion in terms of “fixing” Northern planning presupposes that the planning process is broken, or at least not working well. Underlying this assessment is an explicit or implicit expectation of how Northern planning should operate. That expectation should be realistic, not idealistic. It should recognize that land use planning is difficult everywhere and particularly difficult in the North. No one who understands the complexity of integrated regional planning and the magnitude of the challenges facing Canada’s North could credibly argue that Northern planning will be easy, or that the inescapable need for significant effort to make it work is a persuasive reason for giving it up.

### **The Inherent Challenges of Planning**

Land use planning is an exercise of social choice that requires us to define a common vision, assume responsibility for our actions, take account of alternative values and interests, think about the long term, and make explicit choices now that will have important implications for our future and for the lives of future generations. Planning has the potential to draw upon our capacity for imagination, self-determination, generosity, foresight, and purposive action. It demands the best of us.

The corollary of this higher calling is that land use planning is often difficult. It typically raises complex policy issues and requires trade-offs among competing public priorities and private interests. Discipline is needed to forego short-term gains in order to achieve long-term benefits, particularly when political and economic decisions are often driven by electoral timetables and quarterly financial indicators. The tendency to discount environmental, social, and economic risks to individuals and communities who may bear the costs of land use decisions must be resisted. Integrated planning cuts against the narrow mandates and

organizational “silos” that often characterize our institutions of government, particularly in the areas of environmental and natural resource management.<sup>1</sup>

Land use planning is difficult, primarily because it tries to overcome obstacles to sustainable land and resource management that are deeply rooted in individual and organizational behaviour and in the structure of decision-making. These obstacles are also pervasive, affecting a broad range of policy issues, as illustrated by the financial and environmental crises that have dominated the news over the past year. The fact that planning is rarely easy is as much a symptom of the need to “fix us up” as an indicator of deficiencies in the design and implementation of planning processes.

### **The Northern Context**

The inherent challenges of land use planning are compounded by distinctive features of the North. Land claims agreements and devolution are transforming governance in Canada’s Northern territories. The principal dynamic is the transition from the centralized and sometimes distant authority of the federal government to territorial, regional, and community empowerment. A closely related shift is from decisions dominated by non-Aboriginal values and institutions to co-management and the increased authority and capacity of Aboriginal governments. Land use planning supports this transition through regional planning commissions or boards and through an emphasis on recognizing Aboriginal cultural values and giving communities a meaningful voice.<sup>2</sup>

The pressures on Northern planning are tremendous as it assumes a pivotal role in the emerging governance structure. Nowhere else in Canada is there a greater range of economic, social, environmental, and cultural interests at play in land use planning. At one end of the spectrum

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1 National Round Table on the Environment and the Economy (NRTEE), *Boreal Futures: Governance, Conservation and Development in Canada’s Boreal* (Ottawa: NRTEE, 2005), 38–40. [www.nrtee-trnee.com/eng/publications/boreal-futures/NRTEE-boreal-futures.pdf](http://www.nrtee-trnee.com/eng/publications/boreal-futures/NRTEE-boreal-futures.pdf).

2 See, for example, Yukon Umbrella Final Agreement, subsection 11.1.1, [www.eco.gov.yk.ca/pdf/umbrellafinalagreement.pdf](http://www.eco.gov.yk.ca/pdf/umbrellafinalagreement.pdf); Gwich’in Comprehensive Land Claim Agreement, subsection 24.2.4, [www.gwichin.nt.ca/documents/GCLCA.pdf](http://www.gwichin.nt.ca/documents/GCLCA.pdf); and Nunavut Land Claims Agreement, subsection 11.2.1, [www.nucj.ca/library/bar\\_ads\\_mat/Nunavut\\_Land\\_Claims\\_Agreement.pdf](http://www.nucj.ca/library/bar_ads_mat/Nunavut_Land_Claims_Agreement.pdf).

are small communities of a few hundred Aboriginal people with close ties to the land and to traditional ways of life.<sup>3</sup> At the other end are the federal government—which stands to receive significant tax and royalty revenues from resource development—and large multinational corporations that respond primarily to competitive pressures in global commodity and financial markets. Northern land use planning is called upon to bridge these world views; reconcile the competing interests; and define a vision, objectives, and policy direction for land and resource use within each region. The magnitude of this challenge is striking.

The transformation of Northern governance has also produced many new institutions and fundamentally changed responsibilities and relationships. One result is increasing demands on Northerners, particularly within Aboriginal communities, as they assume a greater role in decision-making. Aligning capacity with authority takes time. Power shifts can create conflict. Turf protection is a common organizational response to change.

The complexity and capacity challenges of Northern governance may be transitional issues that will be resolved with time. They may also prove to be structural and intractable under the current system. In *Road to Improvement*, a recently released report on Northern governance, Neil McCrank recommends a consolidation of regulatory bodies, some aspects of which might require amendments to constitutionally protected land claims agreements.<sup>4</sup> Regardless of whether these problems are transitional or structural, they will affect land use planning.

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3 The North Yukon planning region, for example, represents about 12 per cent of Yukon and has a permanent population of approximately 300 people, all of whom live in Old Crow. North Yukon Planning Commission, *Final Recommended North Yukon Land Use Plan* (Whitehorse: North Yukon Planning Commission, January 2009), 2-1-2-3. [http://nypc.planyukon.ca/index.php?option=com\\_docman&task=cat\\_view&gid=109](http://nypc.planyukon.ca/index.php?option=com_docman&task=cat_view&gid=109).

4 Neil McCrank, *Road to Improvement* (Ottawa: Public Works and Government Services Canada, May 2008), 13-17. [www.reviewboard.ca/upload/ref\\_library/1217612729ri08-eng.pdf](http://www.reviewboard.ca/upload/ref_library/1217612729ri08-eng.pdf).

The relative economic importance of resource development, particularly mining and oil and gas, is another factor that makes Northern land use planning particularly challenging.<sup>5</sup> Non-renewable resources offer the promise of economic diversification and greater self-sufficiency for the Northern territories. Mining and the oil and gas industry have provided training, jobs, and business opportunities for Northerners and have contributed to community infrastructure and government revenue. However, non-renewable resource development does not meet the aspirations of all Northerners, and its record of delivering benefits is mixed. Careless development has left substantial unfunded reclamation liabilities and persistent threats to the environment from abandoned mine sites.<sup>6</sup> Reconciling Aboriginal values and culture with industrial activity can be challenging, and development sometimes produces an inequitable distribution of costs and benefits.<sup>7</sup> The aftertaste of resource development has been bitter for some Northerners.

Sub-surface resources also complicate planning because their precise location and value cannot be determined without considerable expenditure on exploration. The mining industry argues vigorously that keeping as much land as possible available for prospecting is essential to the industry's long-term economic potential. Others fear that this approach opens the door to some development occurring at the expense of important ecological and cultural values, and see planning as a means of designating significant areas of land for protection or special management. While mineral resource assessments and ecological land classification can be combined in some circumstances to reduce conflicts, the resource sector

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5 For a discussion of the promise and implications of non-renewable resource development in the North, see NRTEE, *Aboriginal Communities and Non-Renewable Resource Development* (Ottawa: NRTEE, 2001). [www.nrtee-trnee.com/eng/publications/aboriginal-communities/NRTEE-index-aboriginal-communities.php](http://www.nrtee-trnee.com/eng/publications/aboriginal-communities/NRTEE-index-aboriginal-communities.php).

6 Office of the Auditor General of Canada, *2002 Report of the Commissioner of the Environment and Sustainable Development*, Chapter 3: Abandoned Mines in the North (Ottawa: Office of the Auditor General of Canada, October 2002). [www.oag-bvg.gc.ca/internet/English/parl\\_cesd\\_200210\\_03\\_e\\_12409.html](http://www.oag-bvg.gc.ca/internet/English/parl_cesd_200210_03_e_12409.html).

7 NRTEE, *Aboriginal Communities* (2001), 13–18.

and its advocates within government continue to contest the use of planning to allocate land for conservation when the potential economic consequences of these decisions are uncertain.

Given these challenges, it is not surprising that the record of Northern land use planning over the past several decades has been inconsistent. There have been successes, notably the approval of the Gwich'in and North Yukon plans. Planning in the Sahtu and Dehcho regions is making progress after years of controversy and delay. In Yukon, a draft plan for the Peel Watershed has been completed, although the amount of land designated for conservation is contentious. The Yukon Land Use Planning Council has gained experience and stature.

Nonetheless, most of the North still does not have approved plans, and planning has sometimes seemed more like a catalyst for conflict than a means of developing a common vision and making collective decisions. Considerable time and money have been spent on Northern planning, sometimes with few or no tangible results. There is no shortage of critics, and even supporters of planning express disappointment at the slow pace of progress. The section by Hayden King in this volume provides compelling reasons for taking a hard look at the promise and practice of Northern land use planning.

Many of the things in life that are most worth doing, however, are not easy. Northern land use planning is worthwhile because of the opportunity that it offers Northerners and all Canadians and because of the planning imperative that, for reasons described below, cannot be ignored.

## **WHY “FIX IT UP”?**

Land use planning in the North is both an opportunity and an imperative. Despite the challenges, Northerners have a tremendous opportunity to establish a meaningful vision for sustainability in Northern lands and a roadmap to achieve it before options are severely constrained by significant development. Few places on Earth can match the potential of Canada's Northern territories to use planning to get ahead of the development curve.

Speaking of the Western United States (another iconic North American landscape), legal scholar Charles Wilkinson provides an eloquent statement of the promise of planning. In the concluding pages of his compelling critique of “the lords of yesterday”—his term for the anachronistic laws and policies that continue to govern much land and resource use in the American West—Wilkinson turns his mind to the future and asks:

How, then, might sustainable use work in the West? After identifying all economic, environmental, cultural, and abstract—call them spiritual—elements that need to be sustained, it seems to me inevitable that Westerners increasingly will turn to various forms of planning. When I say planning, I mean it in the broadest sense: the process of a community coming together; identifying problems; setting goals—a vision—for a time period such as twenty or forty years; adopting a program to fulfill those goals; and modifying the program as conditions change. Some developers, imbued with the traditional *carte blanche* attitude so evident in the lords of yesterday, try to paint any form of planning as a straitjacket. But sensible yet visionary planning is the opposite: it can open our minds to the possibilities for our communities—our neighborhoods, schools, businesses, environment, and culture—so that we can build flexible arrangements for trying to achieve and sustain those possibilities. All across the West, stresses have built to the point where it is hard to imagine a sustainable future without some form of planning.<sup>8</sup>

These words are equally applicable to Canada’s North.

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8 Charles F. Wilkinson, *Crossing the Next Meridian: Land, Water, and the Future of the West* (Washington, DC: Island Press, 1992), 300.

In addition to being an opportunity, Northern land use planning is an imperative. The following sections discuss four principal reasons why, despite the disappointments to date, it is essential to complete the remaining plans and firmly entrench vibrant planning processes across the North.

### **Living Within Limits**

Land use planning is an essential response to the major challenge of our time: living within limits. From local water shortages and incremental habitat loss in many parts of the world to the global climate crisis, limits of absolute resource availability, limits of environmental carrying capacity, and limits of socially acceptable change are increasingly evident, and we ignore them at our peril. While limits may not be as intuitively evident in the North as elsewhere on a planet that has memorably been described as “hot, flat, and crowded,”<sup>9</sup> they are nonetheless inevitable as development increases.

Regional planning is part of the solution to the challenge of living within limits because it can be used to identify limits, set priorities, and make trade-offs. Planning is particularly important when it involves managing the cumulative impacts of multiple activities. Without direction from an integrated regional plan, decisions made through resource allocation, project review, and regulatory processes tend to focus on objectives and standard-setting for specific activities or sectors, rather than on achieving defined cumulative outcomes.<sup>10</sup> As the extent and intensity of activity grow, the alternative to outcome-based management at the regional level is a future determined by the unintended and sometimes undesirable results of a multitude of uncoordinated individual

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9 Thomas L. Friedman, *Hot, Flat and Crowded: Why We Need a Green Revolution—And How It Can Renew America* (New York: Farrar, Straus & Giroux, 2008).

10 Government of Alberta, *Land-Use Framework* (Edmonton: Government of Alberta, December 2008), 31. [www.landuse.alberta.ca/AboutLanduseFramework/LUFProgress/documents/LanduseFramework-FINAL-Dec3-2008.pdf](http://www.landuse.alberta.ca/AboutLanduseFramework/LUFProgress/documents/LanduseFramework-FINAL-Dec3-2008.pdf). Steven A. Kennett, *Towards a New Paradigm for Cumulative Effects Management*, CIRL Occasional Paper No. 8 (Calgary: Canadian Institute of Resources Law, December 1999). <http://dsp.space.ucalgary.ca/bitstream/1880/47201/1/OP08Cumulative.pdf>.

actions. Integrated regional planning is therefore much more than drawing lines on the map; it plays a pivotal role in managing cumulative impacts by setting and achieving objectives that respect limits.

## **Living Together**

Land use planning is also essential to helping people live together. As activity levels increase, so do land use conflicts. The often-polarized debate over development versus conservation in the North is one sign, among others, that land use conflicts are already happening.

Land use conflicts sometimes have their origins in different values and competing visions for society and for the land. They can also reflect competing interests. Economists refer to the source of these conflicts as externalities—when costs resulting from one activity are imposed on other people. This phenomenon is also known as neighbour effects—the common experience that the use and enjoyment of one person’s land can be affected by what happens next door.

Relying on private negotiation, litigation, reactive project-specific regulation, or political action to address a multitude of land use conflicts can be impractical, expensive, time consuming, and unfair. British Columbia’s adoption of regional land use planning after years of increasingly acrimonious “valley by valley” conflicts is instructive.<sup>11</sup> Planning offers an alternative to escalating conflict by separating incompatible land uses and establishing rules that allow potentially competing uses to coexist. It fosters certainty by enabling existing land users and potential new entrants to form and protect expectations that their land use values and interests will be respected.

## **Meaningful Self-Determination**

The third element of the planning imperative is collective self-determination. Planning allows communities to define a vision for the future and work together to find ways to make it real. It gives people a say in determining what activities and impacts are acceptable in landscapes that

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11 Government of British Columbia, “History of Land and Marine Planning,” Integrated Land Management Bureau. [www.ilmb.gov.bc.ca/slrp/history.html](http://www.ilmb.gov.bc.ca/slrp/history.html).

are, figuratively speaking, their own backyards. Thomas Berger's portion of this book presents an eloquent and forceful argument that land use planning is central to most modern land claims agreements in the North because Aboriginal people recognize its pivotal role in meaningful self-determination. As noted by the Yukon Land Use Planning Council:

In all three territories, the settled land claims include provisions for land use planning. This reflects [Aboriginal people's] understanding that planning should be a priority because it is holistic and integrates social, environmental, and economic values that they, as the original sustainable land stewards, respect. This land ethic is rooted in their culture and relationships to the land.<sup>12</sup>

The result is that the opportunity for greater self-determination through planning has been extended to residents across much of the North, providing legal impetus to the planning imperative as long as Aboriginal people, governments, and the courts take constitutionally protected land claims agreements seriously.

### **Regulatory Efficiency and Certainty**

The fourth element in the planning imperative is its contribution to regulatory efficiency and certainty. Planning is a key component in the decision-making hierarchy for land and resource use, connecting broad policy with operational decisions by providing context and direction for the issuance of resource rights, project review processes, and resource management. Experience in the North and elsewhere shows that environmental assessment and regulatory processes cannot work well in a planning vacuum when confronted with fundamental value conflicts about land use, and with the significant cumulative effects of multiple

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12 Yukon Land Use Planning Council (YLUPC), "Submission to the House of Commons Standing Committee on Aboriginal Affairs and Northern Development" (Whitehorse: YLUPC, December 8, 2009), 5.

activities.<sup>13</sup> Project-specific environmental assessment and regulatory processes generally lack the information, authority, and policy tools to make meaningful trade-offs among land uses. They are also ill-suited to resolving broader land use issues because their narrow focus means that all relevant interests may not be participating. Without a planning process, however, interveners contesting project applications repeatedly bring these issues forward.

The need for planning to support the efficient and effective review of individual projects is a recurring theme in the North.<sup>14</sup> The *Lancaster Sound Environmental Assessment Report* in 1979, which called for regional planning before the approval of drilling in an environmentally sensitive area, is an early example.<sup>15</sup> Almost 30 years later, the Mackenzie Valley Environmental Impact Review Board's rejection in 2007 of Ur-Energy Inc.'s proposal for uranium exploration in the Upper Thelon Basin recommended the development of an interim land use plan that incorporates cultural values.<sup>16</sup> It is clear that industry's objectives of efficiency and certainty in the regulatory review of proposed projects will be difficult to achieve until those decisions can be made within a context defined by integrated regional plans.

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13 Kennett, *Towards a New Paradigm* (1999), 8–28.

14 Heidi Weibe, *The Integration of Land Use Planning and Resource Management in the Dehcho Territory*, master's degree project, Faculty of Environmental Design, University of Calgary (Calgary: April 2007), 104–5.

15 University of Calgary, "Hydrocarbon Impacts: Key Publications," Arctic Science and Technology Information System, Arctic Institute of North America. [www.aina.ucalgary.ca/scripts/minisa.dll/144/hiproe/hiproesd/sisn+44244?COMMANDSEARCH](http://www.aina.ucalgary.ca/scripts/minisa.dll/144/hiproe/hiproesd/sisn+44244?COMMANDSEARCH). Terry Fenge, "Land-Use Planning in Canada's North: A Wind of Change or a Bag of Wind." In T. Fenge and W. Rees, eds., *Hinterland or Homeland: Land Use Planning in Northern Canada* (Ottawa: Canadian Arctic Resources Committee, 1987), 28.

16 Mackenzie Valley Environmental Impact Review Board, *Report of Environmental Assessment and Reasons for Decision on Ur-Energy Inc. Screech Lake Uranium Exploration Project (EA 0607-003)* (Yellowknife: Mackenzie Valley Environmental Impact Review Board, May 7, 2007), 61. [www.reviewboard.ca/upload/project\\_document/1180455989\\_UR\\_Energy\\_Report\\_of\\_EA%20final.pdf](http://www.reviewboard.ca/upload/project_document/1180455989_UR_Energy_Report_of_EA%20final.pdf).

In fact, the desire for greater certainty is a common thread that connects diverse perspectives on land use:

- Industry wants certainty regarding access to land and resources and regarding the rules of the game that will apply to project proponents within environmental assessment and regulatory processes.
- Aboriginal people want certainty that their values and interests will be respected and that a stewardship ethic will guide land use decisions.
- Environmentalists want certainty that development will not cause severe and irreparable harm to natural ecosystems.
- Northerners, as a whole, want certainty that decisions about land and resources reflect their current needs and their aspirations for the future.
- Regulators and resource managers want certainty in the form of clear and consistent guidance for their day-to-day operational decisions.
- Governments want certainty that major land use decisions will not trigger intense social conflict and adverse political fallout.

Absolute certainty is unattainable and planning is not a panacea, but planning does provide a way for Northerners to set priorities, make trade-offs, and establish parameters for development that will provide a greater measure of certainty for everyone.

### **Evidence of Consensus**

The argument that land use planning is both an opportunity and an imperative is reinforced by several recent reports on conservation and regulatory efficiency. There is ample evidence of an emerging consensus that land use planning is central to achieving these different, but nonetheless complementary, visions.

A report by the National Round Table on the Environment and the Economy (NRTEE), *Securing Canada's Natural Capital: A Vision for Nature Conservation in the 21st Century*, identified the failure of planning to keep pace with other pressures on the landscape as a central barrier to conservation<sup>17</sup> and stated that:

As a first priority, the Round Table recommends that governments immediately require integrated land-use planning to ensure that conservation decisions are made at the same time as or prior to decisions about major industrial development. . . . [T]he federal government should take the lead by requiring completion of integrated conservation planning in advance of major regulatory approvals such as oil and gas pipeline construction licences.<sup>18</sup>

NRTEE reiterated and expanded upon this recommendation in another report, *Boreal Futures: Governance, Conservation and Development in Canada's Boreal*. They concluded that “comprehensive and integrated approaches to land and resource planning” are needed to address “the potential for cumulative environmental effects arising from a number of resource development activities on the same landscapes.”<sup>19</sup> Recommendations to complete land use planning are also a recurring theme in the NWT Stewardship Initiative, another indication that planning is widely seen as essential to achieving conservation and sustainability in the North.<sup>20</sup>

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17 NRTEE, *Securing Canada's Natural Capital: A Vision for Nature Conservation in the 21st Century* (Ottawa: NRTEE, 2003), 45. [www.nrtee-trnee.com/eng/publications/securing-canadas-natural-capital/securing-canadas-natural-capital.pdf](http://www.nrtee-trnee.com/eng/publications/securing-canadas-natural-capital/securing-canadas-natural-capital.pdf).

18 *Ibid.*, xiv.

19 NRTEE, *Boreal Futures* (2005), 39.

20 Northwest Territories Environmental Stewardship Framework, “NWT Environmental Stewardship Framework (ESF),” Northwest Territories Environmental Stewardship Framework. [www.ceamf.ca/01\\_who/01\\_who.asp](http://www.ceamf.ca/01_who/01_who.asp).

The importance of planning for regulatory efficiency was underlined in the 2005 Northwest Territories Environmental Audit, which found that “the lack of land use plans in many areas of the NWT is adding increased complexity and uncertainty to the regulatory processes for resource management and environmental protection” and recommended immediate action to develop and implement land use plans across the Northwest Territories.<sup>21</sup> The audit cited a similar recommendation from the Auditor General of Canada.<sup>22</sup> More recently, the completion and approval of land use plans was a core recommendation of *Road to Improvement*, Neil McCrank’s review of regulatory systems across the North for the Minister of Indian Affairs and Northern Development.<sup>23</sup> Both the Mackenzie Valley Environmental Impact Review Board<sup>24</sup> and the Joint Review Panel for the Mackenzie Gas Project<sup>25</sup> emphasized the need for land use plans to support project-specific review. The 2010 *Report of the Auditor General of Canada* also called for renewed efforts to complete land use planning throughout the North.<sup>26</sup>

Implicit in this body of recommendations, which highlight the need for planning, is a warning that failure to complete, approve, and implement regional land use plans in the North may have significant adverse consequences from ecological, economic and, ultimately, social perspectives. Northern decision-makers would do well to look south to Alberta, not only for a textbook case of the challenges of managing cumulative

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21 SENES Consultants Limited, *NWT Environmental Audit* (Ottawa: SENES Consultants Limited, 2005), 3-2–3-9. [www.ainc-inac.gc.ca/ai/scr/nt/pdf/eapa\\_eng.pdf](http://www.ainc-inac.gc.ca/ai/scr/nt/pdf/eapa_eng.pdf).

22 Ibid., 3-3, citing Office of the Auditor General of Canada, *1990 Report of the Office of the Auditor General of Canada*, Chapter 19: “Department of Indian Affairs and Northern Development—Northern Affairs Program” (Ottawa: Office of the Auditor General of Canada, 1990).

23 McCrank, *Road to Improvement* (2008), 14–20.

24 Cited in SENES, 3-3–3-4.

25 Government of Canada, *Foundation for a Sustainable Northern Future: Report of the Joint Review Panel for the Mackenzie Gas Project, Volume II* (Ottawa: Minister of the Environment, December 2009), 331–362. [www.ngps.nt.ca/PDFs/JRP\\_report\\_vol\\_II.pdf](http://www.ngps.nt.ca/PDFs/JRP_report_vol_II.pdf).

26 Office of the Auditor General of Canada, *2010 Spring Report of the Auditor General of Canada* (Ottawa: Office of the Auditor General of Canada, 2010), Chapter 4: “Sustaining Development in the Northwest Territories,” 15–18. [www.oag-bvg.gc.ca/internet/English/parl\\_oag\\_201004\\_04\\_e\\_33717.html](http://www.oag-bvg.gc.ca/internet/English/parl_oag_201004_04_e_33717.html).

effects and land use conflicts, but also for the appropriate response. The Alberta government, which owns the world's second-largest hydrocarbon resource and operates within a dominant political culture that is strongly pro-development, has launched an ambitious land use planning process because it recognized the risks and costs of inaction in terms of regulatory efficiency, cumulative effects management, and social licence for resource development.<sup>27</sup>

With a strong consensus emerging on the need to complete Northern land use planning, the principal task is to make it happen. There is now enough experience with integrated regional planning in the North and elsewhere to identify opportunities for improvement. Fixing land use planning should follow three broad principles: begin with the end in mind,<sup>28</sup> think outside the conservation-versus-development box, and demonstrate long-term commitment to lead and support planning.

## **BEGIN WITH THE END IN MIND**

Northern land use planning has been a learning process. There was no template for the first plans or detailed guidance on how develop them. Land claims agreements provide the starting point, but provisions such as Chapter 11 of the Yukon Umbrella Final Agreement leave important issues unresolved. This situation has fostered creativity and experimentation, but it has also been a source of uncertainty and frustration. Planning may become a catch-all process for addressing diverse issues, and delays in plan approval are widely seen as problematic.

Progress is being made to define process and product more clearly. The Yukon Land Use Planning Council (YLUPC) has developed a common land use planning process and *A Source Book for Commission Members* to guide regional commissions.<sup>29</sup> Approved and draft plans in

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27 Government of Alberta, "Land-Use Framework," Government of Alberta. [www.landuse.alberta.ca](http://www.landuse.alberta.ca).

28 Stephen R. Covey, *The 7 Habits of Highly Effective People* (New York: Free Press, 2004).

29 YLUPC, *A Source Book for Commission Members* (Whitehorse: YLUPC, February 2008). [www.planyukon.ca/index.php?option=com\\_docman&task=cat\\_view&gid=40&Itemid=59](http://www.planyukon.ca/index.php?option=com_docman&task=cat_view&gid=40&Itemid=59).

Yukon and the Northwest Territories exhibit some common elements and structure. Nonetheless, the time is ripe for a more concerted effort to learn and apply lessons from the first plans.

Charting a smoother course for planning requires “beginning with the end in mind.” That means clarifying expectations for first-generation plans and anticipating issues that may arise at the approval and implementation stages by establishing policy direction and political context at the outset. Investing in pre-planning issue scoping, setting the policy goalposts for planning, and capturing this direction in clear terms of reference, would lead to more focused and efficient planning, more rapid approval, and more effective implementation.

### **Clarify Expectations for First Generation Plans**

The expectations for first-generation plans have been high. Impressive work to date includes the approved North Yukon and Gwich'in plans and the draft plans in the Dehcho and Sahtu regions. These plans are credible documents, backed by extensive data, careful analysis, and significant community and expert input. Planners have applied cumulative effects modelling and geographic information system (GIS) technology to explore the use of disturbance thresholds and other innovations for managing impacts and achieving environmental, social, and economic objectives on Northern landscapes. This work has been at the cutting-edge of planning in Canada. The resulting approved and draft plans address a broad range of issues of concern to Northerners.

This pioneering work has laid the groundwork for future plans in the North and elsewhere. There is a sense among some observers and participants, however, that it is possible to do a better job in identifying objectives, setting priorities, and defining the scope of Northern planning. In some cases, the time and effort spent on data collection and analysis may have gone beyond what was necessary to answer the core questions confronting the creators of the first-generation plans. Paralysis by analysis is a concern, as is the cost of producing plans. The line between “need to” and “nice to” planning is not clear. Tackling too many issues at once can dissipate resources and make it harder to meet timelines for completing plans.

The Yukon Land Use Planning Council has recommended that:

The first generation of regional land use plans need to be more strategic, completed sooner, and include implementation strategies that have measurable targets. There is no such thing as a perfect plan and they need to evolve in a logical fashion. As the Auditor General has already discovered, there needs to be more accountability and consequences for non-performance by all involved.<sup>30</sup>

The time has come to think more deeply and clearly about what Northern plans need to accomplish, what they should look like, and how to get to that result more quickly and efficiently. The corollary is the need for greater clarity on what planning should not try to do.

Planning effort should be commensurate with the immediacy and significance of the risk to the valued characteristics of Northern landscapes and communities that planning can protect and promote. From this perspective, some people argue that the length and complexity that appears to be the norm for Northern land use plans is overkill, given the current and expected levels of activity on many Northern landscapes. The initial plan for a region could focus on defining a long-term vision for the land, establishing basic land use zoning, and providing direction on intensity of use in areas facing significant development pressure.

Identifying areas of particular ecological, social, and economic value through protection, special management, and multiple-use zones is a significant first step in planning. Experience shows that candidate areas with high conservation and cultural value can sometimes be identified relatively easily using traditional knowledge and existing science, and that they are unlikely to change significantly as a result of more intensive data collection and analysis. Additional work may be needed, however,

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30 YLUPC, "Submission to the House of Commons" (2009), 1.

to assess sub-surface resource potential so that the selection of protected and development zones can avoid, where possible, areas where these values overlap significantly.

Planners could focus their efforts on priority sub-regions while recognizing that a more broad-brush approach is adequate in other areas. They could also implement sub-regional planning once the higher level regional plan is in place. The results of this work could be incorporated into regional plans through periodic revisions.

Issue scoping could also be improved. The emphasis on addressing community concerns is a strength of Northern planning that reflects the intent of land claims agreements. However, it can divert limited resources to questions that are not appropriately dealt with through planning, or that are not high priorities from a regional perspective. Northern planning might be more timely and cost effective if initial issue identification was followed by rigorous triage to select areas for attention. Communities should, of course, help set priorities. Planning bodies could then focus on those priorities, politely saying “no” to other issues competing for attention. Some issues could also be earmarked for consideration in subsequent iterations of the plan. By reporting back to communities on what they heard and why they made certain choices, planners would ensure transparency and legitimacy for this scoping process.

Setting priorities and limiting the scope of first-generation plans will be more palatable if Northerners have confidence that plans are living documents that will be revised over time to respond to changing circumstances, such as new information on economic opportunities or ecological risks, and to deal with issues that did not reach the top of the priority list in the first round. This issue is returned to later in this chapter in the subsection “Ensure That Planning Is Dynamic.”

Tightening the focus of Northern planning does not mean that plans should be simplistic or unsophisticated. Northern plans should reflect lessons from other jurisdictions, notably the need to manage cumulative effects directly. Adopting the best current planning concepts and tools

will raise the bar for Northern planning and ensure that first-generation plans are well-positioned to meet the land use challenges that will inevitably arise.

### **Getting to Yes: Provide Policy Direction and Political Context**

Land use planning should be aimed at securing the approval and effective implementation of land use plans. Beginning with that end in mind involves providing some policy direction and political context to planning bodies.

Northern land use planning institutionalizes the accommodation of competing values and interests by requiring both bottom-up community input and the approval of plans by government parties to land claims agreements. Governments formally make decisions after a draft plan is submitted, but values and interests should be reconciled directly during plan development. If that does not occur then, characterizing government approval as a separate process that occurs after planning has been completed is a misnomer; controversy, negotiation, and compromise at this stage are simply the continuation of planning by other means.

The approval process as currently designed is an awkward way to reconcile interests because it is formally separated from plan development, particularly if a planning body works in relative isolation with little policy guidance. Submission of the draft plan may be followed by a long period of review and sequential decisions on plan approval by the government parties. Depending on how the review process is handled, it may not foster a transparent and productive exchange of views and exploration of options.

Waiting until the end of the process to accommodate interests can also result in strategic behaviour that promotes polarization and erodes the credibility of planning. Planning bodies may be inclined to view draft plans as bargaining positions—proposals that they know will be unacceptable to governments but that provide the starting point for inevitable compromise. Whatever its merits as a negotiation strategy, repeatedly asking for the politically untenable may make planning bodies easy targets for critics whose objective is to undermine the process.

Conversely, those who genuinely take draft plans at face value may be bitterly disappointed when they see repeated push-back from government parties and other interests.

Early provision of policy direction is also important because planning is not the right forum for resolving some issues. For example, decisions about the priority attached to non-renewable resource development as an engine of economic growth, the appropriateness of the free entry system for issuing mining rights, and the place of protected areas within a broader conservation strategy, belong in the realm of political debate and legislation. Regional planning can highlight the implications of these choices, and identify issues and options from a regional perspective, but it is not the place to re-fight these political battles.

Finally, clear policy direction can promote constructive interest-based bargaining within planning processes. Experience in British Columbia has shown, for example, that asking resource industries, environmentalists, and other stakeholders to agree on protected areas with little direction can be a recipe for stalemate. The bargaining dynamic changes dramatically, however, if government announces that a certain percentage of land in the planning area will be protected, and that a failure by stakeholders to find a mutually acceptable compromise within a specified time will result in a government-imposed solution. Under the new rules of engagement, previously stalled processes yielded joint recommendations.

Government parties, in consultation with planning bodies, should therefore set goalposts for planning by defining policy direction and political parameters through terms of reference.<sup>31</sup> This task is not trivial. It requires serious thought about planning outcomes and the willingness to make some difficult choices at the outset.

Government parties should also help identify and prioritize issues, provide information and policy analysis, and work toward aligning interests throughout plan development. For example, the Dehcho planning committee was reconstituted, after the rejection of an initial draft plan,

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31 Weibe, *The Integration of Land Use Planning*, 230–231.

to include appointees with explicit mandates to represent the federal and territorial governments. Effective engagement can also occur through ongoing, transparent, and meaningful communication between an arm's-length planning body and government representatives.

Setting goalposts does not, however, mean dictating the detailed game plan. Planning bodies should have scope to experiment with innovative approaches to land use planning and cutting-edge tools. Even more important, government direction should not be a blanket requirement that draft plans be fully consistent with existing policies and priorities. Planning figures prominently in Northern land claims agreements because it is a potentially powerful instrument of change. Planning bodies are independent of government so that they can bring a different perspective to land use decisions and think creatively about new solutions to problems. They should not be restricted to perpetuating the status quo.

Northern planning bodies can legitimately decide to throw down the gauntlet to governments and use the credibility of the planning process, and the logic and political persuasiveness of their recommendations, to promote a significant change in direction for regional land and resource management. This use of planning should, however, be informed by an understanding of government policy direction and sensitivity to political context. It should be a strategic decision, not a shot in the dark.

## **THINKING OUTSIDE THE CONSERVATION-VERSUS-DEVELOPMENT BOX**

The polarization between conservation and development is the second area where there are good opportunities to fix Northern land use planning. This conflict pits environmentalists and some Aboriginal communities against industry and government. It has resulted in governments rejecting draft plans on the grounds that too much land is designated as off limits to some or all industrial development. The failure to bridge this gap in a durable way also increases the risk that planning decisions will be

swept aside in the face of development pressure when economic circumstances change or when valuable natural resources, such as mineral deposits, oil or natural gas, are discovered.

Planning is a negotiation that it is most likely to succeed if participants focus on their interests rather than on rigid positions.<sup>32</sup> All too often, the divide in Northern planning is characterized as a conflict between two extreme positions: lock-it-up protection versus free-for-all development. In reality, the interests at play are often more nuanced.

Even strong promoters of development generally recognize that some areas should be off limits to industrial activity, but they emphasize economic values in setting the appropriate balance between conservation and development. They are particularly concerned with restrictions that appear to them to go beyond what is needed to protect ecological and cultural values. Industry also feels that decisions to protect large areas are likely to be irreversible and may be made without an adequate understanding of the opportunity cost when development potential has not been properly assessed.

Aboriginal communities are sometimes cautious about opening the door too wide to development, given the unfortunate legacy of some past projects and a lack of faith in the regulatory system. However, communities have also benefited from development. Perspectives on the appropriate amount of conservation land in a region could change if confidence increases that development will proceed on the basis of meaningful consultation, will protect ecological and cultural values, and will result in a fair distribution of benefits.

Environmentalists generally recognize that protected areas are not the only way to achieve ecological objectives and that these areas will never be enough when species and ecosystems require vast landscapes. Like some Aboriginal people, environmentalists generally lack confidence in the regulatory system and therefore see the outright prohibition of industrial activity as a more reliable way of maintaining important values.

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32 Roger Fisher, William Ury, and Bruce Patton, *Getting to Yes: Negotiating Agreement Without Giving In*, 2nd ed. (New York: Penguin Books, 1991).

Increased evidence that development can be managed to keep impacts at acceptable levels could reduce the emphasis that environmentalists place on protected areas.

The current polarization may lessen over time as Northerners gain experience working together in planning processes and other forums. In the shorter term, several options should be considered to reframe the conservation-versus-development debate in ways that promote common interests and creative solutions.

### **Expand the Toolkit**

One way to bridge the gap is to shift planning discussions away from a fixation on the percentage of the land base that is off limits to industrial development. For example, development can be managed using intensity measures—such as total landscape disturbance, linear disturbance density, and cumulative discharges to rivers and watersheds—to identify triggers for management action and set limits on impacts.<sup>33</sup> Triggers and thresholds have already been considered in land use planning in the North Yukon<sup>34</sup> and Dehcho<sup>35</sup> regions.

These planning tools focus directly on the conservation interests at stake—managing human activity to protect ecological, cultural, and other values—without precluding development if it can be undertaken with acceptable impacts. Unlike traditional zoning, with its predetermined lists of permitted and prohibited activities, management triggers and intensity limits do not prejudge the types of activities or operating practices that may be used to stay within prescribed impact levels. This approach also promotes innovation, creating incentives for industry to

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33 The use of development density thresholds was recommended in SENES, 3–9. See also Salmo Consulting Inc., “Developing and Implementing Thresholds in the Northwest Territories—A Discussion Paper” and Steven A. Kennett, “From Science-Based Thresholds to Regulatory Limits: Implementation Issues for Cumulative Effects Management,” papers prepared for *Thresholds: From Theory to Practice Conference*, held at Yellowknife, March 13–14, 2006. [www.ceamf.ca/03\\_reference/Reference\\_ThresholdWorkshop.htm](http://www.ceamf.ca/03_reference/Reference_ThresholdWorkshop.htm).

34 North Yukon Planning Commission, *Final Recommended*, 3-4–3-7.

35 Dehcho Land Use Planning Committee, *Respect for the Land: The Dehcho Land Use Plan*, Final Draft Plan (Fort Providence, NWT): Dehcho Land Use Planning Committee, May 2006), 38-41, and 95-6. [www.dehcholands.org/docs\\_final\\_draft\\_dehcho\\_land\\_use\\_plan\\_june\\_02\\_06.htm](http://www.dehcholands.org/docs_final_draft_dehcho_land_use_plan_june_02_06.htm).

improve operational practices, share infrastructure, and find other ways to reduce its footprint. Quantified management triggers and intensity limits are also a major step forward from vague, value-based statements of management intent because they can be supported by meaningful monitoring and accountability.

Cumulative effects modelling tools such as ALCES® and SELES support the use of these options by allowing planners to explore the implications of alternative development scenarios and management approaches.<sup>36</sup> For example, modelling of hydrocarbon development scenarios in the Eagle Plains area for the North Yukon plan showed that development using best practices could occur within disturbance limits that appear to be consistent with important environmental values, but that poorly planned and executed development could have more significant impacts. This planning process allayed concerns of a development free-for-all by setting disturbance thresholds to trigger increased scrutiny if development intensity reaches significant levels. The result was to reduce conflict over proposed industrial activity.

Credible impact thresholds that trigger adaptive management may provide a way for Northern land use plans to retain significant areas for resource development while protecting important ecological and cultural values. Combined with measures to plan access corridors and manage other environmental risks, this innovation in planning—backed by new decision support tools such as ALCES® and SELES—could provide an alternative to current stalemates over protected areas.

### **Ensure That Planning Is Dynamic**

The perception that restricting or prohibiting industrial activity in an area is a once-and-for-all decision, similar to establishing a national park, raises the stakes in the conservation-versus-development debate in Northern land use planning. In addition to fuelling polarization, this view makes it more difficult for decision-makers to adopt a precautionary approach to managing land that is ecologically and culturally significant

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36 See [www.alces.ca/home](http://www.alces.ca/home) and [www.seles.info](http://www.seles.info).

in the face of uncertainty about its other possible values and the impacts of development. This situation is unfortunate, because planning should be dynamic and adaptive.

Using plans to provide both certainty and flexibility is a challenge, but not an oxymoron. As noted by the Yukon Land Use Planning Council, planning supports orderly and efficient decision-making by “[p]roviding present and future potential land users with greater certainty about access to resources, while providing the flexibility to adapt to new information and circumstances.”<sup>37</sup> Land use plans require periodic review and revision in order to remain useful. While planning is an antidote to arbitrary and hasty decision-making, plans are not set in stone.

Ideally, land use plans should establish an enduring vision for the land that includes values and guiding principles. They should also provide certainty for short-term decisions, recognizing that more flexibility may be needed over the longer term. The review and amendment processes should guarantee that periodic changes will be made in a deliberate, transparent, and inclusive manner, but they are explicitly designed to ensure that plans remain adaptable.

An approved land use plan should, therefore, be seen as a framework for change, not a straitjacket. The starting point is that changes over time should be consistent with the longer-term vision for the region. While that vision may evolve over time as well, there is no need to go back to first principles for each review of the plan. Within that context, land use designations may change to accommodate new activities while still achieving the plan’s overall objectives. For example, a development proposal that affects an existing conservation area might be accommodated by reclaiming and protecting a previously developed area in order to achieve the desired ecological or cultural values.

For these reasons, the designation of conservation areas in first-generation plans is best viewed through a planning lens. Land use planning should be coordinated with protected areas strategies, but conservation zoning is not simply another way of creating parks. A precautionary

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37 YLUPC, “Submission to the House of Commons” (2009), 2.

approach is appropriate, of course, because conservation and development decisions sometimes have very different risk profiles in terms of competing values. Sub-surface resources in a conservation zone remain untouched, but they can be developed in the future if the plan is amended. However, development can sometimes compromise ecological and cultural values in ways that cannot easily be reversed. Erring on the side of caution in the short term does not, however, preclude the expansion of development zones in the future if confidence increases that impacts can be managed effectively or if values and priorities change.

Northern land use planning does not yet have a track record of periodic review that could reassure those who fear the future is being held hostage, either through conservation or development, by decisions in first-generation plans. The current review of the Gwich'in Land Use Plan may be an important precedent, showing that periodic review and amendment is a normal part of the planning process, rather than an aberration or an act of contrition or weakness. Mature planning systems, such as municipal planning, institutionalize flexibility. Confidence that Northern land use planning will exhibit this maturity could lower the temperature in debates over the amount of land given a conservation or special management designation.

### **Create a Sustainability Fund to Better Align Interests and Incentives**

The conservation-versus-development debate in Northern land use planning may, in part, reflect different perspectives on the costs and benefits of industrial activity. A legitimate concern about placing large areas of land off limits to industrial development is that it may restrict opportunities for jobs and investment that contribute to community well-being and sustainability. It may also perpetuate a dependence on financial transfers from the federal government that some people see as undesirable.

From the perspective of some Northerners, however, development beyond a certain point looks like a recipe for additional costs, but few benefits. The ability of many Aboriginal and other Northern communities to capture immediate economic benefits from the mining and oil and gas industries is limited by the size of the available labour force, the match of skill sets and employment preferences with opportunities, and the

capacity of Northern businesses. Once those limits are reached, more development requires imports of labour, business expertise, and other goods and services. Many of the benefits go elsewhere, but the social, cultural, and ecological costs and risks remain, and perhaps increase.

This cost-benefit analysis is also influenced by the limited ability of Northerners to secure visible long-term benefits from tax and royalty revenues that currently go to the federal government's general revenue account. In particular, the preference of some Aboriginal people to put significant parts of the North off limits to development might change somewhat if they were granted ownership of more land under land claims agreements or if they could secure more significant benefits from development on non-Aboriginal land.

If the preferences for conservation, which many Northerners express through planning processes, do not appear to recognize the potential long-term benefits of non-renewable resource development that industry and government have identified, perhaps steps should be taken to make these benefits more tangible from a Northern perspective. One way to do that would be to allocate non-renewable resource revenue to a sustainability trust fund that would stabilize and support Northern economies over the long term. In this way, the North's endowment of non-renewable resources would be converted not simply into income, but into financial capital that could provide a source of investment income indefinitely.

Northerners would then see the economic benefits of non-renewable resource development flowing to themselves and their children and grandchildren, rather than simply producing a short-term increase in taxes and royalties for the federal government. A sustainability fund would also benefit Canada as a whole, reducing the need for financial transfers to the North that depend on budget allocations from tax revenue. For industry, an increasing sustainability fund derived from non-renewable resource revenue would provide a persuasive argument that developing the North's non-renewable resources is a good long-term business proposition for Northerners that will contribute to both economic and social stability.

This idea is not new. The National Round Table on the Environment and the Economy recommended a “savings and economic diversification fund” for the Northwest Territories.<sup>38</sup> Norway and Alaska both have funds of this type. Alberta has one as well, but its Heritage Fund is meagre compared with the Norwegian and Alaskan funds. Alberta’s government has preferred to use non-renewable resource revenue to fund current expenditures and keep taxes low. Northerners could take a longer-term view.

The vision reflected in the land use plans that Aboriginal communities and other Northerners are crafting with their own hands should not simply be dismissed as “biased” toward conservation, as its detractors sometimes argue. Rather, it may well be the product of a rational assessment of what Northerners stand to gain and lose over the long term from more development. Creating a sustainability fund from non-renewable resource revenue that would yield secure, long-term benefits to Northerners would be one way of aligning interests to help bridge the conservation-versus-development divide.

## **COMMITMENT TO LEAD AND SUPPORT PLANNING**

Consistent commitment to lead and support planning over the long term is the third area for action in fixing Northern land use planning. Government could demonstrate its commitment by giving planning bodies the capacity and organizational structure to succeed, ensuring accountability, and promoting constructive engagement of key interests.

### **Get the Right People on the “Bus”**

One of the most important ways to fix Northern land use planning is also one of the simplest to understand, if not to execute. To paraphrase a central lesson from *Good to Great*, Jim Collins’ incisive book about achieving organizational excellence: get the right people on the “bus,”

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38 NRTEE, *Aboriginal Communities* (2001), 88–9. See also Jamie Bastedo, *Greening the NWT Economy: Local Pathways to Territorial Prosperity* (Yellowknife: Ecology North, 2009), 30. [www.ecologynorth.ca/uploads/Greening\\_the\\_NWT\\_Economy.pdf](http://www.ecologynorth.ca/uploads/Greening_the_NWT_Economy.pdf).

put them in the right seats, and treat them well so they don't get off at the next stop.<sup>39</sup> Without a board or commission that can make decisions, land use planning in the North can't happen. Without professional and administrative staff to write the plan and run the process, planning won't happen. Without well-qualified and highly motivated people in all key positions, it won't be done well. These statements seem obvious, but Northern planning has repeatedly been stalled or derailed because of people problems.

Northern land use planning is complex and demanding. In the words of one experienced observer, it takes a unique combination of regulatory and policy know-how, creativity, and analytical rigour to write a good land use plan. Planners need to balance multiple competing demands, work in a cross-cultural and interdisciplinary environment, adapt rapidly to changing circumstances, communicate complex ideas in understandable language (both orally and in writing), and engage effectively with a broad range of communities, stakeholder organizations, government departments, and subject matter specialists. Individuals capable of performing well in all of these ways are not easy to find, and concerted effort is needed to build organizations within which they can succeed.

The membership of planning boards and commissions is also critically important.<sup>40</sup> Delay in filling vacancies has been a recurring problem. Some Northern planning processes have ground to a halt because of a lack of quorum. A cumbersome appointment process and insufficient attention to anticipating vacancies are commonly noted deficiencies. Ensuring that the members of these bodies have sufficient knowledge and experience to do the job is critically important. Gender balance and representation of a

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39 Jim Collins, *Good to Great* (New York: HarperCollins Publishers Inc., 2001), 41–64.

40 SENES, *NWT Environmental Audit 6-1–6-6*. McCrank (2008), 30. Government of Yukon, *Yukon First Nation Final and Self-Government Agreement Implementation Reviews* (Whitehorse: Land Claims Secretariat, October 3, 2007), 96–104. Northwest Territories and Nunavut Chamber of Mines, the Prospectors and Developers Association of Canada, and the Mining Association of Canada, "Submission to the Northern Regulatory Improvement Initiative" (February 28, 2008), 31–32. [www.pdac.ca/pdac/advocacy/land-use/expl-mining-submission.pdf](http://www.pdac.ca/pdac/advocacy/land-use/expl-mining-submission.pdf).

range of backgrounds and interests will also contribute to the effectiveness and legitimacy of planning. Training programs for appointees and their staff would help planning bodies hit the ground running.

Planning bodies need professional planners and administrative support to complete their work. Efforts should be made to develop and foster Northern expertise, while drawing on a broader pool of people as required. Suggestions for consolidating planning expertise are offered below.

The approved plans in the North Yukon and Gwich'in areas, and indications of significant progress in several other planning regions, show that Northern planning organizations can muster the expertise to get the job done—but it isn't easy. Demonstrated commitment to planning requires, above all, that government parties provide the financial resources and other assistance needed to recruit, support, and retain the right people to direct and staff planning bodies.

### **Consolidate Expertise and Clarify Roles**

Northern capacity to undertake land use planning could be enhanced by efforts to build a critical mass of expertise. The appointment of a board or commission for each planning region ensures sensitivity to the particular context. There is a risk, however, that excessive fragmentation of Northern planning along regional lines will be a barrier to building capacity, retaining qualified people, and ensuring the institutional memory needed for continuous improvement.

The skills of professional planning staff and the technical and administrative support for planning processes can be transferred across planning regions in the North. Staffing each planning process from scratch—a task that would include developing policy expertise, GIS capacity, and administrative systems—makes little sense, since there are multiple planning regions and limited resources. Furthermore, work in these isolated teams is challenging because of precarious funding and the dependence on a single planning process. It may also be unrealistic to build and retain professional planning teams in small and relatively isolated Northern communities. Drawing on the best and the brightest wherever they are located has advantages, but developing Northern planning capacity should be the ultimate objective. It will be easier to

build significant core capacity in the North if stable and rewarding employment in major Northern centres can be provided through consolidated support for Northern planning.

Consolidating aspects of planning will require a clarification of roles. The autonomy of claims-based regional planning processes must be respected, but there should be reciprocal respect for a central body to provide guidance and support for efficient and competent planning. The Yukon Land Use Planning Council shows the potential of this model, as well as its challenges. It has grown to play a pivotal role in guiding and supporting planning in Yukon, notably by developing the common land use planning process.

The Council's role is still evolving and includes involvement in initial work to ensure a good start to regional planning; the provision of centralized administrative support, data management, and technical expertise; and the sharing of Council staff with planning commissions through formal seconding or other arrangements. The Council is also well-placed to play a key role in maintaining continuity within the planning system as a whole. This role could include monitoring and evaluating plan implementation, and providing support for the periodic review and updating of regional plans to ensure they remain living documents. This task is particularly important if the decision to disband the North Yukon Planning Commission following completion of the plan is a precedent for other regions.

It would also be worthwhile to explore the potential to consolidate planning expertise in the Northwest Territories, particularly through a support unit in Yellowknife that could provide training and guidance on planning processes, data management, GIS and modelling expertise, and other administrative assistance. A review of the effectiveness of the Nunavut Planning Commission in providing leadership and support for planning may be desirable, given the challenges experienced to date with planning in Nunavut.

### **Provide Stable Funding With Strings Attached**

It is no surprise that adequate funding, with appropriate oversight and quality control, is essential to planning. Large funding increases might not be needed to fix Northern planning, however, and they are unlikely in

any event. Governments will understandably hesitate to commit significant new funding, given the amount of money that has already flowed to Northern planning over the past several decades. Funding for land use planning should follow two principles to ensure value for money.

The first is that funding should be provided on a predictable, multi-year basis that is linked to the needs of the planning cycle and creates an environment conducive to retaining qualified people and enabling them to do their jobs. Attracting staff from within or outside the North will be difficult if planning bodies are financially insecure and can offer only short-term contract positions with no certainty of renewal.

The challenge of maintaining consistent funding is well-illustrated by the Sahtu Land Use Planning Board's appeal for funding in 2010. Funding allocated for land claims implementation was exhausted as initial planning efforts suffered repeated setbacks. After years of delays and personnel changes, a reconstituted board with high-profile members is in place, backed by experienced professional staff. The funding, however, remains uncertain. In a submission to a House of Commons standing committee, a representative stated that board members expected to complete the plan within a year if they were granted continuing funding, but that without a new funding allocation they would be obliged to suspend operations before finishing their work.<sup>41</sup>

The second principle is that funding should come with strings attached. A common concern about Northern decision-making is the difficulty in producing deliverables on time. While respect for the autonomy of Northern institutions is essential, there appears to be a lack of accountability in some cases when processes consistently fail to reach milestones on time. The record of the Mackenzie Gas Project Joint Panel is, according to some observers, a recent illustration of this problem.

Funding for land use planning should, therefore, be linked to deliverables, which must be focused and attainable. More rigour in this area is vitally important to ensure accountability for spending as the basis

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41 Bob Overvold, "Sahtu Land Use Planning Board." Presentation to the *House of Commons Standing Committee on Aboriginal Affairs and Northern Development*. (Held at Ottawa on: March 30, 2010).

for justifying a long-term financial commitment. Government will rightly demand results in exchange for allocating more money to Northern land use planning.

Accountability and rigour are also essential to maintain the credibility of the planning process and to allow it to operate effectively. For example, imposing interim restrictions on development during the planning process makes sense to allow planners to do their job and to avoid incentives to sidestep the system. A rush to stake mineral claims during the planning process, whether to influence land use decisions or to prospect for compensation, is an abuse of the mining laws and a threat to the planning process that should not be permitted. For example, the Yukon Land Use Planning Council noted evidence of a mineral staking rush in the Peel Watershed planning region, and a one-year moratorium was put in place.<sup>42</sup>

A moratorium in these circumstances is good planning practice, but imposing interim restrictions during the planning process is understandably contentious if the time frame for completing the plan is highly uncertain. Clear timelines and accountability for planning will make tools, such as a moratorium, easier to use. Efficient and accountable planning processes are also needed to encourage all stakeholders to engage constructively in planning.

### **Promote Constructive Engagement**

Government should demonstrate its commitment to planning by promoting the involvement of all significant interests in plan development and discouraging behaviour that undermines confidence in the process. Plans are more likely to be broadly acceptable if they are seen to reflect a reasonable and transparent accommodation of competing values and interests. People are also more likely to support and implement a plan they have helped to develop. Representatives of all major interests in the North should, therefore, be engaged in planning.

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42 YLUPC, "Submission to the House of Commons" (2009), 12.

Getting everyone to contribute will be easier if there is unequivocal support for planning from governments in the form of a clear commitment to complete the task and implement the results. The message should be that the planning train is leaving the station and anyone interested in having a say should get on board. The corollary, of course, is that planning should be open to all legitimate perspectives and, as noted above, planning bodies should include people from a variety of backgrounds. Likewise, the teams provided by government parties to support planning should include representatives from resource development and conservation departments. Senior leadership should foster a common approach that supports the principles of Northern planning and breaks down the silo mentality based on narrow departmental mandates.

Commitment to this model of planning also requires discouragement of counterproductive behaviour. Governments should make clear, through words and actions, that a strategy of disengagement, passive resistance, or active hostility during the planning process, followed by back-door lobbying and political end runs to derail the results, will not succeed.

A particular challenge in some instances has been getting resource development interests engaged in planning. For example, a submission by the Yukon Land Use Planning Commission to the House of Commons Standing Committee on Aboriginal Affairs and Northern Development includes a section called “How industry can get more involved in the planning process.”<sup>43</sup> It notes that project proponents and organizations associated with the full range of land use sectors need to be involved in planning from the outset, and states, “Too often they are reluctant participants particularly if they think planning will result in more regulation that affects their interests.”<sup>44</sup>

Part of the response to this problem is to demonstrate that, for reasons noted above, land use planning can contribute to regulatory efficiency and to creating the social licence for resource development in the North. Implementing “outside the box” thinking to promote interest-based bargaining and identify creative options for bridging the conservation-

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43 YLUPC, “Submission to the House of Commons” (2009), 13.

44 *Ibid.*

versus-development gap should also help. However, government parties should also be clear that attempts to roll back the clock on planning are doomed to fail.

### **Convene a Northern Planning Forum**

My section of the book surveys a range of options for “fixing” Northern planning, but there is much more work to be done in identifying issues and opportunities. A Northern planning forum could bring together knowledgeable people to share experience, showcase successes, and work together to develop solutions to common problems. There is a rich body of experience with land use planning in the North that goes back several decades, and the challenges and successes of the recent planning efforts in all three Northern territories provide an opportunity to learn important lessons. The fragmentation of planning experience among separate processes distributed across a vast area, and the heavy demands on those involved in these processes, have meant, however, that there are few opportunities to build a community of knowledge.

Efforts to fix Northern land use planning will benefit from a more systematic sharing of ideas and learning from experience. A first meeting could result in an ongoing process. The Northwest Territories Board Forum<sup>45</sup> and the annual Yellowknife Geoscience Forum<sup>46</sup> are different models for sharing knowledge and raising the profile of important issues. Bringing together key people from across the North with a focused agenda and a commitment to identifying and overcoming obstacles would be a positive step for planning as a whole. It would directly support the individuals who are working diligently to meet the obligations and fulfill the promises of Northern land use planning. This forum could also be used to promote links between regional, sub-regional, and sector-specific planning, thereby helping to break down the administrative silos that sometimes frustrate efforts to improve integration in land and resource management.

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45 See Northwest Territories Board Forum, <http://nwtboardforum.com>.

46 See Yellowknife Geoscience Forum, [www.nwtgeoscience.ca/forum](http://www.nwtgeoscience.ca/forum).

## **CONCLUSION**

Land use planning is challenging, particularly in the North, but it is essential as activity levels increase. Although the record of Northern planning is mixed, it is still early days for a change of this magnitude. Integrated regional planning could transform land and resource management, and the North is on the cutting-edge of planning practice in Canada. Transformational change involves much more than new laws and institutions; attitudes and organizational cultures must also evolve. Achieving success will take time.

It is important to recognize that Northern land use planning has had significant successes, despite the frustrations, and that important lessons have been learned. Now is a good time to reflect on those lessons and think creatively about new ways of organizing planning processes, reframing contentious issues, and deploying the resources needed to succeed. While there is no quick fix for Northern planning, opportunities to “fix it up” are readily available and should be acted upon.



# Give It Up:

LAND AND RESOURCE MANAGEMENT IN THE  
CANADIAN NORTH: ILLUSIONS OF INDIGENOUS  
POWER AND INCLUSION

*by Hayden King*





We are trying, in a spate of public seal-munching, Inukshuk-displaying and maritime missions into our thawing Northern passages, to look more Northern . . . [yet] we relate to the Arctic not as a part of our identity or culture or traditional economy, but as a foreign, far-away land we happen to control. The Far North is, in short, our colony.<sup>1</sup>

It is not an exaggeration to say we are the North. To this day only First Nations people live there. . . . You don't live in this land that you are trying to govern, neither do the civil servants of the Ontario government. Yet for some reason you feel compelled to govern us from afar. We cannot accept this. The North is our homeland.<sup>2</sup>

The North . . . our final frontier. The resources, the ocean, the creatures: mysterious, unexplained, unexplored, wild. The North is our future. So goes the refrain of an increasing number of academics, policy people, and government officials seemingly ignorant of the fact that the North has been our past and, of course, is our present. But this is the mentality with which we approach the North—a Southern mentality, a colonial mentality. How often do Southerners think about the North when those resources and that mystery are not in the equation? What do Canadians really know about the North other than baby seals and polar bears, northern lights and thawing ice? Indeed, the cover of this book exemplifies our tangential, unfamiliar relationship. We need sticky notes to remind us that the North actually exists—and then only in terms of resources like uranium or timber.

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1 Doug Saunders, "We See our Arctic as a Colony," *The Globe and Mail*, February 12, 2010.

2 Chris Kornacki, "NAN Youth Rally Against *Far North Act*," *Wawatay News*, August 20, 2009.

In contrast, for Indigenous peoples—Cree, Inuit, Tlingit, and Dene peoples—the North is homeland, as Stan Beardy puts it. For thousands of years, the vast territory has been the site of economies, cultures, societies, and constant change: migrations, newcomers, treaties, more migrations (or relocations), changes in economy, and changes in culture. The most recent of these changes is the increasing attention of Southerners. Over the past few decades, industry has marched steadily north in search of resources; conservation organizations to protect ecosystems—the last “wild” places; governments to assert Arctic sovereignty and promote development; researchers and scientists to gather information for all of the above and, increasingly, to study climate change. Meanwhile, Indigenous peoples struggle to engage with each and be taken seriously.

On a variety of critical issues in the North, the trend is steady. Regarding high-level meetings among Arctic states to discuss environmental challenges and economic development, the Inuit, who have the most at stake, are not invited.<sup>3</sup> On sovereignty, while Inuit support of Canada’s claims in the North makes a compelling case for jurisdiction under international law, the federal government has not reciprocated, or at least appreciated, this gesture; instead, it treats Northern peoples merely as “flagpoles.”<sup>4</sup> Indeed, there is a tremendous lack of support for Northern Indigenous peoples, as demonstrated in widespread challenges, including continued reliance on diesel generators for electricity, incredibly high rates of economic leakage,<sup>5</sup> 25 per cent high school graduation rates,<sup>6</sup> and tuberculosis rates 185 times the national average.<sup>7</sup>

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3 “Inuit Groups Want In on Five Nation Arctic Meeting,” *Nunatsiaq News*, February 14, 2010.

4 Michael Byers, *Who Owns the Arctic?* (Vancouver: Douglas and McIntyre, 2009).

5 Robert M. Bone, *The Canadian North: Issues and Challenges* (Toronto: Oxford University Press Canada, 2009).

6 Thomas R. Berger, *Conciliator’s Final Report: “The Nunavut Project”* (Ottawa: Indian and Northern Affairs Canada, March 2006).

7 CBC News, “TB Rate 185 Times Higher for Inuit Than Others,” CBC News, March 10, 2009, [www.cbc.ca/health/story/2010/03/10/tuberculosis-inuit.html](http://www.cbc.ca/health/story/2010/03/10/tuberculosis-inuit.html).

Despite all of this, the most pressing policy questions regarding Canada's North revolve around dividing the land and designating areas suitable for development or conservation, negotiating the variety of perspectives and often divergent motivations, and determining how we can *plan* the North. All of this has coalesced around the amorphous concept of land use planning. Remarkably, Indigenous peoples have found themselves a part of this discussion, primarily by virtue of a variety of rights accrued under Canadian laws—treaty and Aboriginal rights. Indeed, land use planning (and the concomitant co-management) is seen as having the potential to bring Indigenous peoples into the fold, provide them with real decision-making power, facilitate economic development, and help them achieve self-determination.

While these sentiments may be genuine on the part of policy-makers and planners, I am skeptical of the promise land use planning offers. In fact, a close examination of land use planning and co-management regimes illustrates the opposite of that promise for Indigenous peoples—what Paul Nadasdy calls “anti-self-determination.” Indigenous notions of governance and relationships with the land are considered, but ultimately ignored and excused, while traditional Southern solutions and discourses are uncritically adopted. So, sadly, but not unpredictably, the planning processes in the North have so far disempowered Indigenous peoples in a number of both nuanced and overt ways.

In exploring the institutional and cultural assumptions of land use regimes, it becomes clear that their design, structure, and implementation are so steeped in the technical language and procedure of bureaucracy that Indigenous peoples have immense difficulty accessing or participating in them in earnest. However, not only is the discourse of the regimes problematic; so, too, are the cultural assumptions about our relationship with land, which planning officials take for granted. Meanwhile, Indigenous peoples generally hold contrasting assumptions, which are often dismissed.

In moving beyond assumptions to the concrete examples of Nunavut and Ontario, the reality that Indigenous peoples are left out of the process is reinforced. In the former example, while there was promise in the land use plans, the territory has lost its way. In the latter example,

Ontario has never truly listened to the desires of Indigenous peoples, instead proceeding unilaterally with planning legislation. These examples are among the most recent in the relatively brief history of Indigenous participation in land and resource management.

## **ORIGINS OF INDIGENOUS PARTICIPATION IN NORTHERN PLANNING**

A practice very much associated with the South and with cities and provinces, land use planning has been slowly adopted in Canada's North. It has been proposed and sometimes implemented in the northern reaches of the provinces, and increasingly it is becoming an organizing feature of development in the territories. But land use planning is still an ambiguous concept in the North. It does not resemble the zoning bylaws of municipalities, or the regulatory features of provinces, that traditionally accompany land use planning; rather, it is often more complicated. An abundance of federal and territorial legislation—as well as various classifications of land, gradual devolution of power to territories, increasingly influential conservation and industry lobbies, and, perhaps above all, land claims settlements—makes land use planning across the North unique.

Amid this complexity, a plethora of institutional arrangements have been established, some led by governments, others by the non-profit sector and industry: working groups, Northern tables, wildlife boards, land claims negotiations, impact-benefit or participation agreements, and so on. Attempting to guide and inform many of these processes are a number of mostly incomplete regional land use plans. These are attempts spearheaded by federal, territorial, and provincial governments to initiate a system for designating land use and allotting resources. Most often, this designation and allotment aims to accommodate conservation, development, subsistence hunting, and a general notion of sustainability.<sup>8</sup>

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8 Indian and Northern Affairs Canada, *Northern Land Use Guidelines: Administration Framework* (Ottawa: Indian and Northern Affairs Canada, 2008).

Yet, before land use plans can be designed, policy-makers and planners require certainty—they need to know who owns the land. In the South, this is generally taken for granted. In the North, however, ownership is still contested by First Nations, Métis, or Inuit peoples.

Of course, under Canadian law, unless lands have been formally surrendered in a treaty, those Indigenous peoples still maintain domain. In an effort to extinguish this title, the Canadian government has endeavoured to settle numerous comprehensive land claims across the North. This effort began around 1972 with the Supreme Court's *Calder* decision. For the first time in modern history, the scope of the "Aboriginal title" was examined and, in fact, broadened. No longer could this title be interpreted as being unilaterally bestowed and/or extinguished by the Crown (as had been done); it pre-dated the Crown. This compelled Canada and Quebec to negotiate the 1975 James Bay and Northern Quebec Agreement (JBNQA). Included in the agreement was the first real attempt at a co-managed land use planning regime between an Indigenous people, in this case the Cree, and the Crown. With the realization that Indigenous peoples had a significant interest, and now a legal right, to lands and resources they had traditionally occupied, the Crown had no choice but to include them in the "management" of those lands and resources.

Soon after the JBNQA, Canada repatriated its Constitution and rewrote it. The drafters included the vague and ambiguous section 35: "The existing and Aboriginal treaty rights are hereby recognized and affirmed." Indigenous peoples and Crown lawyers since then have been attempting to discern the meaning of these 11 words. But with the *Guerin* (1984) and *Delgamuukw* (1997) cases, followed by the recent *Haida* (2004), *Taku* (2004), and *Mikesew* (2005) cases, more clarity has been achieved.

In the 2005 case, which the Haida Nation brought against Weyerhaeuser (because the latter was logging the former's territory without their consent), the Supreme Court held that "section 35 represents

a promise of rights recognition.”<sup>9</sup> Interestingly, this relates directly to planning. In that same decision, the Court found that “decisions made during strategic planning may have potentially serious impacts on Aboriginal rights.”<sup>10</sup> As such, it should be expected that throughout the “development of land use strategy, the Crown will continue to fulfill its honourable duty to consult and, if indicated, accommodate” Indigenous peoples.<sup>11</sup> Indeed, according to some legal scholars, “judicial recognition of pre-existing Aboriginal sovereignty . . . should inform the process and outcomes of strategic land use planning.”<sup>12</sup>

This has continued to compel the Crown to include Indigenous peoples in the planning process, even on lands already surrendered where Indigenous peoples still have an interest. In fact, in nearly every comprehensive land claims agreement since 1975, some mechanism for collaboration in land use planning or co-management has been included. The Royal Commission on Aboriginal Peoples (RCAP) noticed this phenomenon in 1996 and labelled it “claims-based co-management”—comprising “the land and environment regimes established under comprehensive claims agreements.” RCAP goes on to define these regimes as “collaborative institutional arrangements whereby governments and Aboriginal parties enter into formal agreements specifying their respective rights, powers and obligations with reference to the management and allocation of resources within a particular area.”<sup>13</sup>

The familiar formula unfolds as follows. Indigenous peoples surrender most of their territories for financial settlements, usually distributed over a number of years; fee simple title to a fraction of their traditional

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9 Jessica Clogg, *Land Use Planning: Law Reform*, Discussion Paper (Vancouver: West Coast Environmental Law Research Foundation, September 2007), 2.

10 Richard Krehbiel, “The Changing Legal Landscape for Aboriginal Land Use Planning in Canada,” *Plan* (summer 2008), 3.

11 *Ibid.*, 3.

12 Clogg, *Land Use Planning*, 2.

13 Royal Commission on Aboriginal Peoples (RCAP), *Report of the Royal Commission on Aboriginal Peoples, Vol. 2: Restructuring the Relationship* (Ottawa: Indian and Northern Affairs Canada, 1996), Part 2, Chapter 4, “Lands and Resources.” [www.collectionscanada.gc.ca/webarchives/20071124125812/http://www.ainc-inac.gc.ca/ch/rcap/sg/shm4\\_e.html](http://www.collectionscanada.gc.ca/webarchives/20071124125812/http://www.ainc-inac.gc.ca/ch/rcap/sg/shm4_e.html).

territories; and some degree of management authority over both indigenous-“owned” lands and formerly occupied, now Crown, lands. This has perhaps been seen most clearly in the Nunavut Land Claims Agreement (NLCA) and the Yukon Umbrella Final Agreement (UFA). Under the NLCA, 90 per cent of the surface and 99 per cent of the sub-surface of the territory was surrendered; in Yukon, the equation follows the trend. In addition to providing fee simple lands and cash, both agreements also established co-management boards. In the Nunavut case, a land use planning commission was created (the first of its kind in the North), whereas the Yukon government and First Nations are still working on various smaller planning boards where the discourse revolves more around co-management.

However, surrendering their title to entire provinces or territories for a say in how that land is managed is a sacrifice for Indigenous peoples—even more so when the nature and structure of the established co-management and land use planning regimes are examined. In the above-noted examples of Nunavut and Yukon, while the settlements are in theory designed to allow for self-determination, it is often the opposite that is achieved: the status quo, where governments exercise ultimate authority and are loath to genuinely respect the aspirations of Indigenous peoples. Indeed, Indigenous peoples have participated in planning processes that follow land claims negotiations on their terms (or equal terms) in very few cases.

## **THE INSTITUTIONAL AND CULTURAL ASSUMPTIONS OF LAND MANAGEMENT**

Land use planning regimes are very much related in design and implementation to the land claims settlements that gestate them. To participate in those land claims negotiations, Indigenous peoples are obliged to do so on the terms Canada sets. Land claims negotiations take place only after a First Nation submits a formal claim and Canada accepts it. Then those negotiations are undertaken in a legal and financial discourse where Canada has the advantage. Canada dictates the terms of the negotiations and, finally, Canada decides the fairness of the settlement it

awards. The “preponderance of state power enables the state to dictate the conceptual assumptions underlying the land claims process and rules by which negotiations will proceed.”<sup>14</sup>

Land use planning proceeds in a similar fashion. However, flowing from the challenges presented in land claims negotiations are related problems apparent in land use planning regimes. First, the unfamiliar institutional forums, steeped in the language of the state (legal and economic discourses), can be alienating. Immediately, Indigenous peoples are at a disadvantage regarding their ability to express their desires. This disadvantage continues throughout the learning (or capacity-building) process, as Canada continues to maintain ultimate power in the relationship. In a second and related problem, when Indigenous peoples do attempt to insert their perspectives or use their discourses, they are only appreciated at an insincere level. In fact, Indigenous peoples are encouraged to consider land as merely resources or to adopt scientific notions of animal behaviour implicitly advocated by Canada and riddled throughout the planning process. As such, Indigenous peoples are at risk of losing their own perspectives about relationships with the land.

### **Northern Incapacitation**

Land use planning has always been a very organized and rigid process, from its origins in cities as a mechanism to arbitrate land designation to contemporary attempts to adopt it in Northern areas. Councils and boards meet, negotiate, legislate, and adjudicate in highly technical terms. This is seen as a logical extension of state power into land use and management (indeed, this is governance, after all). But for Northern Indigenous peoples, who do not converse in the discourse prevalent in the process, frequent challenges present themselves. Indeed, the highly bureaucratic nature of the regimes tends to marginalize Indigenous voices. Marcus Lane, writing about planning with Indigenous peoples

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14 Paul Nadasdy, “The Antithesis of Restitution? A Note on the Dynamics of Land Negotiations in the Yukon, Canada.” In Derick Fay and Deborah James, eds., *The Rights and Wrongs of Land Restitution* (New York: Taylor and Francis, 2008), 87.

in Australia, highlights some of the challenges: those participating often have to traverse language barriers, lack basic organizational and technical resources, and are unfamiliar with the planning process.<sup>15</sup>

Land use planning in the North requires a variety of boards, councils, agencies, or organizations, working somewhat in concert. In fact, the sheer volume of planning boards across the territories is slightly bewildering. In Nunavut, there are five planning boards. In Yukon, there are eight, and in the Northwest Territories, another seven. These boards can include surface rights boards, development assessment boards, heritage resources boards, and so on. However, true to the rhetoric of cooperation, there is generally 50 per cent indigenous participation on each board. The Yukon Wildlife Board, for example, has 12 members: 6 appointed by Yukon First Nations and 6 appointed by the Yukon government. But on these boards, genuine participation is slow to start because much of the upfront work deals with bringing Indigenous peoples “up to speed” on the required skills. They must attain a certain level of competency in the use of language, concepts, rules and procedures, statistics, scientific methodology, budgeting, work plans, tenure arrangements, contracts, and intergovernmental relations.

If they fail to learn, the entire land use or resource management regime is threatened, because this technical information is just as critical as knowledge of the given area or resource targeted in the plans.<sup>16</sup> So there are special training sessions, workshops, and initiatives to help educate Indigenous peoples (if they have not already been South for a more general formal education). Even so, the pool from which to draw this cadre of land use planners is incredibly small. As a result, outside consultants are often brought in to serve as community representatives or, remarkably, Canadian or territorial government employees are

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15 Michael Hibbard, Marcus Lane, and Kathleen Rasmussen, “The Split Personality of Planning: Indigenous Peoples and Planning for Land and Resource Management,” *Journal of Planning Literature*, 23 (November 2008), 136–51.

16 Ruth Meinzen-Dick, A. Knox, and Peter Hazell, *Collective Action, Property Rights and Technologies for Natural Resource Management: A Conceptual Framework* (Washington DC: International Food Policy Research Institute, 1998).

assigned to serve the First Nation, as was the case when at least one Yukon government bureaucrat was assigned to help the Little Salmon/Carmacks First Nation.<sup>17</sup>

Even with the help to catch up and earnest government substitutions, it is rare that participating Indigenous peoples are able to prevail against official experts with whom they disagree. Indeed, this allows government officials to manipulate the process, which obviously creates an unequal playing field for negotiations and discussions regarding the use and designation of lands and resources. Marc Stevenson provides an apt example with the Beverly-Quamanirjuaq Caribou Management Board, one of the seemingly successful co-management regimes. When the Board was attempting to determine the stock of caribou, Canadian officials advocated the use of aerial surveys. However, the First Nation representatives were hesitant to use the technique, as photos would invariably fail to catch the entire caribou population and the data would be skewed. To prove the effectiveness of the aerial survey, a government biologist asked the skeptical First Nations representatives to guess at the number of caribou in a particular aerial photograph. The uneducated guesses were all far off the mark, which, in turn, supposedly reinforced the validity of these methods and counteracted the concerns.<sup>18</sup>

This is not to say that those Inuk or Tlingit peoples cannot “catch up,” build capacity, and actually engage in the process or call out government officials for manipulation; they can and certainly do, on occasion. However, broad progress is illusive. In Nunavut, after over 10 years of attempts to bring the representation of Inuit civil servants in the total government workforce to 85 per cent (to reflect their representation in the general population), the results—currently stalled at 45 per cent—are continually disappointing. According to Thomas Berger, one of the primary challenges in raising the numbers is the education system in

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17 David Natcher and Susan Davis, “Rethinking Devolution: Challenges for Aboriginal Resource Management in the Yukon Territory,” *Society & Natural Resources*, 20, 3 (March 2007), 271–9.

18 Marc G. Stevenson, “The Possibility of Difference: Rethinking Co-Management,” *Human Organization*, 65, 2 (summer 2006), 167–80.

Nunavut, which ignores cultural components (primarily language).<sup>19</sup> In the Northwest Territories, despite repeated efforts at affirmative action over the past 15 years, the number of Dene, Tlicho, and Métis government employees in management positions has actually dropped.<sup>20</sup>

In terms of land use planning, even if Indigenous peoples did achieve the numbers required to genuinely participate, there is a recognizable power imbalance related to decision-making authority. In each of the planning boards mentioned above, in all three territories, the Indigenous representation (which is never more than 50 per cent) only has the power to make recommendations to either the Minister of Indian Affairs or territorial ministers for approval or rejection. While it is obviously critical that Canadian officials have input into the planning process, in this scenario, they have all the power. In fact, it is striking how little this model deviates from that used under the *Indian Act*, where every decision by a First Nation requires approval from the Department of Indian Affairs. Indeed, as RCAP noted of some of the first co-management regimes, “ultimate authority remains with the government.”<sup>21</sup>

It is also the Minister of Indian Affairs or the territorial government who makes funding decisions that affect the viability of planning boards. Under the Yukon Devolution Transfer Agreement, for example, First Nations were allocated \$3 million to assist with comprehensive land use planning—an amount that has already proven insufficient.<sup>22</sup> In Nunavut, the Inuit have had to sue Canada to force the implementation of the NLCA, which should have helped build capacity to undertake initiatives such as planning. Also in Nunavut, the agency responsible for consulting with the Inuit on development projects—the Nunavut Impact Review Board—has extremely limited resources, continually pleading with Indian and Northern Affairs Canada for funds to promote

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19 Berger, *Conciliator's Final Report*.

20 CBC News, “Fewer Aboriginal People Hold Top N.W.T. Jobs,” CBC News, July 29, 2009, [www.cbc.ca/canada/north/story/2010/07/29/north-nwt-affirmative-action.html](http://www.cbc.ca/canada/north/story/2010/07/29/north-nwt-affirmative-action.html).

21 RCAP, *Report of the Royal Commission*.

22 Natcher and Davis, “Rethinking Devolution.”

public consultations. So embarrassing is the situation that it is not uncommon for the Board to host public information sessions for one or two attendees.<sup>23</sup>

From the tremendous lack of human and knowledge capacity among Indigenous peoples to the near complete control of the institutional process—from decision-making to funding arrangements—by Canadian officials, it should be fairly evident where power lies. To some, this may seem like a cynical reading, where governments are authoritative or malevolent at the expense of local people. However, this is really just an extension of the very real historical relationship. To others, the issues chronicled above will be moot when Indigenous peoples catch up, filling those positions and gaining the requisite knowledge. But this outcome, if it is ever realized, will also be problematic. As Peter Kulchyski has remarked, “regardless of the level of power provided to Aboriginal governments, every decision that is made following the dominant logic, in accordance with the hierarchical and bureaucratic structures of the established order, will take Aboriginal peoples away from their own culture.”<sup>24</sup>

### **Philosophical Incompatibility**

Not only do the bureaucratic land use regimes of the present force Indigenous peoples into an alien system of management that limits their decision-making power; the process also encourages them to surrender their values and, indeed, their cultural perspectives on land and resource use in favour of Western or Euro-Canadian notions of development, conservation, and science. This may seem ironic, given the rhetoric of co-management and, even more so with the supposed “integration” of Indigenous knowledge into land management practices. But integration is problematic when land use planners assume that this knowledge can be distilled as simply another data set to be incorporated into the

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23 Nunavut Impact Review Board (NIRB), *Public Meetings Summary Report for Baffinland Iron Mines Mary River Project* (Cambridge Bay, Nunavut: NIRB, December 2009). [http://ftp.nirb.ca/reviews/CURRENT\\_REVIEWS/08MN053-BAFFINLAND\\_MARY\\_RIVER/2-REVIEW/04-COMMUNITY%20CONSULTATIONS/](http://ftp.nirb.ca/reviews/CURRENT_REVIEWS/08MN053-BAFFINLAND_MARY_RIVER/2-REVIEW/04-COMMUNITY%20CONSULTATIONS/)

24 Peter Kulchyski, *Unjust Relations: Aboriginal Rights in Canadian Courts* (Toronto: Oxford University Press Canada, 1994), 121.

accepted way of doing things, which is generally bureaucratic, scientific, reductionist, technical, and compartmentalized. However, the reality is that Indigenous knowledges often contrast—and, in some cases, fundamentally clash—with this logic.

As previously mentioned, both the visioning of land use planning and the actual process flow from Euro-Canadian assumptions about the land and our relationship with it. Land and “resources” are seen in a utilitarian light, having little value independent of their benefit to humans. As Indigenous peoples are schooled in this logic, they implicitly adopt these assumptions or are at least pushed to view them as common sense. For instance, Article 5 (Wildlife) of the NLCA includes references to “non-quota limitation,” “total allowable harvest,” “basic needs level,” and so on. Indeed, most co-management agreements are replete with references to the land in quantitative terms, ready for our use.<sup>25</sup> Of course in recent years, with the growing environmental lobby, there has been much emphasis on conservation. Yet, once again, it is a very Euro-Canadian notion of conservation where humans are distinct from the land, forbidden to use it except for occasional canoe, hiking, or hunting adventures.

All of this is at odds with traditional Indigenous conceptions of the land. Of course, the diversity of Indigenous peoples in North America and even the Far North is bewildering; cultural, linguistic, philosophical, and practical expressions vary wildly. Interestingly, though, Indigenous peoples from the Hopi and Navajo in the South to the Inuit and Tlingit in the North share common traits. They continue to emphasize notions of reciprocity and balance—what comes out of the land must go back in. In practice, this concept may be as simple as a Cree hunter in James Bay offering tobacco for the caribou he has just killed. However, the essence of this exchange reinforces a world view that the land and the creatures we share it with have power; they are all sentient, aware, equal, and deserving of respect. So central is this notion of respect and reciprocity that some Indigenous peoples, the Haudenosaunee among others, believe that if we fail to live up to our obligations to animals and

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25 Stevenson, “The Possibility of Difference.”

the land, the entire world will come undone. There are certainly utilitarian aspects to these views, but there is also the central theme of respect that is often lacking in the discourse of land use planning and co-management.

So, not surprisingly, when notions of land “management” are introduced, they fundamentally clash with Indigenous conceptions of this relationship. Nadasdy, in his work with the people of Burwash Landing, Yukon, has written extensively about this clash:

Yukon First Nations people find the assumption of control inherent in wildlife management at best ludicrous, possibly even offensive. As one Kluane First Nation hunter regularly noted at wildlife management meetings, the term wildlife management itself is a misnomer. Humans cannot “manage” wildlife populations, he said. [Wild animals are] quite capable of taking care of themselves; they make their own decisions about when to reproduce and where to go—decisions that are quite independent of any desires on the part of humans.<sup>26</sup>

For many Indigenous peoples, there are even worse consequences than offending animals. Indeed, attempting to manage the land and other creatures can be “hazardous by demonstrating a sense of arrogance towards the sentient world,”<sup>27</sup> potentially jeopardizing the all-important reciprocal relationship and, perhaps, threatening everything. This extends beyond wildlife to other aspects of land use planning: dividing the land into zones or extracting minerals, which give the land its essence, for example.

To the credit of government officials, scientists, biologists, and others, there is an increasing willingness to listen to and possibly incorporate these perspectives into land use planning and co-management regimes.

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26 Paul Nadasdy, “Wildlife as Renewable Resource: Competing Conceptions of Wildlife, Time, and Management in the Yukon.” In E. Ferry and M. Limbert, eds., *Timely Assets: The Politics of Resources and Their Temporalities* (Santa Fe, New Mexico: School of Advanced Research Press, 2008).

27 Stevenson, “The Possibility of Difference,” 169.

As early as 1996, the government of the Northwest Territories made it policy to include traditional ecological knowledge (TEK) during environmental assessment. The NLCA mandates the use of Inuit knowledge throughout. Indeed, Nadasdy notes the growth of the discourse surrounding TEK. Since the early 1990s, he writes, there has been “an explosion in the number of conferences, symposia, and workshops devoted to TEK across the North, not to mention the growth of a substantial academic research.” The purpose of all this “has been to ‘collect and document’ traditional ecological knowledge and ‘integrate’ it with scientific knowledge of the environment.”<sup>28</sup> However, as mentioned above, this integration is complicated.

Without getting into the epistemologies of Western sciences and Indigenous knowledges, it can be said with certainty that the two general ways of understanding the world are distinct and even divergent. Thus, any attempt at melding the two in the pursuit of collaborative knowledge and a successful co-management or land use planning regime will necessarily encounter challenges. These might range from interpretation problems relating to language incompatibilities to differences in the scope of observations (long-term in the case of TEK and short-term in the case of science). But the primary challenge is a philosophical one. It may be the case that TEK cannot be distilled and incorporated into Western science because, aside from any technical data, TEK is about a way of living in the world—values and beliefs. If these are not included and recognized along with the technical knowledge or data, the data will be ineffectual because Indigenous knowledge would be taken out of context. This is an approach that ultimately dismisses Indigenous perspectives.

To use another example from Paul Nadasdy’s work: At a meeting of the Ruby Range Sheep Steering Committee, Indigenous hunters advocated the end of the “full curl rule,” which allowed hunters across the region to kill old sheep—that is, sheep whose horns were fully curled. The concerned First Nation hunters argued that these full curl sheep are

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28 Paul Nadasdy, “The Politics of TEK: Power and the ‘Integration’ of Knowledge,” *Arctic Anthropology*, 36, 1-2 (1999), 1.

actually the most important to the overall sheep population because they have a role as teachers: “It is from them that the younger rams learn proper mating and rutting behaviour as well as general survival strategies.”<sup>29</sup> The scientists on the committee reviewed the literature and disagreed. The rule remained. Similarly, Yukon’s catch and release fishing policy is highly contentious because it contradicts Tutchone and Tagish beliefs that it is disrespectful to give back gifts. Whether it’s Dall sheep in Yukon or polar bears in Arviat or belugas in Southeast Baffin, Indigenous conceptions of animals as sentient, intelligent, and social are often incompatible with Western scientific perspectives.

Ultimately, while longitudinal observations on glacial movements provided by the people of the Saint Elias Mountains can be helpful to scientists, the notion that glaciers can listen and respond to those people is considered absurd.<sup>30</sup> So inevitably, the knowledge is removed from cultural contexts (distilled) and, eventually, the “data” are diverted (compartmentalized) to climatologists, geologists, wildlife biologists, and other scientists, so that the knowledge can be made ready for use in land management regimes.<sup>31</sup> In this schema, Indigenous peoples are then encouraged to see the benefits of their knowledge informing Western science, which they are also encouraged to adopt at the expense of their own assumptions. So, effectively, Indigenous peoples’ “participation in state-sponsored projects of co-management has (actually) served to disempower them by creating virtually insurmountable barriers to the inclusion of their values, understandings, knowledge, and institutions into these processes.”<sup>32</sup>

Once again, the relationship is defined by power. Canadian officials and Western scientists wield ultimate authority when it comes to knowledge. Indigenous peoples can merely contribute some facts.

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29 Paul Nadasdy, “The Anti-Politics of TEK: The Institutionalization of Co-Management Discourse and Practice,” *Anthropologica*, 47, 2 (2005), 227.

30 Julie Cruikshank, *Do Glaciers Listen? Local Knowledge, Colonial Encounters, and Social Imagination* (Vancouver: UBC Press, 2005).

31 Nadasdy, “The Politics of TEK.”

32 Stevenson, “The Possibility of Difference,” 172.

From the institutional and cultural assumptions of planning, discussed above, to the concrete examples of Nunavut and Ontario below, it is clear that Indigenous peoples are limited in their ability to affect Northern planning decisions.

## **THE NUNAVUT PLANNING COMMISSION AND ONTARIO'S *FAR NORTH ACT***

The shape of the discussion, so far, focuses on the power or lack of power that Indigenous peoples exercise in the planning process—from their marginalization in institutional processes to the illusion of the inclusion of their knowledge systems. In both cases, despite the tremendous sacrifices Indigenous peoples have made for a modicum of authority in land use planning and co-management regimes, they are effectively outside of the processes. This power imbalance might be most acutely observed by looking at cases of Northern land use planning in more depth. Two jurisdictions, Nunavut and Ontario, are of interest here.

As mentioned in an earlier section, land use planning and co-management in Canada's North are relatively recent and somewhat ambiguous concepts. They have not been uniformly applied and are at different evolutionary stages in various jurisdictions. The two examples, presented here, chart land use planning regimes that illustrate two stages of the process. In the Nunavut case, land use planning has been attempted and practised for over a decade—so long, in fact, that new iterations of the planning process are being discussed. In Ontario, efforts are just getting started, with planning legislation passed in the fall of 2010. While the two jurisdictions vary wildly in terms of geography, motives, actors, and so on, the cases have much in common regarding a failure to adequately include Indigenous perspectives.

### **Nunavut's Squandered Opportunity**

The failure of the only jurisdiction to complete and undertake comprehensive land use plans in the North should highlight the inappropriate nature of the undertaking, or at least its execution. While the NLCA was,

and often still is, lauded as a land claims settlement and self-government success, there are many challenges for the Inuit, both in forcing the federal government to implement the settlement terms and in wresting control of its own institutions, such as the Nunavut Planning Commission (NPC). The Commission, tasked with bringing Inuit into the planning process, has instead excluded them. While Inuit helped draft land use plans, the NPC has since ignored their desires, explicitly violating the plans in a number of recent decisions. The examples below illustrate what can be described as, at best, a squandered opportunity and, at worst, the corruption of land use planning in the North.

With the NLCA came the NPC, a public institution with members from the governments of Canada and Nunavut, as well as Inuit regional organizations. The NPC was given a critical mandate to oversee comprehensive land use plans for the new territory. The organization describes itself as follows:

A co-management organization with distinct authority and decision-making responsibilities protected under the NLCA. The NPC consults with government, Inuit organizations . . . but it is the Commission's responsibility to make the final decisions on how land use plans will be developed and how the plans will manage the land in Nunavut.<sup>33</sup>

Almost immediately after the NLCA was signed, the NPC began dividing the territory into six regions and developing comprehensive land use plans for each one. By 2000, two of the six plans had been completed: North Baffin and Keewatin. But in the 10 years since, they have remained the only regional land use plans—the other four originally envisioned have yet to be drafted.

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33 Nunavut Planning Commission (NPC), "About the Commission," NPC, [www.nunavut.ca/en/about-commission](http://www.nunavut.ca/en/about-commission).

Aside from small-scale development,<sup>34</sup> any and all project proposals in the land use plan areas must be reviewed by the NPC. This process is described in section 11.5 of the NLCA:

Upon receipt and review of a project proposal, the NPC . . . shall: (a) determine whether the project proposals are in conformity with plans; and (b) forward the project proposals with its [NPC's] determination and any recommendations to the appropriate federal and territorial agencies.

Effectively, the NPC reviews the project, looks at the regional plan the proposal falls under, determines whether it conforms to that plan, and then issues a positive or negative conformity determination to those federal and territorial agencies. To conform to a plan, a given proposal must not violate the guidelines and restrictions. For instance, development that might negatively affect caribou calving grounds is discouraged in both plans and, if proposed, should earn a negative conformity determination. Other conformity requirements include commitments to sustainable development, inclusion of Inuit knowledge, and wildlife conservation.

The NPC plays a crucial role as an arbiter of development—effectively, a gatekeeper. However, since its creation, the Commission has seemingly lost its way, approving a number of extremely controversial projects that blatantly deviate from the two land use plans in place. Not surprisingly, residents of Nunavut have a problem with this. Late last year, a *Nunatsiaq News* editorial quipped, “because of a long series of foolish blunders, most committed within the past 10 years or so, no reasonable person can now claim that the environmental protection system laid out within the land claims agreement is capable of inspiring public

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34 Section 21-1 of the NLCA defines small-scale development. It is essentially anything not requiring a permit or authorization. It might include mineral staking, construction within a municipality, or hotels with fewer than 20 beds, for example.

confidence.”<sup>35</sup> There are two particular cases that demonstrate the NPC’s negligence: Areva Uranium’s Kiggavik Project and Baffinland Iron Mines’ Mary River Project.

In the Keewatin Regional Land Use Plan (KRLUP), section 3.5 states, “any review of uranium exploration and mining shall pay particular attention to questions concerning health and environmental protection.” Section 3.6 follows that up by specifying that “any future proposal to mine uranium must be approved by the people of the region.” Yet, in late 2008, Areva Uranium’s Kiggavik Project—a plan to extract 3,000 tonnes of concentrated yellowcake uranium annually for 17 years, at multiple open-pit and underground mining sites, 80 kilometres west of Baker Lake—received a positive conformity determination, even though the potential ecological or social consequences of the project were never reviewed. In addition, to satisfy the Inuit approval condition, a single two-day workshop was held.<sup>36</sup> Remarkably, Brian Aglukark, Regional Director for the NPC, wrote, “With respect to sections 3.5 and 3.6 of the KLRUP which require review of all issues relevant to uranium exploration and mining by the NPC, as well as approval of the people of the region, the NPC has concluded that these requirements have been met.”<sup>37</sup>

A starkly similar case occurred with another project falling under the North Baffin Land Use Plan (NBLUP). Section 3.5 of that plan states, “any party wishing to develop a transportation corridor shall submit to the NPC a detailed application for an amendment [to the land use plan].” Yet, Baffinland Iron Mines’ Mary River Project—a plan to extract 18,000 tonnes of high-grade iron ore annually for 21 years, 160 kilometres south of Pond Inlet—also received a positive conformity determination despite a proposal for two shipping corridors (and without the company even applying for an amendment):

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35 “Nunavut’s Radioactive Issue,” *Nunatsiaq News*, editorial (December 29, 2008).

36 CBC News, “Concerned Baker Lake Residents Question Public Support for Areva Proposal,” CBC News (February 18, 2009). <http://www.cbc.ca/canada/north/story/2009/02/18/baker-areva.html>.

37 NPC, Conformity letter regarding Areva Kiggavik Proposal to pertinent Nunavut government officials (January 16, 2009), NPC. [http://ftp.nirb.ca/reviews/CURRENT\\_REVIEWES/09MN003-AREVA\\_KIGGAVIK/](http://ftp.nirb.ca/reviews/CURRENT_REVIEWES/09MN003-AREVA_KIGGAVIK/).

A railway system will transport (after its construction) the ore from the mine area to an all-season, deep-water, port and ship loading facility at Steensby Inlet where the ore will be loaded into ore carriers for overseas shipment through Foxe Basin. A dedicated fleet of cape-sized ore carriers, capable of breaking ice, will be chartered by Baffinland.<sup>38</sup>

This proposal would create the largest development project in Nunavut history and have tremendous ecological and social impacts. It is a project that should have garnered significant scrutiny from the NPC, given the NBLUP restriction on shipping corridors. Incredibly, like the Kiggavik Project, the Baffinland proposal explicitly violated the land use plan and was allowed to proceed.

The Inuit have surrendered 90 per cent of their territory and 99 per cent of their subsurface rights for input on these plans. Yet, in the end, they are still alienated from decisions about development that will significantly affect them. It seems clear that land use planning in Nunavut is neither empowering Inuit nor giving them decision-making authority. Certainly, Inuit serve on the NPC, but they have only half of the positions and the senior policy advisor for the organization lives in Yellowknife, Northwest Territories.<sup>39</sup> In addition, if the NPC ever makes a negative conformity determination, the minister has the power to exempt whichever proposals he deems important enough to do so, despite Inuit objections.

It is unclear why the NPC has violated the plans so grossly, but the Commission has certainly become dysfunctional. At least they, too, recognize as much. The NPC has announced plans to overhaul land use planning in the territory by starting over with a new, Nunavut-wide

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38 Baffinland Iron Mines Corporation, "Development Proposal for the Mary River Project" (Toronto: Baffinland Iron Mines Corporation, March 2008), 1. <http://baffinland.com/Theme/Baffinland/files/Volume%20I%20-%20%20Main%20Report.pdf>.

39 NPC, "Our Team," NPC. [www.nunavut.ca/en/about-commission/our-team](http://www.nunavut.ca/en/about-commission/our-team).

plan.<sup>40</sup> It should be noted that there are very few operating mines in Nunavut today. The conformity determination violations the NPC has committed have been flagged by the Nunavut Impact Review Board, which oversees development outside of the two regional land use plans in place. That has delayed the related projects to some degree. Despite this, construction on the Areva and Baffinland projects, among others, is proceeding at a rapid pace.

Of course, Nunavut is not the only jurisdiction in the North where development is moving quickly. In Ontario, development is just as hurried, even more so, and Cree and Ojibwe peoples there who want to engage with planners face significant challenges. However, there are also many contrasts between the two jurisdictions. For instance, in Nunavut, development has generally followed the creation of land use plans (in the two regions mentioned above, at least), but in Ontario, development occurs in the absence of a land use planning regime. In addition, while the Inuit were very involved in drafting the Nunavut plans, Ontario's approach has excluded First Nations peoples.

### **Exclusionary Planning in Ontario**

While Nunavut and Yukon have pursued land use plans through the relatively recent NLCA and UFA, treaties in Northern Ontario are over 100 years old and make no mention of planning commissions. There are also no stipulations for the co-management of surrendered lands in the North, and there is no consensus on roles and responsibilities. In fact, there is little consensus about who actually has authority in Ontario's North. The Cree and Ojibwe feel that they agreed to share their territories in treaties 3, 5, and 9. Ontario feels that there was explicit surrender and, thus, the Crown has jurisdiction. This is the unsteady footing from which planning proceeds in the province. Not evolving from the claims-based co-management common in the territories, Ontario's experience might be described more as crisis-based, as it is a response to numerous high-profile confrontations. However, despite the

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40 Gabriel Zarate, "NPC Promises Draft Nunavut Land Use Plan by Fall," *Nunatsiaq News*, March 24, 2010.

differences between Nunavut's and Ontario's land use planning regimes, there are similarities—primarily, the exclusion of Indigenous peoples from the planning process. In Ontario's case, the problem does not lie in the execution of plans, but in the drafting.

Ontario has an inauspicious history with First Nations communities in the province. That history has even occasionally resulted in violent conflict with the Haudenosaunee and Algonquin peoples, often over lands and resources. Of course, the province has witnessed the police shooting death of Dudley George at Ipperwash and the ongoing standoff in Caledonia, but most pertinent have been a number of recent conflicts in the North. Foremost among these is probably the summer of 2008 dispute between the Kitchenuhmaykoosib Inninuwug (KI) and the platinum mining firm, Platinex. Under Ontario's ancient *Mining Act*, companies are granted free entry, essentially wherever they please, to explore for subsurface minerals. In this case, Platinex began exploring KI territory, over the latter's objections. When the Chief and council of the community parked their boat in the path of floatplanes carrying prospectors, forcing them to turn back, Platinex sought and secured an injunction against the blockaders. Still, they refused to move. This led to their jailing on six-month prison terms and subsequent widespread condemnation among Ontarians of the draconian punishment.

Amid the public outcry, and subsequent incidents at Attawapiskat and Grassy Narrows, the Ontario government sought to alleviate some of the tension. It agreed to revise the *Mining Act*; to set up a bilateral forum called The Northern Table with the Nishnawbe Aski Nation (NAN), the political organization that represents 49 Far Northern First Nations; and to embark on an ambitious attempt to draft planning legislation. Indeed, when the next conflict arose, the Ontario government's actions were quite different, though the First Nations' were similar. This time, when prospectors attempted to land their plane on a frozen lake landing strip in Marten Falls and were turned away by the protestors, they did not file an injunction. Instead, the incident was reported to Ontario's Minister of Northern Development and Mines, who then personally visited the community. He brought rare fresh fruit, Ontario

government golf shirts, and hats as gifts, met for hours with the community about their concerns, and finally offered assurances that Marten Falls would benefit from development.

Ontario's change in tactics is undoubtedly informed by past mistakes (the government had to pay Platinex millions of dollars in the KI case, for example). However, it also likely relates to what those prospectors were seeking in Marten Falls in the first place—chromite. The suspected deposits of chromite throughout 5,000 square kilometres of Northern Ontario rock have been called “the most promising mining opportunity in Canada in a century.”<sup>41</sup> Labelled the “Ring of Fire,” the chromite find is unique in North America and is expected to create a staking rush and mineral boom in the province—so much so that the Ontario government has appointed a Ring of Fire coordinator. However, the development will affect many First Nations and, needless to say, the government cannot risk multiple angry First Nations threatening this opportunity as they have in the past. As such, in addition to golf hats, Ontario has been working steadily on land use planning legislation for the North.

The *Far North Act*, which the Ontario Legislature passed as Bill 191 in September 2010, is designed to bring Ojibwe and Cree peoples into the land use planning process. In fact, the stated purpose of the Act is to provide “land use planning in the Far North that directly involves First Nations in the planning.” The rhetoric is impressive, really. In the actual legislation, the term “First Nation” is mentioned 55 times in 24 terse sections.<sup>42</sup> Yet, the trend described above regarding power and illusion is maintained. Ontario drafted the Act without NAN's input, scheduled consultations unilaterally and on short notice, and then cancelled the consultations when NAN representatives couldn't attend.<sup>43</sup> In fact, so contentious is the *Far North Act* that NAN has condemned it. As Grand Chief Stan Beardy stated on the eve of the bill's passage,

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41 “Don't Let Mines Pre-Empt Natives” *Toronto Star*, editorial, March 10, 2010.

42 Ontario, Legislative Assembly, “Bill 191,” *Far North Act, 2010*, Government of Ontario. [www.ontla.on.ca/web/bills/bills\\_detail.do?locale=en&BillID=2205](http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&BillID=2205)

43 Kate McLaren, “*Far North Act* Hearings Cancelled,” *The Sudbury Star*, June 23, 2010.

We will do everything we can to prevent this legislation from passing, but if Bill 191 is passed in spite of our opposition, NAN First Nations will not recognize the legislation and will move to exercise full and exclusive jurisdiction over their traditional territory.<sup>44</sup>

In addition to the concerns already mentioned, NAN is strongly opposed to the encroachment and usurpation of jurisdiction in their territories. Under treaties 5 and 9, the 49 signatory First Nations believe they have the right to govern themselves and the lands they have occupied since time immemorial. Yet, the *Far North Act* presumes to set aside 225,000 kilometres for conservation without input from NAN; to divide the Far North territory into two zones, against their opposition; and to give control of the land use planning process entirely to the Ontario government—even community land use plans are subject to ministerial approval.<sup>45</sup> In addition, many projects are excluded from land use planning, including the construction of transmission lines, mineral staking and exploration, and already-approved plans. In fact, the minister “would have authority to determine additional activities that may proceed before a community-based land use plan is in place.”<sup>46</sup> Again, that leaves ultimate authority with the government and potentially eschews local people’s desires.

It is not as though First Nations in Northern Ontario are opposed to development or conservation (though they might have unique notions of both), or even the concept of land use planning. As Sandy Lake First Nation Chief Alan Fiddler has noted, “We fully support land use plans . . . [but] within the terms and guidelines established by our Elders and our communities.”<sup>47</sup> This was the message community members from

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44 Nishnawbe Aski Nation, *Bill 191*, news release (n.p.: NAN, July 22, 2009).

45 Ontario, Legislative Assembly, “Bill 191.”

46 Ontario, Ministry of Natural Resources, *Far North Act*, backgrounder (Toronto: Government of Ontario, n.d.). [www.mnr.gov.on.ca/en/Business/FarNorth/2ColumnSubPage/273187.html](http://www.mnr.gov.on.ca/en/Business/FarNorth/2ColumnSubPage/273187.html).

47 Tanya Talaga, “Stop *Far North Act* or Face Conflict: First Nations,” *The Toronto Star*, September 14, 2010.

the Far North tried to deliver to the Ontario government on the steps of the Legislature as the bill was being passed. But despite the protest outside, the government signed the *Far North Act* into law. This marked not the hoped-for end, but the stubborn continuation of the trend in confrontation between the Ontario government and First Nations.

While this discussion began with the observation that Ontario has changed tactics in response to First Nation demands, the reality is stasis. As early as 1992, the Dease River Band Council Manager reported,

In the majority of the land, we are the sole users and occupiers. The government, with its various ministries, has studied and prepared management plans in which we have had no input. The majority of the management plans are not geared to meeting the First Nations' needs or priorities.<sup>48</sup>

Based on the description of Ontario's effort at planning and the exclusion of NAN, the trend, it seems, endures. The only real change is the recognition of the increasing assertiveness of First Nations in the province and corresponding pandering, which might only delay the inevitable clashes, which are sure to re-emerge as long as Ontario insists on planning the North unilaterally, excluding Indigenous peoples.

Planning attempts in Ontario and Nunavut are not the only examples of the contemporary relationship between Indigenous peoples and Canadian, provincial, and territorial governments regarding land use. However, they are prominent and indicative of Northern planning to a large extent. Ontario represents the worst type of planning with Indigenous peoples—a seemingly complete disregard for the perspectives and opinions of the people who will be most directly affected by the land use plans. In Nunavut, on the other hand, Inuit input was gathered, considered, and included. Indeed, the two existing plans were incredibly promising. However, the NPC, the organization that implements the

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48 RCAP, *Report of the Royal Commission*.

plans, has failed Nunavummiut. The Nunavut example demonstrates planning dysfunction and may signal that even when plans arise from good intentions, they are incredibly difficult to sustain.

## **POTENTIAL ALTERNATIVES: FROM ADAPTATION TO THE TWO-ROW WAMPUM**

All of this is not to say that some organizational structure to provide a forum for, and to accommodate the diverse perspectives in the North, is not important. With the increasing interest in the North, it might even be critical. Indeed, the settlement of land claims and growing Indigenous assertiveness certainly correspond to an opportunity for Indigenous peoples to play an active and renewed role in the stewardship of lands and resources. We have seen First Nations, Métis, and Inuit peoples step up and seize these opportunities in a bid to prevent further dispossession. No doubt they recognize that it would be irresponsible to turn down the chance to make sensible decisions about development and conservation in some systematic fashion; as such, the argument here is not for the complete abandonment of the concept of land use planning in the North. However, I am suggesting that Indigenous peoples critically reflect on the process, as it is being designed and implemented; and leverage the power to correct the institutional imbalance and insert the values they know are essential to our relationships with the land and the diversity of creatures that we share it with. There is an emerging array of diverse examples that we can possibly learn from in this endeavour.

Increasingly, the literature on co-management has been supporting the notion of adaptive co-management, defined as “a process by which institutional arrangements and ecological knowledge are tested and revised in a dynamic, ongoing, self-organized process or learning by doing.”<sup>49</sup>

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49 Carl Folke and others, *Resilience for Sustainable Development: Building Adaptive Capacity in a World of Transformations* (Stockholm: Ministry of the Environment, 2002). Quoted in Fikret Berkes, “Evolution of Co-Management: Role of Knowledge Generation, Bridging Organizations and Social Learning,” *Journal of Environmental Management*, 90, 5 (April 2009).

In this configuration, the stakeholders involved spend time developing the structures of the regime as well as co-creating or affirming knowledge of the region. Design, implementation, and enforcement are truly done collaboratively from the outset. This creates true co-management. On the adaptive side, there is continual reflexivity: stakeholders constantly review their actions and respond to events on the ground, which, in turn, requires ongoing revisions of the plans. Such a philosophy challenges the Nunavut plans, which require review only after five-year periods. Adaptive co-management might be the most optimistic of the alternatives described here.

In Central Yukon, the Northern Tutchone Council (NTC) has rejected land use planning as it is currently being practised. Instead, the council is working on a system where traditional laws, collectively called Doo Li, would apply to resource use in their settlement area (the system would also apply to non-native peoples). Being practical, the NTC is attempting to make Doo Li somewhat compatible with Yukon's planning apparatus by developing enforcement regimes, public education initiatives, and codification.<sup>50</sup> While the effort is slow to start and is effectively accompanying the NTC's work to become self-governing, it does demonstrate a potential alternative based on cultural understandings of the land. Likewise, the Haida in British Columbia, after an intense battle with the provincial government over timber harvesting, have pursued a similar path with their land use vision called *Yah'guudang*, which actually gives priority to cedar, salmon, and black bears over people.<sup>51</sup> The Ojibwe in the Treaty 3 area of Northwestern Ontario have established *Manito Aki Inakonigaawin*, or the Great Earth Law, and have been successful at getting corporations to sign on to its land use planning principles; companies who do not sign are not welcome in the region.<sup>52</sup>

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50 Natcher and Davis, "Rethinking Devolution."

51 Louise Takeda and Inge Ropke, "Power and Contestation in Collaborative Ecosystem-Based Management: The Case of Haida Gwaii," *Ecological Economics* (2010).

52 Grand Council of Treaty #3, "Laws and Policies," Grand Council of Treaty #3. [www.gct3.net/grand-chiefs-office/laws-and-policies/](http://www.gct3.net/grand-chiefs-office/laws-and-policies/).

Finally, there is at least one model based on the recognition that the knowledge systems—or, at the least, the philosophy—of Canadian planners and Indigenous peoples are largely incompatible. This does not mean, however, that cooperation is also impossible. Marc Stevenson has formulated the “Two-Row Wampum Approach,” adapting the ancient Mohawk and Dutch treaty that envisioned our relationship as two separate boats sailing down the same river. In each boat: our unique values and beliefs. While we will undoubtedly affect each other with the wake from our boats, we steer our own vessels. So, transposed onto planning, Indigenous knowledge and management systems and Canadian knowledge and management systems would be developed independently, coming together in some mechanism for collaborating on decision-making and planning.<sup>53</sup>

While land use planning and co-management in Canada’s North require serious examination and renovation, each model discussed above also comes with a plethora of challenges. Government officials must be willing to divest power; Indigenous peoples need to increase, to some degree, their literacy in bureaucratic discourses; and, on the part of all involved, there must be an earnest appreciation of different philosophical and technical knowledge. Despite the obstacles, helpful guidance exists. In a presentation on collaborative resource management to the Standing Committee on Aboriginal Affairs and Northern Canada, the Inuit Tapirisat Kanatami stated the following.

The objective of co-management is to bring together the traditional Inuit system of knowledge and management with that of Canada’s. We knew we could manage our resources in our own tradition, but we also recognized that the government’s management system had something to offer. Our definition of co-management is the

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53 Stevenson, “The Possibility of Difference.”

blending of these two systems of management in such a way that the advantages of both are optimized, and the domination of one over the other is avoided.<sup>54</sup>

## **CANADA'S NORTH: A NEW PLAN?**

Land use planning as it continues to be practised actually disempowers Innu, Gwich'in, and Tlingit peoples. The bureaucratic approach to collaboration alienates Indigenous peoples, who are generally unacquainted with the discourses employed in the process. In addition, those discourses are derived from cultural assumptions about the land, development, conservation, and relationships with animals and resources, which fundamentally clash with the perspectives of Indigenous peoples. Lastly, experiences in Ontario and Nunavut demonstrate that even when Indigenous peoples try to insert their perspectives into the planning process, ultimately, those perspectives are marginalized through a corruption of the process or an unwillingness to share power.

A plethora of examples demonstrate that dissatisfaction abounds. In the slew of co-management and land use planning regimes across the North, Indigenous peoples are expressing their discontent. Government-imposed hunting bans have been repeatedly violated from the Northwest Territories to Labrador; blockades in response to exploitative development seem to multiply by the year in British Columbia and Ontario; individual First Nations and Indigenous organizations routinely launch court cases and appeals against companies, provinces, and territories, and vice versa. In a 2009 study of Little Salmon/Carmacks First Nation, David Natcher found that 83 per cent of community members surveyed

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54 RCAP, *Report of the Royal Commission*.

believe they will have considerably less access to land in the future.<sup>55</sup> All of this speaks to the failure to manage lands, resources, and people under current Northern land use regimes.

However, amid the failures, there may be cause for optimism. Very recent developments have demonstrated that Canadian institutions might be able to accommodate difference. In the first instance, Inuit took the government to court to prevent a seismic mapping experiment in Lancaster Sound from taking place, fearing the procedure could harm whales in the region. The judge in the case listened to evidence from Canadian scientists but also listened to Inuit experts. She weighed the perspectives equally and eventually agreed with the Inuit, affirming the validity of that knowledge system. In the second instance, Parks Canada committed to establishing a 12,000-square-kilometre national park in Northern Labrador among the Torngat Mountains that allows Innu peoples to continue to hunt within it. The decision was viewed as pragmatic, since local people would have otherwise refused to endorse the creation of the park. However, it also marks an important change in philosophy: the recognition that perhaps conservation does not require excluding humans from “wilderness.”

To say that things are changing in the North would be an understatement. Physically, the North is undergoing rapid and widespread transformation due to climate change. Economically, Northern development has never seemed so sustained. Politically, the North has emerged as a foreign policy focus. Among the collective consciousness of Canadians, the North is becoming, perhaps for the first time, familiar. Indeed, it might be our perceptions about the North that herald the most significant transformation. While the Southern mentality will no doubt be difficult—and, in many cases, impossible—for some to abandon, there is promise in the recent events at Lancaster Sound and in the Torngat Mountains. These cases indicate that our imaginations are capable of extending the limits of what is possible. So, amid all of this, the new policy for land and resource managers in Canada’s North can be found and hopefully adopted: change.

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55 David Natcher, Clifford Hickey, Mark Nelson and Susan Davis, “Implications of Tenure Insecurity for Aboriginal Land Use in Canada,” *Human Organization*, 68, 3 (fall 2009).





# From the Lecture:

## CONVERSATIONS AND QUESTIONS





*The CIBC Scholar-in-Residence Lecture was held in Whitehorse, Yukon, on May 12, 2010. The event was moderated by Assembly of First Nations Yukon Regional Chief Eric Morris. It was extremely well received by the community, attracting a standing-room-only audience of over 250 people. The community gathered to hear moderator Chief Eric Morris and three scholars—Thomas Berger, Steven Kennett, and Hayden King—speak on land use planning in Canada’s North.*

**Michael Bloom:**

Good evening and welcome to tonight’s Scholar-in-Residence Lecture. I’m Michael Bloom, vice-president of The Conference Board of Canada, and I’m pleased to be here tonight with you at the Beringia Interpretive Centre. We recognize that we’re on the traditional territories of two groups, the Ta’an Kwäch’än Council and the Kwanlin Dün First Nation. We thank you for welcoming us to your community.

I also want to acknowledge that tonight’s lecture and program is a joint venture with our friends and colleagues at the Conference Board’s new Centre for the North. The centre is taking a North-centric approach to providing insights into how the challenges facing the North can be met and great opportunities realized. And we’re delighted by the enthusiastic response.

This year’s 2010 Scholars-in-Residence—Thomas Berger, Steven Kennett, and Hayden King—will present their comments on “Canada’s North—What’s the Plan?,” which will consider the effectiveness and utility of land use planning in Canada’s North.

The program is a unique venture of the Centre for the North with the CIBC Scholar-in-Residence Program—a collaboration of significance, we think, and a collaboration that is intended to help Northerners and Southerners alike to identify challenges and opportunities, to gain knowledge and insights, and, ultimately, to bring about important changes and to make the most of opportunities that could be realized.

CIBC is very pleased that the Scholar-in-Residence Program, through this public lecture and the monograph that will come out in the fall, will bring this important Northern issue to a wider national audience. CIBC congratulates the three distinguished scholars on their important research and looks forward to participating in the launch of the forthcoming monograph.

On behalf of my colleagues at The Conference Board of Canada, I want to acknowledge this contribution by the bank that is making this program possible. It's a tribute to CIBC's commitment to cutting-edge research and analysis on major public policy issues, and we're delighted by their confidence in us as an organization to serve as a conduit for this research initiative.

So tonight we're here with a superb line-up—three renowned scholars and a distinguished moderator.

The fullness of the house tonight speaks to the importance of the issue, and we hope that this lecture will help to elevate the quality of the public discussion on this topic and to disseminate awareness of the issue to a broad audience. We see the importance of elevating the dialogue, of informing the dialogue, through the thoughtful contribution of intelligent, informed scholars who can bring issues forward to help people understand the range of ideas that can inform explanation and, ultimately, action.

Our distinguished moderator this evening is Regional Chief Eric Morris, Assembly of First Nations, Yukon Region. We are delighted that Regional Chief Morris has agreed to act as moderator for tonight's event. It's an important issue. His tremendous experience in leadership roles in the North is so important to informing this conversation tonight.

He has been, as many of you will know, chief of the Teslin Tlingit Council, a governing First Nation. He's been acting grand chief of the Council of Yukon First Nations. He holds a portfolio focused on the environment and economy for the Assembly of First Nations and he sits on the AFN's Executive Committee. So his extensive role in leadership, and his active interest in land use planning and the issues associated with that, make him particularly well suited to the task of acting as our moderator for the evening.

**Chief Eric Morris:**

Thank you very much. I want to take this opportunity to give thanks to Ta'an and members of the Kwanlin Dün for allowing us to once again be on their traditional lands to have this all-important discussion. Many things have taken place over the years on these lands. Agreements have been signed, final agreements have been signed on your lands, and we give you great thanks for allowing us to once again be here this evening. I know Frances Woolsey had to leave, so we give her thanks for leading us in our opening praying this evening. It's such a critical part of anything that we do in the Yukon that the spiritual aspect of our beginnings has to be recognized, and we acknowledge our Creator for anything that we're going to embark upon.

In some ways, I have a bit of a bias about land use planning, because I believe that we need to have land use plans in place. The Yukon has 11 final agreements in place, and out of the 23 agreements in Canada, most of them are held here in the Yukon. And in terms of looking at what type of a formula you'll need to look at the land and look at how you are going to deal with land, we have all the makings of that solution in place already. It's just a matter of being able to act on them and being able to do the things that are necessary to make those various things happen.

As always, we have our challenges, to say the least. But aside from that, hopefully, some of the views that will be shared this evening will give you an idea of what needs to happen or what could be created.

*What follows are excerpts from the Q&A session with the audience.*

**Chief Eric Morris:**

Looking at the whole issue of land use planning and the various challenges that we're faced with . . . . As you mentioned, Hayden, some of it in some cases is not working to reach the ends that we all hope to reach, which are looking at various issues of sustainability and economic development; looking at how we utilize lands and how we plan for the future; and then looking at much in relation to what you say, Steven, about Beginning With the End in Mind.

Our elders, as Hayden may know, have always advised that any time we start anything, we have to begin with the end in mind. Much in relation to land use planning and work that's done in those areas involves looking at what we hope to achieve, understanding the objective in mind.

In terms of some of the things that you have done, Mr. Berger, around looking at the Porcupine caribou herd, they are still an issue today. The Vuntut continue to lobby in the United States on behalf of the caribou herd, looking at protection of the Arctic National Wildlife Refuge. A lot of work has been done in that area. It continues today with all of the things that were brought forth in your day in relation to the importance of that particular herd and understanding the significance of it. And looking at how it is being dealt with today, a lot of work obviously still needs to be done.

I had some thinking around the question, "What's the plan for the North?" I believe that we've always had a plan for the North. I think that having all of our agreements in place is very significant in regard to that—we do want to have a say in what happens here in the North. We want to be able to have a say in what happens here in the North through land use planning processes that we develop.

I look at some of the work that our various boards and committees have done here in the territory. We have a Fish and Wildlife Management Board that has done some very significant work over the years, had some very good people working on those various boards, and brought forth a vision for what they see is happening for our wildlife, our fish. And you're looking at how some of the various things that you've identified in your presentation as issues are related to our beliefs, our traditional knowledge of how we treat animals—the very animals that we share this earth with—and the significance of that relationship.

I look at how land use planning will link all of these various bodies that do work as it relates to our animals and our water—how all of these things will be linked through a land use plan to serve as a guide for the work that's necessary here in the Yukon.

In relation to the Arctic, I was actually listening to a presentation about it in Toronto earlier this winter. And one of the things that they were talking about is that 10 per cent of the fresh water in North

America is found in the North. That's amazing when you think about it. And it really kind of caught me off guard and I'm thinking, "What are they doing, talking about our water?" We need to have various initiatives in place that look at helping us to manage, protect, and look after our water, because that's what sustains us.

In terms of looking at it from a broader perspective in the Arctic, I know that the Prime Minister over the past months has identified the Arctic as being an area of focus for establishing sovereignty, looking at development, looking at the whole situation of our polar bears and the sea ice melting, and how the Inuit have—yes, they talk about land, but they also live out on the ice.

So, in relation to the Prime Minister's view in terms of looking at Arctic sovereignty, looking at establishing it, we also need to look at development—like looking at what is happening now down in Louisiana with the BP oil spill.

It really begs the question, "What are we doing to allow that not to happen in our country, in our lands, in our traditional territories?" So I pose that to all of you.

**Thomas Berger:**

That is something that I'm sure people here have followed closely. When I recommended the wilderness area in the northern Yukon be set aside to protect the Porcupine caribou herd, we were thinking especially of the calving grounds of the herd, which are along the Arctic Coast. But, of course, those calving grounds extend into the United States, into Alaska, and in fact the entire main calving ground is actually in Alaska.

And the Gwich'in on both sides of the border in the Yukon and in Alaska, as Chief Morris said, have fought the fight for 30 years or more to prevent the United States . . . . You see, we in Canada have protected the calving grounds of the herd on our side of the border. The United States has established the Arctic National Wildlife Refuge on the contiguous area in Alaska. But they have made an exception for the calving grounds along the coast because the oil and gas industry thinks there's all kinds of oil and gas there.

The Republicans in the United States have always wanted to open that up to oil and gas exploration and development. The Democrats have always opposed it, and the Gwich'in have shown a capacity to work with, to make their influence felt with, the Parliament of Canada quite successfully and with the Congress of the United States and the administration in the United States.

So sometimes you have to work with the institutions that are there. You can't just say, "We're writing off the Congress of the United States. We're not going to pay any attention to them." They have the capacity to pass laws that would open up the Porcupine calving grounds on the U.S. side. And if it were opened to oil and gas, you would find that, just as in most of the great herds in Alaska, the Porcupine caribou herd would diminish to a remnant within 50 years.

It illustrates another point. In Alaska, the Inupiat, who are the Inuit folks living along the coast, have always been in favour of drilling in the refuge. Because, as Chief Morris said, they're interested in the resources offshore on the ice and in the water—bowheads, belugas, walrus, seals—so they have been going to Congress and taking a position in opposition to that of the Gwich'in.

This is something that Aboriginal people have to work out for themselves. The interesting thing is that I'm told that the Inupiat's desire to see oil and gas exploration and development in the refuge has diminished, because they now realize that if they go inshore, they will soon decide that it is time to go offshore as well. And as Chief Morris has said, we've seen an example of the kind of thing that can happen offshore in the Gulf of Mexico. We should all be watching that.

We're fortunate now because the Democrats control the White House and Congress. The Republicans controlled Congress when Bill Clinton was president, but he would veto any attempt to go in there. When Reagan and Bush were president—Bush I—they wanted to go in there, but Congress was held by the Democrats, so they stopped it. And it's a fight that goes on.

I should add that I testified before committees of the Senate and the House of Representatives in Washington, D.C., urging them to protect this area. One of the congressman said to me, "Well, who lives there?"

Who's going to enjoy this park?" And I said, "Well, on our side of the border, there are Canadians who live in the park, who make use of the resources, and they now share in the management of the park."

But there is another value as well at stake here, and that is whether we, as Canadians or as people of the world, have an obligation to pass on some land in its natural state to future generations. We don't have the right, we don't have authority, to exploit the world in any way we wish. And, of course, as Steven pointed out, we now see in global warming the consequences of that attitude.

**Chief Eric Morris:**

Just as a note, I know that someone once wrote a book and one of the quotes that he used on the cover was, "We are only borrowing land from our great-grandchildren." And that principle, I think, is still strong with us.

Steven, you've mentioned a bit about capacity and some of the challenges around the Arctic—for example, in terms of being able to have the capacity to do what's necessary to look at all the issues that are necessary to look at. Are you able to offer a reflection on that?

**Steven Kennett:**

I will meditate on that while I multitask here, which my wife says I don't do very well. In response to your first question, I guess what I'd like to try to challenge us to do is to make a connection between what you've said and really interesting arguments that Hayden made about land use planning. Because what I took from your discussion and from what Mr. Berger said is that the reality is that the world out there is changing as we sit here—that things are happening, decisions are being made, institutions are taking action.

So we have to decide how we respond to that collectively. Now, I recognize a lot of the very good issues that Hayden raised about land use planning and there are many ways of characterizing that process, from various shades of grey and black and so on.

But the reality is that there is a situation out there that we can respond to, to the best of our ability, or we can look for alternative ways. I don't feel qualified to really talk a lot about the Aboriginal, cultural, and political dynamics in planning. But what I can say is that some of the frustrations that he's identified, I think, are generalizable.

Those of us who care about what's happening on our planet are losing battles everywhere right now. We're losing battles on climate change. We're losing battles on species in Alberta. We're losing battles on wetland. We're losing battles on water. We're losing them all over the place as a result of decisions that are being made. And we're dealing everywhere to varying degrees, and this is not to diminish at all the particular issues and concerns of Aboriginal people, but all of us who care about these things are dealing with systems that are stacked against us in various ways.

So we are faced with the tactical, strategic, political, moral challenge of how we respond to that situation. And everybody, I guess, has to look into their own hearts and decide, and look at their own appropriate strategies and the resources that they have.

If not this approach, then what? I guess my sense from having seen this happen in the place that I call home is that trying to use planning processes to the best extent that we can—to bring those issues into the open, to force those trade-offs into the light of day, to try and engage people as best we can on these issues, and to try to stem the tide of some of the pressures that may seem insurmountable—seems to me the best option, despite all of the other failings. I guess one could quote Churchill about democracy being the worst of all systems except for the others.

Planning has a lot of problems. And it's symptomatic of a lot of deeper problems, but I still think that to deal with the reality that we face right now, I think we may not have a strong hand, but we have something to go on. And I guess the flipside of that, to Hayden, is, "What next, then?" If we say, "This system is rotten. We don't want to have anything to do with it right now. But we're going to engage in a long-term struggle to change the system while decisions are being made, unless we can stop those decisions from being made, while the

climate is changing, while the water is being polluted.” Is that the approach that we want to take right now? It’s an open question and I think it would be interesting to hear your views on that.

In terms of capacity, I’d like to hear people’s views around the table on that. I know we all hear about capacity issues. We know that Southern planning has developed a big toolbox of ways of doing planning. We know that you can spend huge resources on data, on information, on analysis, and various other things to support planning. It can be an endless strain on resources.

So there are two ways of dealing with that: providing more capacity or, as I was suggesting, at least considering whether we can get 50 per cent, 80 per cent, of the way there in the first round by being more circumspect, more modest, about what we’re trying to do and maybe taking that first step and then the next steps afterwards. That may be one way of trying to deal with capacity constraints and still make progress.

**Hayden King:**

In relation to your question, and I think I can try to answer Steven’s question in the process, we’re talking about Arctic sovereignty and we’re talking about protecting the Arctic, a particularly sensitive ecological place. I think if we support the Inuit in both of those endeavours, we can get closer to where we want to be and that’s, of course, protecting it and asserting some degree of control over those who do want to open up or who do want to use the Northwest Passage for a shipping route, for offshore oil and gas exploration, and so on.

I think that until this point, we haven’t been supporting the Inuit in the North. We’ve had Steven Harper’s famous refrain, “Use It or Lose It,” and the Inuit are sitting back saying, “What is he talking about? We’ve been using it for years.” The Inuit are asking for a deepwater port in Iqaluit; the federal government decides to put it elsewhere. The Inuit are still using diesel generators; there’s no stable supply of electricity. The list goes on and on.

I think that—and Mr. Berger knows this and Michael Byers points this out in his book, *Who Owns the Arctic?*—the best way to protect Arctic sovereignty is to support the Inuit, after the Western Sahara case

and their national law established that a state can essentially borrow or adopt sovereignty from indigenous peoples if the indigenous peoples are willing to allow it to do so. In this case, the Inuit have done so in the Nunavut Land Claims Agreement.

The only catch is that the recipient has to hold up the bargain, which the federal government doesn't seem to really be doing. It is not really asking the Inuit or supporting infrastructure in Nunavut to address capacity problems so that the Inuit can really engage in these processes from their perspective.

Now, if we did and if we could, and the Inuit really had a genuine say in planning in the North, great. One of the suggestions, and I think this was made by Sheila Watt-Cloutier, was for an international planning board.

So let's take the countries that surround the Arctic Circle, including indigenous people, and figure out, "Well, how are we going to do this?" Maybe that's an effective solution to resolving these issues. And as I said, if you include Inuit perspectives—you know, if there's no ice, there's no Inuit. So I think the number one priority up there is maintaining the ice and preventing what will, of course, be disastrous.

### **Chief Eric Morris:**

I know, as you've mentioned, there are a number of things that can be taken into consideration. You know in looking at the systems sometimes that are stacked up against us, the policies that are stacked up against us, that they don't give us the fluidity to be able to reach out and try something different. You never know how it's going to turn out until you actually go and do it. And part of it is looking at some of the apprehension around all of that. I think in the North here, especially here in the Yukon, we've always been ones to take that step. There are many people in the room this evening that have often said that we are on the cutting edge of land claim implementation when it comes to that, looking at how we begin to work with the various processes that are in place.

As you well know, Chief Wedge is one of the ones that is in the fourth year of implementation of his agreement in his traditional territory, Carcross Tagish First Nation. Chief Wedge—

**Chief Mark Wedge:**

Thank you, and I want to really express my appreciation to the Conference Board for putting this on, because I think it's very important. And there seems to be a theme, because I agree with all of you.

Mr. Berger, obviously when we started this process of 30 years of negotiating, we said, "We've got to finalize these agreements so that we can get certainty, so that we can move forward." So we diligently negotiated 35 years—we're going into our fourth year of implementing our agreement. And that was the intent in asking, "How do we make sure that our plan will be looked after and that all of these inserts are put into a treaty—a modern-day treaty that is like none before, because we breached all the other ones—so that we could go ahead and plan and work together?"

And then as we begin to move, Steven, what you talked about is that there's frustration within government because you take these treaties and you start saying, "Okay, how do we plan this stuff?" And one department plans against another department, and you have interdepartmental difficulties. We need to start getting a consistent policy that's really going to say, "Okay, this is how we begin to plan so it's almost interdepartmental." There's this gridlock—as well as the current government flavour, political flavour, that may change—and some political influences or non-political influences. But how, when they begin to play this out, is it representative of the people? Agenda 21 was a good example of where you had non-governmental organizations being more representative of the population than the actual elected governments.

Well, a similar kind of thing with this land use planning seems to be occurring, where you start saying, "Where are the interests of the Aboriginal people, the broad peoples?" We're at the point where we just start saying, "It's not working." Unless there's somewhere where this shifts or this changes, how do we fix this thing? What we intended was great. We're all frustrated with what's happening. But really, what's happening is you just start saying, at some point in time, you break the fundamental certainty we tried to establish with negotiating in these treaties.

And that certainty, through an implementation process that is failing us, is leading to uncertainty. So there are a couple of options we start talking about and it would be interesting to hear some perspectives. One option is that you just simply say, “Let’s turn these treaties back in and go back to where we were. Let’s get back exemption from taxes. Let’s get back into where we can put roadblocks up and we can just do all of the stuff so that no development can occur. It’s more effective for us as Aboriginal people.” Or we change the system and start saying, “What does this system look like and what is this system?”

Our governance model—and other First Nations have some governance models that need to be looked at by other governments—is about how departments can work together, about how you get integrated processes in planning things. We’re small governments that you can do that with and experiment with, but nobody is necessarily looking.

The next question is, we have under the self-government agreement the ability to do law-making. And that’s not being used because these committees, these steering committees, are all offering recommendations to other governments to finalize. You’ve got to share that power more broadly, so that some of these concerns are met.

So there are at least three kinds of approaches or processes. One, I’d like to say, is let’s do the moratorium all over again. No land disposition or anything until we figure out how to get effective land use planning. Of course, everybody is going to say no. But that’s what we did with the moratorium. Two is, let’s figure out when and how we’re going to fix this system. Three is, let’s look at some alternatives to start saying, “Can we use some self-government agreements or legislative authorities in First Nation law and perspectives to incorporate those traditional values into this contemporary thinking?”

**Hayden King:**

I hear you on the uncertainty thing. A lot of people, I think, are now saying, “We preferred when we didn’t know what Aboriginal title meant. And we preferred uncertainty because then we had a little bit more power in the process.” And that’s unfortunate to see today.

So in terms of starting to think about alternatives, what are they? Well, that's the key question. That's a question that Steven brought up earlier, when we were talking about Aboriginal title. Because we're not going to turn back the clock on the treaty. We can't do it. The Lakota tried to do this in the United States and pull out of all the treaties with the Americans. Did they get their land back? Of course not.

So we can't go back on the treaty. What are we going to do? What are the alternatives going to be? The Northern Shoshone Council, I think, has been trying to integrate . . . on it. They've said, "We're not really interested in the way that land use planning is being practised. We're going to do our own thing. We're going to insert traditional perspectives in the land use practice."

This is an ongoing process. They have to have comprehensive support from the community or widespread—almost unanimous—support from the community to do this. In addition to inserting their values and cultural perspectives on land and resource management, if we call it management, they're also trying to make it compatible with the institutions of Canada.

So figuring out enforcement regimes, figuring out public education policies—I'm not saying the two aren't compatible; it's possible. So you've got the Northern Shoshone Council. The Haida Gwaii in B.C., after an extensive struggle with the provincial government, finally wrested control and created a land use plan that was based on their cultural perspectives.

Now, non-native people on the West Coast of British Columbia are saying, "We want the Haida to manage our land." Ojibway in Northwestern Ontario have instituted the great law of Europe with Treaty 3 areas. They've said, "Companies, you want to come and do business in our territory? You've got to abide by this set of laws and rules that we've laid down."

The situation is different in Ontario. Treaties have been there for a long time. Companies like Bell, Telus—they've signed on. Multinational foresting companies—they've signed on to these agreements. So alternatives are possible. Now they're only possible on lands where indigenous peoples have title after treaties have been made. On lands where they've surrendered title, where they're merely a form of stakeholder, like

industry and conservation—well, something else has got to work. Those other stakeholders certainly need input, but we can look to indigenous peoples for models on how to relate to each other.

I'm not saying that I know what the alternative to land use planning is. What I am saying is, we need to really critically look at how it is being done, how we're proposing doing it, and unless we fix these things, what's the point? We're going to lead to more uncertainty. We're going to lead to more breached treaties. We're going to lead to this never being resolved and not planning the land effectively.

**Chief Eric Morris:**

I know that's it's a very important issue in terms of looking at how traditional knowledge is incorporated into the planning that needs to happen. I think what's also key is the recognition of traditional knowledge. Scientific knowledge is always highly valued and then sometimes traditional seems to take a backseat to things. And I think, in recognition of that, that's one of the key areas that needs to be looked at as well, in terms of how we need to recognize the knowledge of our elders and their knowledge of the land and all of the—as you mentioned in your presentation—of the animals and all the things that are in existence: you know, weather systems, weather patterns, and the list goes on in terms of the knowledge that is there.

**Thomas Berger:**

Some of you are old enough to remember the Mackenzie Valley Pipeline Inquiry. I travelled in the Mackenzie Valley in the Western Arctic, holding hearings, for about two years. I went to every community, Aboriginal and non-Aboriginal.

And I think we succeeded in melding traditional knowledge and the views of local people in those communities with the views of the experts, because we held hearings in Yellowknife where we heard from the experts: sociologists, biologists, zoologists.

But we did, I think, succeed—I hope we did—in getting, for instance in Old Crow, the views of elders and hunters. As I recall, we stayed in every community until everybody who wanted to say something

had his or her say. And I think we learned a lot. And in the report, we included the views of Aboriginal people on a basis of equality, if you will, with the views of experts, and I based my judgment on all of that.

All I'm really saying is that it can be done. Now that was perhaps exceptional, but I don't see why it isn't possible even today. I'm not saying how it should be done today; there may be other methods. But I think we succeeded at that time.

I went down the Mackenzie Valley with Dave Suzuki about three summers ago. We went to all kinds of villages where I'd been in the 1970s. Going to those villages on the Mackenzie River, I met old timers like myself who remembered testifying, and I remembered them. But what was remarkable, I met people who were 30, and even 20, who insisted that they had testified.

**Audience Member:**

My name is Peter Becker and I have one specific question for the panel, including the moderator, of course. It's a concern that was brought forth by a former premier of the Yukon, Tony Penikett, who wrote at the time to Jean Chrétien. And what he described there is the possibility that NAFTA Chapter 11 could be used directly to challenge the validity of land claims, and that's my question. I would just like to update a little bit, with all the water that has gone under the bridge since he wrote that letter. We have a big land use planning issue here now—the Alaska gas pipeline—and what really made me spring into action as a journalist–citizen was this deal that was struck last year between Exxon and TransCanada. Knowing a little bit of the history, it made no sense to me other than that they actually needed a legal partner to challenge across the border—right?—because NAFTA challenges can only be done across the border, TransCanada being Canadian and Exxon already having a good history of launching NAFTA Chapter 11 challenges, and that is in dispute right now in Newfoundland and other places.

So it wouldn't have to happen just in a planned way, but perhaps also in an underhanded way. The pressure might already be there to sort of plow the way through many jurisdictions here, that's the point. Thanks and I appreciate this whole event very much.

**Thomas Berger:**

I have no comment because I'm not familiar with it. Sorry.

**Steven Kennett:**

I'm in the same position. I don't know the NAFTA implications.

**Audience Member:**

Well, I published my concerns here locally and on the Internet, on YouTube, and in the journal *Defend Constitution*, so you can actually see the work that was done partly by me on this issue.

**Chief Eric Morris:**

In relation to the pipeline itself, I know that when I look at the Alaska pipeline corridor, for some strange reason, I always thought that was one of the first land claim agreements in the Yukon, because they actually identified a strip of land going through the territory for pipeline use. And I thought how unsettling that was, but that's my view.

**Bev Buckway, Mayor of Whitehorse:**

Gentlemen, welcome to the capital city of the Yukon, Whitehorse. I have two simple questions for you. But first, I would like to thank you very much for coming. You can tell by the size of the audience in this room that your presence is very much appreciated, so make sure you come back.

So, the two simple questions—the population of Whitehorse has gone from 5,000 up to 25,690 now. So, I would ask, what is your prediction for population growth in the territories? Because a lot of the land use planning issues are the result of increased population. And the second question is, what I'm hearing here tonight is that a lot of the land use conflicts seem to pit non-indigenous people against indigenous people. Can you suggest a new model that would perhaps blend perspectives and move us away from that conflict?

**Thomas Berger:**

I would leave it to my fellow panellists to answer the second part of the question, but predictions about population growth are very, very difficult. Let me just point out something about variations in land claims agreements in the North. The land claims agreements that you adopted here in the Yukon are agreements that allow you to manage your own land and your own resources and to govern yourselves and matters vital to your own interests as Aboriginal people.

In Nunavut, as you know, their land claims agreement provided for establishing a public government—that is, the Government of Nunavut. This government, which emerged from the land claims agreement, is one in which everybody in Nunavut, Aboriginal and non-Aboriginal, is a participant or voter. The Inuit are the only beneficiaries under the provisions relating to hunting and fishing and resources and so on of their land claims. With global warming and the receding of the ice, the changes in weather patterns—and there may even be long-term effects on the populations of the resources of the land and the sea on which indigenous peoples have long depended—certainly are very much apparent in Nunavut. The idea that the oil and gas resources and the mineral resources will soon be opened to exploitation—I don't mean to use that word pejoratively—open to production, if you will, has recently been given impetus by industrial development in Nunavut.

Such development didn't exist before. However, those resources, industry believes, are going to become accessible, and there has been more staking of mineral claims in Nunavut in the last two or three years than anywhere in the North, or even in the whole country. When I wrote my report in 2006 in Nunavut on the provisions of the land claims agreement relating to employment, I made the point that the old question of employment is a difficult one in Nunavut.

They have their own government with about 3,200 employees. The provision in the agreement is that Inuktitut, the Inuit language, will be one of the languages in the workplace. There's a provision that they [the Inuit] will have essentially 85 per cent of all the jobs because the proportion of the population that they currently represent is 85 per cent. Maybe someday they won't; they may be less than 50 per cent someday,

and the consequences of the particular form of government they chose in the land claims agreement may then be something they'll have to think very hard about.

But they wanted this land claims agreement, they've got it and now they've got—and Hayden referred to this—he called it the bureaucratization, I think, of these institutions. They now have about 50 per cent of the jobs in the government, but they are the jobs at the lower level, often secretarial, and the jobs that require technical or professional or that kind of training are not held by the Inuit. It's their government, but that's the way it has turned out.

I suggested that lying behind the whole issue of employment was the issue of education. In Nunavut, where in 75 per cent of the homes, their first language is still Inuktitut—not English or French—they have a system of bilingual education that doesn't work, because they stop teaching in Inuktitut in about Grade 4 and then everybody switches to English. And Inuktitut is a written language.

And I urged that they have a proper system of bilingual education from kindergarten to Grade 12 and that they learn in both languages instead of studying in their own language until Grade 4 and then stopping, so that after that it's taught as if it were Spanish or some other language. And of course they start learning in English in Grade 5 and of course they're behind, and it is not surprising that this system has not worked.

Now, the folks in the Government of Nunavut wanted to change this and we worked out a proposal for a bilingual scheme. It would require federal government funding, so that these people could emerge literate in both their own language and in English. You won't find anyone in Nunavut who doesn't believe they have to learn to speak and function in English. That provides access to the world around them and, of course, it's omnipresent—in the malls, on TV, and everything else.

But I'll just tell you one of the things you run into in this country, which is I think in many ways a wonderful country—and I prefer the weather—but the federal government long ago adopted the policy that we have two official languages, English and French, and the federal government will not subsidize education in any language except

English and French. As I pointed out, this is a one-off. Nunavut is the only jurisdiction in the country that has a majority Aboriginal population. It's not likely to be replicated.

We briefly had in Manitoba, in 1870, a province that had a majority Métis population. That lasted about three or four years, until settlement from Ontario overwhelmed them.

Anyway, I said, "Folks, you can make an exception for this. Don't get rattled by this, as if we're going to wind up teaching kids in Ukrainian with federal funding in Alberta and so on."

And that has gone nowhere, and I think at the time I thought I was going to be able to get folks in Ottawa to really think about this and to alter the policy in the case of Nunavut. But alas, I didn't succeed. I leave that thought with you, because these things are complicated. I think that Aboriginal people have to inhabit those land claims agreements and they have to inhabit their own governments. In the 21st century, you have to know who you are; you have to know your own traditions, your own people; you have to know the skills that will give you access and the opportunity to participate in the larger world. The Inuit constructed those institutions; they're their institutions. And I was urging in a sense the next steps to enable them to actually inhabit those institutions fully.

### **Steven Kennett:**

A couple of comments on those questions—I'm afraid those questions were simple to state but not so simple to answer, at least for me. On the question of population, I just don't know enough about the demographics. I know from observing the Northwest Territories that there's an underlying demographic trend here. I'm not sure what it is, but you get a change in the resource economy, diamond mines or something like that, and it can cause you to have a jump in population fairly quickly of people coming in.

So I can't answer your question, but my comment would be that I think planning—it's difficult for planning as a human institution to predict these things, but it needs to be flexible enough to adapt to them. If there are population pressures that are there and the spillover effect in terms of land use, then that's a place to focus planning effort.

In terms of the characterization of issues, I really am out of my depth in kind of working through the Aboriginal–non-Aboriginal options, but I would say again, just from where I sit looking at either oil sands in Alberta or the pipeline, I don’t think these issues only break down Aboriginal–non-Aboriginal. I see Aboriginal people as advocates on different sides of those issues and non-Aboriginal people as well. So that’s again not to minimize the fundamental Aboriginal issue, but I think that it is more complex than that.

**Hayden King:**

Regarding your questions in terms of demographics, absolutely, the population is going to increase. The fastest-growing segment of the Canadian population is indigenous peoples. It’s the same case with the Northwest Territories; their population is going to increase, as Steven pointed out, as more development occurs in the North. With the increasing development we’ve seen trending, people are going to be attracted here to work. So population is going to increase. Maybe we need to account for that in planning. I’m not sure.

Regarding the Aboriginal or indigenous–non-indigenous conflict, it seems that we’ve highlighted [it] through our presentations—or I have—but I don’t mean it to be as black and white. The issues are much more diverse than that. There are non-native people that support indigenous planning ideas. There are native people that are very much a part of the bureaucratic and regulatory regimes that currently exist. It’s more nuanced than that.

Are there new models that can accommodate both perspectives without creating division? Not many that we’ve tried.

In the literature, there’s this concept called adaptive co-management. And essentially, adaptive co-management, if we applied it to a broader context than land use planning, means that the parties involved—in this case, indigenous peoples and Canada—sit down together. They construct the knowledge about the region instead of coming to the table saying, “This is what we know.” They develop the plans together, they develop the budgets together. They design and implement these things together

in a genuine way, as opposed to the way it's currently done, which is very one-sided, with the government telling indigenous people how it is and what to do and so forth.

And the adaptive nature of adaptive co-management means that we assess these policies continually, all the time. And this is important, given the state of climate change right now. It's not as though we re-evaluate the plans every five years as we currently do. But we're always on the ground. We're always considering what's going on and always making changes together.

I know, in theory it sounds nice and in practice it might be a different thing, but that's one model that's suggested that you might want to look into.

**Audience Member:**

There were so many ideas that came to me while I was listening to you that I hope I won't get lost in what I'm saying. I should start by saying that I'm from Switzerland, so I'm from the land of planning. And I'm a lawyer, too, so I have been dealing a lot with planning. In Switzerland, we deal with many levels of land planning: the federal, then the regional, then the canton, then the city, then the municipality, and then the square, between two roads—that's still a unit that goes under planning. And I frankly believe that if we didn't have planning, there would be civil war in Switzerland.

And I don't know if many people realize how many civil wars and conflicts in this world are a result of non-planning. If you look to Algeria, if you look to different conflicts in Africa, you can always see that the root of all these conflicts—on top of being ethnic and political and other—is people fighting over land, people fighting over resources.

So, listening to you, I'm thinking that planning is almost a little bit like the cherry on top of the cake. It doesn't really convince me, I have to be frank. To me, planning has to be at the same level as the Constitution. It's the law and the value that will govern how people share and live together in a given space. And in the Yukon, I don't know

if there is planning, really, and I don't know if many people in this room have come to this conference wondering, "Are we going to discover what kind of planning we have in the Yukon?"

Because there are the First Nations and they have their territorial rights—and thank God they're here, right?—they're the ones that took the first step in protecting areas of the land. But in between First Nations land, there's Crown land. And on Crown land, pretty much everything goes right now. There is no guideline. We have processes like YESAB. When there's a new impact on land, there's a socio-economic assessment board that will take people's comments and give them advice.

But how do they make their decisions? Because there are no laws, there is no guideline for them to decide. In my vision of planning, planning has to be a democratic process, and it's only going to be as good, as strong, as the democracy in a given place. And it has to be a child of democracy. That means that people have to be heard and it has to reflect the value of all people that live here, including the minorities; otherwise, it's not a basis for peace. And there have to be legal mechanisms to implement, to enforce it.

For instance, if you have your Yukon plan, which we call in French *plan directeur*, that would be the general plan that says, "Okay, we want so much land that is protected, so much land that goes for resources, and there's this and this important aspect that has to be considered in planning." And then there have to be mechanisms to be able to go to court and say, "Okay, this project goes against the plan that was democratically reflecting what people really want." And I do not see any of that really implemented in the Yukon.

I could give you many examples, real-life cases, where the absence of planning really creates problems for people.

I hope that this conference will get people thinking about the big job that needs to be done here, so that a vision that represents everybody and ensures the future of all of us in the Yukon, the future for our children, can be developed.

It is a political process, so it's driven by government. Government has to decide they're going to open a consultation, they're going to think of the Yukon as a whole thing and start putting in guidelines.

So it starts with politics and it starts with the government that will commit to that process and then do it in a fair way.

**Amy Leach:**

I'm actually doing my master's research on this very topic, so it's quite timely that everyone is here, because I'm hoping to have my draft out by the end of this month.

It's interesting, some of the comments that have been raised tonight. Some people are arguing that the process is not working. I find that interesting, mostly because I would almost argue that, instead, we are at an exciting place in the process. It's not that it's not working; it's just that we've come to a place where we've been able to identify obstacles in the process. I think that with the signing of the North Yukon Land Use Plan, at least in the Yukon, the process seems to be making its way. It's been a bumpy road, but we're finding ways to overcome some of these challenges.

And what I'd like to pose to the panel is whether some of the challenges that Mr. King identified in his talk can actually be addressed through the existing land use planning framework that we have here in the Yukon, or elsewhere through discussion upfront or in terms of references Mr. Kennett suggested or in other ways—if we can actually fix this. Thank you.

**Hayden King:**

Yeah, sure. I shouldn't say I think we can fix it, since I'm from the perspective of saying we should give it up, but as I said, I think it's irresponsible to sit back and say, "Well, I'm not making any decisions. I'm not going to make responsible or sensible decisions about land and conservation and development." It's irresponsible.

We've got to do these things, but for indigenous people to be meaningful participants—and, really, for Northerners and rural people to be meaningful participants—I think we've got to reconsider substantially how we do these things. And, unfortunately, I don't really think that the institutional frameworks that do exist will accommodate that. I think we really need to revise wholesale how we do things, and I know that

Steven has pointed out that none of these things is going to happen overnight, and I think Mr. Berger pointed this out as well. It's going to be a process.

Climate change is happening, certainly. Minerals in the ground—they're not going anywhere. Let's figure this out. But again, I'm not in a position to tell you, yes, Model B is going to work for the Yukon. But I think that there needs to be some serious consideration of something entirely different.

**Steven Kennett:**

Yeah, I thought Hayden agreed with me at the end of his talk. Part of the challenge is in planning—the problems embedded in the planning process that can be worked on through improvements to that process. Planning is itself embedded within this integrated resource management system, which starts with broader policy and then defines things spatially through planning, and then goes down to regulatory issues.

And so some of these problems relate to that system, which is actually in place in the North more than in some other places but needs to be fixed. And then there are other issues—the political, cultural, broader issues that are way outside of what planning can fix—and those issues are real and important and they impinge on planning. It comes back to the part of the question—do we put planning aside while we try to solve those problems, or do we continue on?

And I guess, as I said, I think we can make progress. I think we can make planning work better. I think we can learn from successes in North Yukon and Gwich'in, what's happening with the Sahtú plan and the Dehcho plan, where there've been bumpy roads, but those processes, from what I hear, are moving forward. And someone I was talking with who's really closely involved in the North Yukon plan says this is a very cutting-edge document. The North is on the cutting edge of—maybe the bleeding edge—but the cutting edge of some of this planning.

That person said, sometimes the biggest challenge is to get the first plan there, and if you can get over that, then there are opportunities for more incremental but important progress after that. So, I assure you, I think there are things we can do.

**Shirley Frost:**

My name is Shirley Frost and I come from Old Crow. It's a very interesting talk. I was the chair of the North Yukon Planning Commission and our plan has just been approved. It's the first plan in the Yukon. It was a long and arduous and painful process for everyone involved—the parties, the commission members, the community.

We were determined to see it to completion and, yes, when we started, we had the end in mind because that's how we think as Aboriginal people; we have a holistic view. We said, "Okay, we're going to develop a plan but we want . . ." Also in the plan will be the process for the implementation of the plan, which was important to the commission and the members of the community of Old Crow.

Our model or vision was "looking forward," and that guided us through the whole document. And then we went back to the very basics; we went back to the community.

We tackled the whole planning process with planned partners in mind. So we said, "Okay, if the governments are going to approve this plan, then they must be part of the process from the very beginning." And the community members; we kept going back to the community. I'd have to stand in front of the community and explain in very simple terms a lot of the technical jargon with the whole land plan. However, it's exciting, it's very exciting in the Yukon. I hope all the parties have learned a lot. We're looking forward to the future because the spirit and the intent of the claims are to gather today for our children tomorrow, and I don't think that means just Aboriginal people. We all live in this world with all of creation and it's our ultimate responsibility as the intelligent being to take care of all this that is so precious and yet so fragile.

**Chief Eric Morris:**

In reference to all of what you've heard, some of the views that have been presented to you, I think essentially what it comes down to is looking at what the willingness is to begin to look at land use planning—not only that, as one part, but the overall implementation of agreements within the Yukon, and some of the challenges that we're faced with. We can go on for days just referencing some of the challenges that we have.

Part of it is being able to look beyond that perspective and being able to look at the options, the opportunities, that are out there for us, and how we sustain our community populations. That was one of the questions, about looking at the various populations and how you see them evolving. In terms of looking at it from that perspective, that's just one small aspect—there's also looking at sustainability, looking at some of the challenges around climate change, looking at how the underdeveloped countries view the developing countries. There's literally hatred out there for the developed countries because, essentially, they are the ones that are responsible for contributing to the changes that we're having in our climate. Where do we take up the responsibility for looking after it, as a developed country? How do we do it together?

In terms of looking at where you've taken us in our thinking; in terms of being able to stand on the edge of the cliff, so to speak, and have a look at what's lying out there; in terms of looking at what path we choose, in which direction we head . . . And being able to have that as a thought and being able to look at it from that perspective—but also being able to say to ourselves in choosing that path that this is not the only path, but that there are other alternatives. And looking at how we can implement or incorporate what's out there into what we're doing at any given time.

So it's a tricky balance in terms of looking at what we're doing here in the North, I believe, especially here in the Yukon, or looking at where we were. As was mentioned earlier on, there was really no template for implementation of land claim agreements in the Yukon. So aside from that, looking at that in terms of looking at what the challenge was for our chiefs of the day, the chiefs of the day had the courage to be able to see that not as a wall, but as an opportunity, and move beyond it. And in the same way, in terms of what it is that you've presented to us, [what is important] is being able to look at that as a perspective as well: to see what those walls are, but be able to step beyond them and move beyond that and look at developing something that's reflective of our communities, of our lifestyles, of who we are here in the North.

Many of us can probably share some of the questions that we are asked about the North: Is there daylight up there? Do you guys still live in igloos? Those are still questions that are being asked of us.

But aside from that, looking at how we can use—let’s say the Assembly of First Nations, for example—looking at working with universities across the country, being able to encourage them to implement courses that teach their students about who we are as indigenous peoples. And so looking at that as an opportunity to begin to help, to look at how we can change perspectives about who we are to the lands that we live on, I think is really important.

And as a part of that, in closing, I want to take this opportunity to thank you very much for being here with us. Thank you to Ta’an and Kwanlin Dün for allowing us to have this conversation and this dialogue, because, essentially, that’s what it was about: having a dialogue, sharing perspectives, looking at the various views, and being able to look at what we can create when we walk through those doors.

I believe that we often are guided by the work that has been done by our past leaders. You mentioned Elijah Smith. I think he was such a visionary: “Together today for our children tomorrow.” “It will always be with us for as long as we shall exist.” I remember hearing stories about how he wanted his chiefs to travel. When he travelled to Ottawa, he didn’t want all his chiefs travelling together; he wanted them to travel separately, just in case something happened. That’s the way he strategically planned his work.

When we begin to look at those very things that make up who we are in terms of the work that we do in our community, it’s based on that type of foundation. And we need to be able to build on that—and part of being able to build on that is looking at some of the views that you bring forward, to bring it forward in a good and in a kind way, and I think that’s what makes it all worthwhile.









**The North covers about 80 per cent** of Canada's landmass but accounts for less than 7 per cent of its population. Most of Canada's natural resources—forests, metals and minerals, hydroelectric sites, oil and natural gas, and untapped resources that can be further developed—are in the North, and a warming climate is making them more accessible. But developing the North will increase tensions between advocates of keeping the North's fragile ecosystems pristine and those who see socio-economic opportunities. Adding to the tension, businesses, Aboriginal communities, and federal, provincial, and territorial governments will each want their share of the benefits of economic development.

*Canada's North: What's the Plan?* draws on the different viewpoints of three nationally renowned scholars to explore the effectiveness of land use planning in Canada's North from three very distinct perspectives. Their essays are required reading for those seeking to understand this important issue and draw their own conclusions.

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