File No. 36779

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF YUKON)

B E T W E E N:

THE FIRST NATION OF NACHO NYAK DUN, THE TR'ONDËK HWËCH'IN FIRST NATION, THE VUNTUT GWITCHIN FIRST NATION, YUKON CHAPTER CANADIAN PARKS AND WILDERNESS SOCIETY, YUKON CONSERVATION SOCIETY, GILL CRACKNELL, AND KAREN BALTGAILIS

APPELLANTS
(Respondents)

– AND –

GOVERNMENT OF YUKON

RESPONDENT
(Appellant)

– AND –

ATTORNEY GENERAL OF CANADA, GWICH'IN TRIBAL COUNCIL AND COUNCIL OF YUKON FIRST NATIONS

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(Rule 42 of the *Rules of the Supreme Court of Canada*)

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PART I – OVERVIEW AND STATEMENT OF FACTS

Overview

1. In 1993, Canada, Yukon and the Yukon First Nations, represented by the Council for Yukon Indians, entered into an Umbrella Final Agreement. Its terms were incorporated into the Final Agreements of Canada and Yukon with, among others, the First Nations of Nacho Nyak Dun, Tr'ondëk Hwëch'in and Vuntut Gwitchin. In Yukon, the negotiated Final Agreements are fundamental instruments for achieving "the grand purpose" of reconciling First Nation and non-First Nations in a mutually respectful long-term relationship. They do this by, among other things, prescribing a land use plan approval process which is grounded in the principles of consultation and reciprocity.

2. In 2004, Yukon and the appellant First Nations, together with the Gwich'in Tribal Council, jointly established a commission under the Final Agreements' land use plan approval process to develop a regional land use plan for the Peel Watershed region, an undeveloped area that represents 14% of Yukon. At the first stage of the plan approval process, the commission forwarded its recommended plan to Yukon and the First Nations. Yukon then had the obligation to approve, reject or propose modifications to the recommended plan to the extent it applied to Non-Settlement Land, and the First Nations had a corresponding obligation to the extent the plan applied to Settlement Land. Yukon elected to propose modifications. Having done so, Yukon was obligated to forward written reasons for its proposed modifications to assist the commission in developing its final recommended plan.

3. However, as the courts below found, key modifications that Yukon proposed failed to comply with the process set out in the Final Agreements: they were insufficiently detailed and were unsupported by written reasons. Instead, Yukon waited until the final stage of the plan approval process, after the commission released its final recommended plan, to make detailed modifications which, as the courts below found, were not based on the proposed modifications Yukon had put forward at the first stage.

4. Yukon accepts the determination of the Court of Appeal that its failure to properly propose modifications to the recommended plan did not honour the land use plan approval

process and thus breached the Final Agreements. The current government of Yukon is committed to honouring the integrity of the land use plan approval process and to fostering an ongoing relationship with the Yukon First Nations. To this end, Yukon accepts the principles underlying the final recommended plan and with this perspective is committed to following the prescribed land use plan approval process at all points before and after the issuance of a final recommended plan.

5. This appeal is not about whether Yukon breached the Final Agreements, which is admitted; nor is it about the merits of the commission's final recommended plan. Instead, it raises three issues – (1) when the breach occurred, (2) what remedy is appropriate, and (3) what rights the parties have under the Final Agreements at the final stage of the land use plan approval process. These issues – which Yukon submits were properly decided by the Court of Appeal – are vitally important issues for the land use plan approval process under the Final Agreements, for the similar provisions governing other matters addressed in the Final Agreements and for the process of reconciliation which the Final Agreements are intended to further. Because Yukon and the First Nations have equivalent rights and responsibilities in the land use plan approval process, the determination of these issues will affect all of the parties to the Final Agreements.

6. On the first of these issues, Yukon submits that the breach began when Yukon failed in its obligation, if it was going to propose modifications to the commission's recommended plan, to particularize those modifications and provide sufficient detail in its written response to permit the commission to address Yukon's concerns. The appellants' position – that Yukon breached the Final Agreements when it modified the final recommended plan – would artificially postpone the date of breach and fail to recognize the importance of all of the stages in the multi-stage plan approval process for which the Final Agreements provide.

7. Because Yukon breached the Final Agreements when it failed to properly propose modifications to the recommended plan, it follows, on the second issue, that that is the stage in the process to which the parties must be returned. As the Court of Appeal recognized, remitting the matter to this stage is more likely than the remedy proposed by the appellants – remitting the matter to the end of the process – to further reconciliation between Yukon and the appellant First Nations. It would give Yukon an opportunity, after consultation in accordance with the Final

Agreements, to set out in detail its views on the recommended plan, or approve the recommended plan, relying on the parties operating under the treaty process, rather than a court-imposed solution, to resolve the consequences of Yukon's breach. This is how the land use plan approval process was meant to unfold.

8. The third issue arises only from the reasons of the Court of Appeal, since no order was made in respect of it, and there was no finding in the courts below that Yukon's modifications to the commission's final recommended plan amounted to a rejection of that plan. Should the Court nonetheless wish to address this issue, Yukon submits that the Court of Appeal made no error in concluding that Yukon retains – whether or not it wishes to exercise it – the ability at the end of the process not only to approve or modify but also to reject the final recommended plan as it applies to Non-Settlement Land, just as the First Nations have the corresponding ability to approve, reject or modify the plan as it applies to Settlement Land.

9. This issue may not have a practical bearing in this case, since none of the parties has contended, and neither court below found, that Yukon rejected rather than modified the final recommended plan. However, the conclusion of the Court of Appeal reflects the text of the Final Agreements, which this Court has stated warrants close attention, the practical reality that there are many reasons why Yukon or the First Nations may wish to reject a final plan, and perhaps more importantly, the creation of reciprocal rights and obligations between Yukon and the Yukon First Nations in the land use plan development process.

10. For these reasons, Yukon submits that the appeal should be dismissed.

The Umbrella Final Agreement

11. In 1993, following two decades of negotiations between the Council of Yukon Indians, the Federal Government and Yukon, the parties entered into the Umbrella Final Agreement

("UFA").[1] The purpose of the UFA is "to enable the [First Nations] in the Yukon to live and work together on equal terms with [non-indigenous people]."[2]

The Final Agreements

12. The UFA is not itself legally binding. Instead, it provides a framework for concluding final agreements between Yukon, Canada and the First Nations. Individual final agreements incorporate the UFA in its entirety as well as additional provisions specific to the signatory First Nation. The appellant First Nations have each entered into final agreements with Canada and Yukon.[3]

13. Under the Final Agreements, the First Nations have "[surrendered] their undefined Aboriginal rights in almost 484,000 square kilometres … in exchange for defined treaty rights in respect of … access to Crown lands, fish and wildlife harvesting, heritage resources, financial compensation, and participation in the management of public resources."[4] The Final Agreements are "land claims agreement[s]" under s. 35(3) of the *Constitution Act, 1982*.[5]

14. The Final Agreements are lengthy, comprehensive documents. The topics that they address include First Nation heritage promotion, sustainable water use, fish and wildlife conservation, and land use plan development.

The Chapter 11 provisions for developing and approving regional land use plans

15. The Final Agreements at issue in this appeal incorporate Chapter 11 of the UFA, dealing with the development of land use plans.[6] Chapter 11 permits, but does not require, Yukon and

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[1] Court of Appeal Reasons, para. 2, Appellant's Record ("AR"), Vol. I, Tab 4, p. 100

[2] Chief Elijah Smith, *Together Today for our Children Tomorrow*: *A Statement of Grievances and an Approach to Settlement by the Yukon Indian People*, January 1973, p. 25, Respondent's Book of Authorities ("BOA"), Tab 26

[3] Court of Appeal reasons, para. 8, AR, Vol. I, Tab 4, p. 101

[4] *Beckman v. Little Salmon/Carmacks First Nation*, [2010] 3 S.C.R. 103, para. 9, BOA, Tab 1

[5] *Little Salmon*, para. 2, BOA, Tab 1

[6] The Nacho Nyak Dun's Final Agreement supplements Chapter 11 with specific provisions dealing with the Peel Watershed. See for example ss. 10.3.2.1, 10.3.2.2 and Schedule C to Chapter 10, Respondent's Record ("RR"), Tab 1, pp. 18, 22-23.

the First Nations to jointly establish regional land use planning commissions to develop regional land use plans.[7] Broadly speaking, the First Nations have authority over land use plans as they apply to Settlement Land, and Yukon has authority over land use plans as they apply to Non-Settlement Land.[8]

16. As a first step in the land use plan approval process, the planning commission prepares and submits a recommended plan to Yukon and each affected First Nation.[9] Under s. 11.6.2 of the Final Agreements, Yukon must, after consultation with any affected Yukon community and each affected First Nation, "approve, reject or propose modifications to" the parts of the land use plan applicable to Non-Settlement Land.[10] Similarly, under s. 11.6.4, each affected First Nation, after consultation with Yukon, must "approve, reject or propose modifications to" the part of the plan applicable to the Settlement Land of that First Nation.[11] The Final Agreements define "consultation" to mean providing the party to be consulted notice of a matter to be decided in sufficient form and detail to allow the party to prepare its views on the matter; a reasonable period of time to prepare its views on the matter and an opportunity to present those views; and "full and fair consideration … of any views presented."[12]

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[7] Nacho Nyak Dun Final Agreement, s. 11.4.1, RR, Tab 1, p. 19; Tr'ondëk Hwëch'in Final Agreement, s. 11.4.1, RR, Tab 2, p. 72; Vuntut Gwitchin Final Agreement, s. 11.4.1, RR, Tab 3, p. 119. Where a regional land use plan has been approved as it relates to Non-Settlement Land, Yukon is in general to exercise its discretion with respect to land use in conformity with the plan. Where a plan has been approved by a First Nation as it relates to its Settlement Land, the First Nation has in general a corresponding obligation in exercising its land use discretion: Nacho Nyak Dun Final Agreement, ss. 11.7.1, 11.7.2, RR, Tab 1, p. 21; Tr'ondëk Hwëch'in Final Agreement, ss. 11.7.1, 11.7.2, RR, Tab 2, p. 75; Vuntut Gwitchin Final Agreement, ss. 11.7.1, 11.7.2, RR, Tab 3, p. 121

[8] Court of Appeal reasons, para. 12, AR, Vol. I, Tab 4, p. 102; Hansard, Legislative Assembly of Yukon, June 3, 1992 – 1:30pm, BOA, Tab 31; Hansard, Legislative Assembly of Yukon, March 16, 1993 – 1:30pm, BOA, Tab 32: "Yukon First Nations will approve and implement those sections of plans that deal with settlement lands. Government will approve the sections that deal with non-settlement lands."

[9] Nacho Nyak Dun Final Agreement, s. 11.6.1, RR, Tab 1, p. 20; Tr'ondëk Hwëch'in Final Agreement, RR, s. 11.6.1, Tab 2, p. 73;Vuntut Gwitchin Final Agreement, s. 11.6.1, RR, Tab 3, p. 120

[10] Court of Appeal reasons, para. 18, AR, Vol. I, Tab 4, p. 103

[11] Court of Appeal reasons, para. 19, AR, Vol. I, Tab 4, p. 104

[12] Court of Appeal reasons para. 20, AR, Vol. I, Tab 4, p. 104; Nacho Nyak Dun Final Agreement, Chapter 1, RR, Tab 1, p. 15; Tr'ondëk Hwëch'in Final Agreement, Chapter 1, RR, Tab 2, p. 68; Vuntut Gwitchin Final Agreement, Chapter 1, RR, Tab 3, p. 115

17. If Yukon proposes modifications to or rejects the recommended plan, it must forward either the proposed modifications with written reasons, or written reasons for rejecting the recommended plan, to the commission.[13] An affected First Nation must do the same if it proposes modifications to or rejects the recommended plan.[14]

18. The courts below determined that in either case, the written reasons must provide sufficient detail to guide the work of the commission.[15] The commission must then reconsider the plan and, with written reasons, issue a final recommended plan.[16] Following further consultation with any affected Yukon community and any affected First Nation on the final recommended plan, Yukon must, under s. 11.6.3.2, "approve, reject or modify" that part of the final recommended plan applicable to Non-Settlement Land.[17] Correspondingly, following further consultation with Yukon, affected First Nations must, under s. 11.6.5.2, "approve, reject or modify" that part of the final recommended plan applicable to Settlement Land.[18]

19. The commission is given no authority to finally approve or implement its final recommended plan with respect to either Settlement Land or Non-Settlement Land.

The Peel Watershed Regional Land Use Planning Commission

20. The appellant First Nations, together with the Gwich'in Tribal Council and Yukon, established the Planning Commission for the Peel Watershed Region (the "Commission") in

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[13] Court of Appeal reasons, para. 18, AR, Vol. I, Tab 4, p. 103; Nacho Nyak Dun Final Agreement, s. 11.6.3, RR, Tab 1, pp. 20-21; Tr'ondëk Hwëch'in Final Agreement, s. 11.6.3, RR, Tab 2, p. 74; Vuntut Gwitchin Final Agreement, s. 11.6.3, RR, Tab 3, p. 120

[14] Court of Appeal reasons, para. 19, AR, Vol. I, Tab 4, p. 104; Nacho Nyak Dun Final Agreement, s. 11.6.5, RR, Tab 1, p. 21; Tr'ondëk Hwëch'in Final Agreement, s. 11.6.5, RR, Tab 2, p. 74; Vuntut Gwitchin Final Agreement, s. 11.6.5, RR, Tab 3, pp. 120-121

[15] First Instance reasons, paras. 195-196, AR, Vol. I, Tab 2, pp. 80-81; Court of Appeal reasons, paras. 148-150, AR, Vol. I, Tab 4, p. 139

[16] Nacho Nyak Dun Final Agreement, s. 11.6.3.1, RR, Tab 1, p. 20; Tr'ondëk Hwëch'in Final Agreement, s. 11.6.3.1, RR, Tab 2, p. 74; Vuntut Gwitchin Final Agreement, s. 11.6.3.1, RR, Tab 3, p. 120

[17] Nacho Nyak Dun Final Agreement, s. 11.6.3.2, RR, Tab 1, p. 21; Tr'ondëk Hwëch'in Final Agreement, s. 11.6.3.2, RR, Tab 2, p. 74; Vuntut Gwitchin Final Agreement, s. 11.6.3.2, RR, Tab 3, p. 120

[18] Court of Appeal reasons, para. 19, AR, Vol. I, Tab 4, p. 104; Nacho Nyak Dun Final Agreement, s. 11.6.5, RR, Tab 1, p, 21; Tr'ondëk Hwëch'in Final Agreement, s. 11.6.5, RR, Tab 2, p. 74; Vuntut Gwitchin Final Agreement, s. 11.6.5, RR, Tab 3, pp. 120-121

2004. The Peel Watershed region covers approximately 68,000 square kilometres of territory, and comprises 97.3% Non-Settlement Land and 2.7% Settlement Land.[19] It is largely undeveloped.[20]

21. The Commission was made up of six members: a Nacho Nyak Dun nominee, a Gwich'in Tribal Council nominee, a joint Yukon and Vuntut Gwitchin nominee, a joint Yukon and Tr'ondëk Hwëch'in nominee and two Yukon nominees.[21] A Technical Working Group and a Senior Liaison Committee were constituted to provide advice to the Commission.[22]

Development of the regional land use plan

The Commission's Recommended Plan

22. In December 2009, following public consultation and the preparation of various background reports,[23] the Commission forwarded its Recommended Plan to Yukon and the affected First Nations: the First Nations of Nacho Nyak Dun, Vuntut Gwitchin, Tr'ondëk Hwëch'in and the Gwich'in Tribal Council. The Recommended Plan divided the Peel Watershed region into 21 Landscape Management Units ("LMUs"). It then assigned LMUs to one of two land use designations: Special Management Areas ("SMAs") and Integrated Management Areas ("IMAs"). The Recommended Plan proposed that 80.6% of the Peel Watershed region be designated as SMAs, which would receive a high degree of protection: existing tenures and land uses would continue, but new surface access would be prohibited.[24] The remaining 19.4% of the region would be designated as IMAs, which would be open to mineral and oil and gas development. Any development would be subject to the terms of the Recommended Plan, which included a prohibition on "winter or all-season road access."[25]

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[19] Court of Appeal reasons, para. 25, AR, Vol. I, Tab 4, p. 105

[20] First Instance reasons, para. 9, AR, Vol. I, Tab 2, p. 7

[21] Court of Appeal reasons, para. 26, AR, Vol. I, Tab 4, p. 105

[22] Court of Appeal reasons, paras. 27-28, AR, Vol. I, Tab 4, p. 105

[23] Court of Appeal reasons, paras. 34, 37, AR, Vol. I, Tab 4, p. 107

[24] Court of Appeal reasons, para. 46, AR, Vol. I, Tab 4, pp. 109-110

[25] Court of Appeal reasons, para. 47, AR, Vol. I, Tab 4, p. 110

Consultation on the Recommended Plan

23. Following their receipt of the Recommended Plan, Yukon and the affected First Nations signed a letter of understanding setting out a coordinated process to consult on and respond to the Recommended Plan.[26] The letter of understanding contemplated (among other things) a joint response to the Recommended Plan, and individual responses if necessary.[27] The Chair of the Senior Liaison Committee wrote a letter to the Commission in February 2011 setting out the joint response to the Recommended Plan of Yukon and the First Nations of Nacho Nyak Dun, Tr'ondëk Hwëch'in, Vuntut Gwitchin and the Gwich'in Tribal Council. In their joint response, the parties agreed that "the Peel Watershed is a unique area that encompasses many areas of cultural and environmental significance, and that, given the values and the largely pristine state of the region, selected areas will be excluded from development and afforded high levels of protection."[28] The modifications proposed in the joint response were largely changes of form.[29]

Yukon's supplementary responses

24. Yukon's supplementary responses were set out in a four page letter from the Minister of Energy, Mines and Resources and a 16-page appendix. The letter set out five proposed modifications to the Recommended Plan. The first and second proposed modifications, which the Court of Appeal described as the "Development and Access Modifications," are central to this appeal. They asked the Committee to "[r]e-examine conservation values, non-consumptive resource use and resource development to achieve a more balanced plan," and "[d]evelop options for access that reflect the varying conservation, tourism and resource values throughout the region."[30] The Court of Appeal found that the balance of Yukon's proposed modifications "essentially [duplicated] the Joint Response."[31]

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[26] Court of Appeal reasons, para. 49, AR, Vol. I, Tab 4, p. 110

[27] Court of Appeal reasons, para. 49, AR, Vol. I, Tab 4, p. 110

[28] Court of Appeal reasons, para. 50, AR, Vol. I, Tab 4, p. 111

[29] Court of Appeal reasons, para. 51, AR, Vol. I, Tab 4, p. 111

[30] Court of Appeal reasons, para. 53, AR, Vol. I, Tab 4, pp. 111-112

[31] Court of Appeal reasons, para. 54, AR, Vol. I, Tab 4, p. 112

25. Yukon's letter explained that the Development and Access Modifications were proposed because "[t]he planning region has a mix of values and resources," and "there is an ability to accommodate mixed uses that meet society's need, while erring on the side of caution on the basis of a determined level of risk." The letter also explained that "[w]hile government believes there should be areas where development is excluded in the Peel, more work needs to be done by the Commission to identify and develop a rationale for these areas."[32]

26. Yukon disagreed with the Recommended Plan's proposed ban on surface access, expressing the view that this "is not a workable scenario in a region with existing land interests and future development potential."[33] Instead, it wanted "to see a range of access options developed which consider the various conservation and resource values throughout the region."[34] The letter did not propose how and why particular LMUs might be suitable for development. Instead, Yukon's position was that the Commission had to do "more work ... to identify [LMUs] and develop a rationale" for restricting development in certain LMUs.[35]

The Commission's Final Recommended Plan

27. The Commission reconsidered the Recommended Plan in light of the parties' joint responses, the affected First Nations' supplementary responses, and Yukon's supplementary responses.[36] The Commission forwarded its Final Recommended Plan to the parties in July 2011. The Final Recommended Plan included a number of substantive changes based on the parties' comments, including a reduction of the number of LMUs from 21 to 16. However, in general, the Commission did not significantly alter the "general management direction of the Recommended Plan."[37]

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[32] Court of Appeal reasons, para. 55, AR, Vol. I, Tab 4, pp. 112-113

[33] Court of Appeal reasons, para. 55, AR, Vol. I, Tab 4, pp.112-113

[34] Court of Appeal reasons, para. 55, AR, Vol. I, Tab 4, pp. 112-113

[35] Court of Appeal reasons, para. 57, AR, Vol. I, Tab 4, p. 113

[36] Court of Appeal reasons, para. 58, AR, Vol. I, Tab 4, pp. 113-114

[37] Court of Appeal reasons, para. 59, AR, Vol. I, Tab 4, pp. 114-115

28. The Commission rejected Yukon's Development and Access Modifications. In the Commission's view, Yukon's Development and Access Modifications "[urged] the Commission to re-think and re-write the rationale for each SMA; revisit its assessment of resource conflicts between the values of conservation, non-consumptive resource use, and resource development; and reconsider its ban on surface access in much of the planning area."[38] However, the Commission found that Yukon's response "did not discuss why it wanted these changes and where it felt they might be appropriate. It did not discuss locations of concerns, or what modifications it sought."[39] Therefore, although the Commission noted these "general desires," it felt that to adequately address them it would have had to go "back to the drawing board."[40]

Consultation on the Final Recommended Plan

29. In anticipation of the Final Recommended Plan, Yukon and the affected First Nations signed a second joint letter of understanding in January 2011 on how consultation would proceed. This letter largely mirrored the first letter signed in 2010. However, consultation did not begin immediately because a territorial election was scheduled for October 11, 2011.

30. In February 2012, before undertaking any consultation, Yukon issued a news release explaining that it "has developed eight core principles that will be used to guide modifications and completion of the Peel Watershed Regional Land Use Plan." The news release stated that the "principles will provide guidance for the timely completion of the remaining steps in this important land use planning process," and that Yukon would "use the principles to guide strategic modifications to the draft Peel Plan."[41]

31. Three days later, the affected First Nations wrote to Yukon to say that it had overstepped in its response to the Final Recommended Plan. The affected First Nations advised that in their

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[38] Court of Appeal reasons, para. 59, AR, Vol. I, Tab 4, pp. 114-115

[39] Court of Appeal reasons, para. 59, AR, Vol. I, Tab 4, pp. 114-115

[40] Court of Appeal reasons, para. 59, AR, Vol. I, Tab 4, pp. 114-115

[41] Court of Appeal reasons, para. 65, AR, Vol. I, Tab 4, p. 116. The "eight core principles" put forward by Yukon were (1) special protection for key areas, (2) manage intensity of use, (3) respect for the First Nation Final Agreements, (4) respect the importance of all sectors of the economy, (5) respect private interests, (6) active management, (7) future looking, and (8) practical and affordable.

view, Yukon's authority to modify the Final Recommended Plan was limited to modifications based on modifications that it had proposed to the Recommended Plan.[42]

32. In September 2012, Yukon gave a presentation to the Senior Liaison Committee proposing a new land use designation system for the Peel Watershed region that would permit more development.[43] The affected First Nations wrote to Yukon in October 2012 and objected to the introduction of a new land use designation system. In their view, the new plan undermined the Chapter 11 process and was a "rejection of the constitutionally protected land use planning process" set out in the Final Agreements.[44] Yukon responded that it believed it was acting within its authority under the Final Agreements.[45]

Attempts to consult on Yukon's proposed new land use designation system

33. In October 2012, Yukon issued a news release indicating that it would begin consultation on its new proposed land use designation system, which would run until late February 2013.[46] It also issued a formal notice of consultation on the Final Recommended Plan and its response to the Plan.[47] In June 2013, Yukon circulated a more detailed version of its proposed approach to the land use plan for the Peel Watershed region. The proposed approach contained, among other things, a series of measures aimed at permitting further development in the Peel Watershed region.[48] This document also explained that Yukon's concern with the Final Recommended Plan was that it "does not manage multiple uses in the region and limits future economic activity."[49]

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[42] Letter from the Nacho Nyak Dun, Tr'ondëk Hwëch'in, Vuntut Gwitchin and Gwitch'in Tribal Council to Yukon, February 17, 2012, RR, Tab 4, pp. 146, 149

[43] Court of Appeal reasons, para. 68, AR, Vol. I, Tab 4, p. 117

[44] Court of Appeal reasons, para. 69, AR, Vol. I, Tab 4, p. 117

[45] Court of Appeal reasons, para. 70, AR, Vol. I, Tab 4, p. 117

[46] Court of Appeal reasons, para. 71, AR, Vol. I, Tab 4, pp. 117-118

[47] First Instance reasons, para. 94, AR, Vol. I, Tab 2, p. 38

[48] Court of Appeal reasons, para. 76, AR, Vol. I, Tab 4, p. 119

[49] Court of Appeal reasons, para. 77, AR, Vol. I, Tab 4, p. 120

Yukon's modifications to the Final Recommended Plan

34. On October 1, 2013, Yukon provided the affected First Nations with its proposed modifications to the Final Recommended Plan, and a summary of its priorities for the modifications.[50] To achieve these priorities, Yukon's proposed modifications included a number of "substantive changes" to the Final Recommended Plan.[51]

35. The affected First Nations voiced their objections to the proposed modifications by letter on October 21, 2013, on the basis that they "amount[ed] to a new Plan and, as such, violate the terms of constitutionally protected Final Agreements."[52] Yukon and the affected First Nations met on November 8, 2013, but were not able to reach an agreement on the proposed modifications.[53]

36. Following that meeting, Yukon proposed an extension of consultation and a continuation of discussions.[54] However, in light of their position on the modifications available to Yukon, the First Nation of Nacho Nyak Dun and the Tr'ondëk Hwëch'in declined further consultation on Yukon's proposed modifications in November and December 2013.[55] Yukon therefore concluded consultation with those First Nations in respect of the regional land use plan for Non-

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[50] Yukon's priorities included (1) better management access to control and manage access to protect environmental, cultural and wilderness values, (2) protection of river corridors and their viewscapes, (3) changes to some LMU boundaries to better accommodate site specific interests related to industry and conservation values, and (4) increased management tools for industrial activity: Court of Appeal reasons, para. 78, AR, Vol. I, Tab 4, p. 120

[51] Court of Appeal reasons, paras. 76-79, AR, Vol. I, Tab 4, pp. 119-121

[52] Court of Appeal reasons, para. 80, AR, Vol. I, Tab 4, p. 121

[53] Letter from Yukon to the Nacho Nyak Dun, Tr'ondëk Hwëch'in, Vuntut Gwitchin and Gwitch'in Tribal Council, November 15, 2013, RR, Tab 5, p. 150

[54] Letter from Yukon to the Nacho Nyak Dun, Tr'ondëk Hwëch'in, Vuntut Gwitchin and Gwitch'in Tribal Council, November 15, 2013, RR, Tab 5, p. 150; Letter from Yukon to the Nacho Nyak Dun, Tr'ondëk Hwëch'in, Vuntut Gwitchin and Gwitch'in Tribal Council, December 5, 2013, RR, Tab 6, p. 151

[55] Letter from the Nacho Nyak Dun, Tr'ondëk Hwëch'in, Vuntut Gwitchin and Gwitch'in Tribal Council to Yukon, November 21, 2013, RR, Tab 7, pp. 152-153; Letter from the Nacho Nyak Dun and Tr'ondëk Hwëch'in to Yukon, December 13, 2013, RR, Tab 8, p. 154

Settlement Land.[56] Consultation with the Gwitch'in Tribal Council and the Vuntut Gwitchin First Nation continued into January 2014.[57]

37. The First Nation of Nacho Nyak Dun and the Tr'ondëk Hwëch'in informed Yukon of their decision to conclude consultation under s. 11.6.5.2, and purported to approve the Final Recommended Plan for both Settlement Land and Non-Settlement Land.[58] On January 20, 2014, Yukon finalized the land use plan for the Peel Watershed region based on its proposed modifications ("Yukon's Final Plan"), and invited the affected First Nations to participate in its implementation.[59]

The action

38. On January 27, 2014, the First Nation of Nacho Nyak Dun, the Tr'ondëk Hwëch'in, Yukon Chapter-Canadian Parks and Wilderness Society, Yukon Conservation Society, Gill Cracknell and Karen Baltgailis commenced an action for declarations that the Final Recommended Plan is the binding regional land use plan under the Final Agreements, and that the Development and Access Modifications did not comply with s. 11.6.2 of the Final Agreements. They later modified the relief that they sought to an order quashing Yukon's Final Plan and remitting the process for consultation on the Final Recommended Plan with directions limiting the modifications open to Yukon.[60]

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[56] Letter from Yukon to the Nacho Nyak Dun and the Tr'ondëk Hwëch'in, December 19, 2013, RR, Tab 9, p. 155

[57] Letter from Yukon to the Gwitch'in Tribal Council, December 19, 2013, RR, Tab 9, p. 155; Letter from the Vuntut Gwitchin to Yukon, January 17, 2014, RR, Tab 11, pp. 157-158; Letter from Yukon to Gwitch'in Tribal Council, January 17, 2014, RR, Tab 12, pp. 159-160

[58] Letter from the Nacho Nyak Dun to Yukon, January 14, 2014, RR, Tab 13, p. 161; Letter from the Tr'ondëk Hwëch'in to Yukon, January 14, 2014, RR, Tab 14, p. 162

[59] Letter from Yukon to the Nacho Nyak Dun, Tr'ondëk Hwëch'in, Vuntut Gwitchin and Gwitch'in Tribal Council, January 20, 2014, RR, Tab 15, pp. 163-164

[60] Court of Appeal reasons, para. 97, AR, Vol. I, Tab 4, p. 125; First Instance reasons, para. 3, AR, Vol. I, Tab 2, p. 5

39. The Gwich'in Tribal Council was granted leave to intervene in the Supreme Court of Yukon and in the Court of Appeal. The Vuntut Gwitchin First Nation was added as a respondent in the Court of Appeal.[61]

The Supreme Court of Yukon decision

40. The trial judge, Justice Veale, characterized the Development and Access Modifications as "bald expressions of preference not sufficiently detailed to permit the Commission to respond in a meaningful way."[62] As the Court of Appeal explained, Justice Veale concluded that "Yukon missed its opportunity at s. 11.6.2 to seek more scope for development and all-season access" because Yukon had failed to set out sufficient details as well as rationales and suggestions for implementation.[63]

41. Despite this finding, the trial judge concluded that Yukon breached the Final Agreements only later, at the s. 11.6.3.2 stage, on the basis that Yukon's modifications to the Final Recommended Plan "did not respect the planning process."[64] He reached this conclusion for two reasons. First, in his view, Yukon's decision to propose modifications to the Recommended Plan at the s. 11.6.2 stage amounted to tacit approval of the balance of the Plan.[65] As a result, Yukon could not either reject or propose new modifications to the Final Recommended Plan under s. 11.6.3.2.[66] Second, Yukon's ability to modify the Final Recommended Plan at the s. 11.6.3.2 stage was limited to modifications that were based on those that it had validly proposed to the Recommended Plan.[67] If Yukon could propose entirely new modifications at the s. 11.6.3.2, stage, this would "thwart the process entirely."[68]

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[61] Court of Appeal reasons, para. 83, AR, Vol. I, Tab 4, p. 122

[62] First Instance reasons, para. 196, AR, Vol. I, Tab 2, p. 81

[63] Court of Appeal reasons, para. 96, AR, Vol. I, Tab 4, p. 125

[64] First Instance reasons, para. 197, AR, Vol. I, Tab 2, p. 81

[65] First Instance reasons, para. 163, AR, Vol. I, Tab 2, p. 70

[66] First Instance reasons, para. 163, AR, Vol. I, Tab 2, p. 70

[67] First Instance reasons, para. 163, AR, Vol. I, Tab 2, p. 70

[68] First Instance reasons, para. 163, AR, Vol. I, Tab 2, p. 70

42. As a remedy, the trial judge remitted the matter for consultation on the Final Recommended Plan. In his view, it was "not appropriate" to remit the matter to permit Yukon to propose modifications to the Recommended Plan because Yukon, rather than "dealing with the Commission response in a collaborative manner … took over two years to pursue this flawed process which betrayed the spirit of the Final Agreements."[69] In light of this finding, the trial judge concluded that "it would be inappropriate to give the Government the chance to now put its January 2014 plan to the Commission."[70]

The Court of Appeal decision

43. The Court of Appeal unanimously granted Yukon's appeal in part. The Court of Appeal agreed that Yukon had not followed the prescribed land use plan approval process, but held that the trial judge had erred in determining that Yukon's departure from the process began only at the s. 11.6.3.2 stage, when Yukon's Final Plan was put forward. That was "a selective view of matters."[71] Rather, the breach began when Yukon "did not properly set out its detailed modifications at the stage of s. 11.6.2."[72] The appropriate remedy was therefore "to return the parties to the point at which the failure began"[73] – the s. 11.6.2 stage. This would "allow the process to unfold as it was meant to,"[74] and would "allow [Yukon] to articulate its priorities in a valid manner."[75] In the Court of Appeal's view, this remedy "best [served] the goal of achieving reconciliation."[76]

44. With respect to the trial judge's other conclusions, the Court of Appeal agreed that modifications to the Final Recommended Plan must be based on modifications proposed to the

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[69] First Instance reasons, para. 219, AR, Vol. I, Tab 2, pp. 88-89

[70] First Instance reasons, para. 219, AR, Vol. I, Tab 2, pp. 88-89

[71] Court of Appeal reasons, para. 168, AR, Vol. I, Tab 4, pp. 143-144

[72] Court of Appeal reasons, para. 168, AR, Vol. I, Tab 4, pp. 143-144

[73] Court of Appeal reasons, para. 114, AR, Vol. I, Tab 4, p. 131

[74] Court of Appeal reasons, para. 166, AR, Vol. I, Tab 4, p. 143

[75] Court of Appeal reasons, para. 178, AR, Vol. I, Tab 4, p. 146

[76] Court of Appeal reasons, para. 169, AR, Vol. I, Tab 4, p. 144

Recommended Plan, but disagreed that Yukon could not reject the Final Recommended Plan.[77] The Court of Appeal observed that there was nothing in the Final Agreements constraining the ability of Yukon (or the corresponding ability of the affected First Nations) to reject the Commission's final recommendations. It reasoned that the ability to reject the Final Recommended Plan "is necessary since the Commission in its reconsideration under s. 11.6.3.1 might put forward a final recommendation which on the whole is objectionable to Yukon," and that this situation might arise from new changes that the parties had not previously considered.[78] In the Court's view, this result was also "consistent with the notion that the entire planning process begins … with the voluntary agreement of the parties. Neither party is entitled to a regional land use plan as of right."[79]

45. Neither the trial judge nor the Court of Appeal made a finding that Yukon's Final Plan amounted to a rejection, rather than a modification, of the Commission's Final Recommended Plan. The order of the Court of Appeal does not address the scope of Yukon's ability under s. 11.6.3.2 (or the corresponding ability of the affected First Nations under s. 11.6.5.2) to reject a final recommended plan.[80]

The current Yukon government's position

46. Yukon accepts the determination of the Court of Appeal that the former government's failure to properly propose modifications to the Recommended Plan did not honour the land use plan approval process. As set out above, Yukon has committed to respecting the entirety of the land use plan approval process.[81]

PART II – POSITION WITH RESPECT TO THE APPELLANTS' QUESTIONS

47. Yukon submits that the Court of Appeal made no error in determining that

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[77] Court of Appeal reasons, paras. 157-160, AR, Vol. I, Tab 4, pp. 141-142

[78] Court of Appeal reasons, para. 159, AR, Vol. I, Tab 4, p. 141

[79] Court of Appeal reasons, para. 159, AR, Vol. I, Tab 4, p. 141

[80] Court of Appeal order, AR, Vol. I, Tab 3, p. 95

[81] See above at paragraph 4

(1) the breach began at the s. 11.6.2 stage, when Yukon, having elected to propose the Development and Access Modifications to the Recommended Plan, failed to properly propose them;

(2) the appropriate remedy was to remit the matter to the s. 11.6.2 stage; and

(3) Yukon's decision to propose modifications to the Recommended Plan did not deprive it of the ability to reject the Final Recommended Plan.

PART III – STATEMENT OF ARGUMENT

Standard of review

48. As the Court of Appeal stated, the issues in this appeal relate to the construction of constitutional documents.[82] The standard of review is therefore correctness.

Interpretive principles applicable to modern treaties

49. As this Court explained in *Beckman v. Little Salmon/Carmacks First Nation*, "[t]he reconciliation of Aboriginal and non-Aboriginal Canadians in a mutually respectful long-term relationship is the grand purpose of s. 35 of the *Constitution Act, 1982*."[83] Reconciliation aims to reconcile the "pre-existence of distinctive aboriginal societies with the assertion of Crown sovereignty."[84]

50. Modern treaties such as the Final Agreements are "[a]n important vehicle … to jointly advance reconciliation."[85] They aim to do this by creating the "legal basis to foster a positive long-term relationship between Aboriginal and non-Aboriginal communities."[86] Modern treaties,

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[82] Court of Appeal reasons, para. 112, AR, Vol. I, Tab 4, p. 130

[83] *Little Salmon*, para. 10, BOA, Tab 1

[84] *R. v. Van der Peet*, [1996] 2 S.C.R. 507, para. 49, BOA, Tab 23; *Behn v. Moulton Contracting Ltd.*, [2013] 2 S.C.R. 227, para. 28, BOA, Tab 2

[85] Court of Appeal reasons, para. 174, AR, Vol. I, Tab 4, p. 145; *House of Sga'nisim v. Canada (Attorney General)*, 2013 BCCA 49, para. 3, BOA, Tab 11

[86] *Little Salmon*, para. 10, BOA, Tab 1; *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, [2005] 3 S.C.R. 388, para. 1, BOA, Tab 15

like their historical counterparts, must be implemented honourably by the Crown, and interpreted generously by the courts to achieve the "grand purpose" of reconciliation. [87]

51. However, unlike historical treaties, modern treaties are the product of negotiations between sophisticated, resourced parties.[88] As a result, in interpreting modern treaties the negotiated text warrants close attention.[89] The primacy of the Final Agreements' text is reflected in the negotiating parties' decision to include a "whole agreement clause,"[90] and in the Agreements' interpretive provisions, which provide among other things that "there shall not be any presumption that doubtful expressions in a Settlement Agreement be resolved in favour of any party to a Settlement Agreement or beneficiary of a Settlement Agreement."[91] Professor Dwight Newman explains "that modern treaties are to be approached in a manner suited to their detailed, negotiated text, that approaching them with deep attention to text is the primary means

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[87] *Little Salmon*, para. 12, BOA, Tab 1; *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511, para. 17, BOA, Tab 10

[88] *Little Salmon*, paras. 9, 67, BOA, Tab 1; *Quebec (Attorney General) v. Moses*, [2010] 1 S.C.R. 557, para. 7, BOA, Tab 21; Julie Jai, "The Interpretation of Modern Treaties and the Honour of the Crown: Why Modern Treaties Deserve Judicial Deference," (2009) 26 *National Journal of Constitutional Law* 25, p. 2, BOA, Tab 28

[89] *Little Salmon*, paras. 67, 91, BOA, Tab 1; *Moses*, paras. 4, 6-7, 12, BOA, Tab 21; *Eastmain Band v. Robinson*, [1993] 1 F.C. 501 (C.A.), paras. 19-23, 56, 65, BOA, Tab 5 (leave to appeal refused, [1993] S.C.C.A. No. 23, BOA, Tab 6); *Nunatsiavut v. Canada (Department of Fisheries and Oceans)*, 2015 FC 492, paras. 134-139, BOA, Tab 17; *Inuit of Nunavut v. Canada (Attorney General)*, 2014 NUCA 2, paras. 58-59, BOA, Tab 12; *House of Sga'nisim*, paras. 69-71, BOA, Tab 11; Dwight Newman, "Contractual and Covenantal Conceptions of Modern Treaty Interpretation," (2011) 54 *The Supreme Court Law Review* 17, pp. 478-481, BOA, Tab 27

[90] Section 2.2.15 of each of the Nacho Nyak Dun, Tr'ondëk Hwëch'in and Vuntut Gwitchin Final Agreements states: "Settlement Agreements shall be the entire agreement between the parties thereto and there shall be no representation, warranty, collateral agreement or condition affecting those Agreements except as expressed in them." See Nacho Nyak Dun Final Agreement, s. 2.2.15, RR, Tab 1, p. 16; Tr'ondëk Hwëch'in Final Agreement, s. 2.2.15, RR, Tab 2, p. 69; Vuntut Gwitchin Final Agreement, s. 2.2.15, RR, Tab 3, p. 116; *Inuit of Nunavut*, paras. 58-59, BOA, Tab 12; *Little Salmon/Carmacks First Nation v. Yukon (Director, Agriculture Branch, Department of Energy, Mines & Resources)*, 2008 YKCA 13, para. 75, BOA, Tab 13

[91] Nacho Nyak Dun Final Agreement, s. 2.6.3, RR, Tab 1, p. 17; Tr'ondëk Hwëch'in Final Agreement, s. 2.6.3, RR, Tab 2, p. 70; Vuntut Gwitchin Final Agreement, s. 2.6.3, RR, Tab 2, p. 117; Jai, p. 14, BOA, Tab 28; Newman, pp. 478-479, BOA, Tab 27; see also the reasons of Deschamps J. in *Moses* (in dissent), paras. 117-118, BOA, Tab 21

of interpreting them to achieve their purposes, and that failing to approach them in this way undermines the processes of reconciliation underway in various ongoing negotiations."[92]

52. Contextual and purposive approaches to treaty interpretation are also important in interpreting modern treaties. The Final Agreements' interpretive provisions establish "a principle of contextual interpretation based on the general scheme of the provisions, divisions and chapters and of the treaty as a whole in accordance with its systemic nature."[93]

53. As the Court of Appeal noted, "[t]his is the general context one must be alive to in considering how the land use planning process contemplated by Chapter 11 of the UFA is to be interpreted and implemented."[94]

No error in concluding that the breach began at the s. 11.6.2 stage

54. The Court of Appeal correctly determined that Yukon's breach of the Final Agreements began when, in putting forward the Development and Access Modifications, it failed to carry out its obligation to propose modifications to the Recommended Plan in a manner that was sufficiently detailed, and to provide written reasons for these proposed modifications.[95]

Yukon's failure to propose modifications and provide written reasons

55. As indicated, Yukon elected to "propose modifications to" the Recommended Plan. The text and purpose of s. 11.6.2 and Yukon's obligation to act honourably in implementing the "intended purpose" of the Final Agreements meant that Yukon had to particularize its proposed modifications so that the Commission could address them and the affected First Nations and Yukon communities would have an opportunity to prepare and communicate their views on what was proposed.[96] As the courts below found, it also had to provide written reasons in sufficient

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[92] Newman, p. 483, BOA, Tab 27

[93] *Little Salmon*, para. 138, BOA, Tab 1

[94] Court of Appeal reasons, para. 123, AR, Vol. I, Tab 4, p. 133

[95] Nacho Nyak Dun Final Agreement, ss. 11.6.2-11.6.3, RR, Tab 1, p. 20; Tr'ondëk Hwëch'in Final Agreement, ss. 11.6.2-11.6.3, RR, Tab 2, p. 74; Vuntut Gwitchin Final Agreement, ss. 11.6.2-11.6.3, RR, Tab 3, p. 120

[96] *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, [2013] 1 S.C.R. 623, para. 73, BOA, Tab 14

detail to guide the Commission in its reconsideration of the Recommended Plan. In this context, "[b]ald expressions of rejection or disapproval are inadequate."[97]

56. Yukon did not satisfy its obligation. While the proposed Development and Access Modifications reflected Yukon's desire for more development in the Peel Watershed region, they offered only "general criticisms" of the Recommended Plan. As "bald expressions of preference,"[98] they were insufficiently particularized to permit the affected First Nations to express their views on Yukon's proposed modifications.[99] The proposed modifications and Yukon's written reasons were also insufficient to guide the Commission in its reconsideration of the Recommended Plan.[100] In particular, Yukon's proposed modifications and its written reasons did not explain why Yukon wanted these proposed modifications, where it felt they might be appropriate, locations of concern, or what modifications Yukon sought.[101]

57. The Court of Appeal therefore properly determined that Yukon breached the Final Agreements at the s. 11.6.2 stage. As the Court of Appeal stated, the trial judge's view that the breach began only at the s. 11.6.3.2 stage, when Yukon's Final Plan was put forward, is unduly selective.[102] It failed to recognize the reality that Yukon was not conducting itself in a manner consistent with the scheme of the Final Agreements or the honour of the Crown from the time at which it put forward its proposed Development and Access Modifications but failed to particularize them and support them with written reasons.

No basis for overturning the Court of Appeal's decision

58. The appellants argue that the Court of Appeal's conclusion that the breach began at the s. 11.6.2 stage relies on a finding that "during this stage in February 2011, Yukon already knew

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[97] *Provincial Court Judges' Assn. of New Brunswick v. New Brunswick*, [2005] 2 S.C.R. 286, paras. 25, 44, BOA, Tab 20

[98] First Instance reasons, para. 196, AR, Vol. I, Tab 2, p. 81

[99] Court of Appeal reasons, paras. 143-145, AR, Vol. I, Tab 4, pp. 137-138

[100] First Instance reasons, para. 111, AR, Vol. I, Tab 2, p. 48; Court of Appeal reasons, paras. 59, 149, AR, Vol. I, Tab 4, pp. 114, 139

[101] Court of Appeal reasons, para. 59, AR, Vol. I, Tab 4, p. 114

[102] Court of Appeal reasons, para. 168, AR, Vol. I, Tab 4, pp. 143-144

what its proposed modifications were going to be, but it failed to properly set them out."[103] The appellants say there is no evidentiary basis for this finding. Rather, in their submission, "Yukon did not even begin to develop "the extensive modifications to the Recommended Plan which Yukon eventually set out in Yukon's Final Plan until over a year later, in February 2012."[104] The appellants argue that the Court of Appeal's conclusion about the point of breach relies on this misapprehension of the evidence, and should therefore be overturned.[105]

59. This argument should be rejected. The Court of Appeal did not find that Yukon "already knew" its specific modifications to the Recommended Plan at the s. 11.6.2 stage.[106] Rather, it correctly concluded that Yukon breached the Final Agreements when it failed to properly propose modifications to the Recommended Plan.[107] Regardless of what came later or what was (or was not) in the minds of the members of the government at the time, it was with the failure to put forward sufficiently particularized proposed modifications with written reasons that the breach of the Final Agreements began.

No error in remitting the matter to the s. 11.6.2 stage

60. The Court of Appeal properly determined that the appropriate remedy was to remit the matter to the s. 11.6.2 stage. This remedy restores the *status quo ante* that existed at the time Yukon's non-compliance with the Final Agreements began and furthers reconciliation between the appellant First Nations and Yukon.

The Court of Appeal's remedy restores the status quo ante and furthers reconciliation

61. It is well established that constitutional remedies should restore the *status quo ante*, placing the party that did not comply with its constitutional obligations back into the position it occupied prior to the failure and allowing it to perform constitutionally what the court deemed to

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[103] Appellant's factum, para. 68

[104] Appellant's factum, para. 69

[105] Appellant's factum, para. 69

[106] Appellant's factum, para. 68

[107] Court of Appeal reasons, paras. 146-150, AR, Vol. I, Tab 4, pp. 138-139

be unconstitutional.[108] Administrative law remedies reflect the same principle: subject to very limited exceptions, the appropriate administrative law remedy for a failure of process is to remit the matter for reconsideration.[109]

62. In this case, Yukon breached the Final Agreements when it failed to properly propose modifications to the Recommended Plan. The Court of Appeal's remedy returns the parties to that point and gives Yukon an opportunity to comply with the Final Agreements by either formulating properly particularized modifications to the Recommended Plan, supported by written reasons, or approving the Recommended Plan. Yukon would thus have the opportunity to do constitutionally what is acknowledged to have been unconstitutional, ensuring that the final plan is not the product of a "flawed process." [110]

63. It is equally well established that remedies in the Aboriginal law context should further "the ultimate goal of Aboriginal-Crown relations, namely, reconciliation."[111] As this Court explained in *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, this Court's case law seeks to "further an ongoing process of reconciliation by articulating a preference for remedies that promote ongoing negotiations."[112]

64. The Court of Appeal's remedy furthers reconciliation because it places the parties back in the prescribed land use plan development process at the point at which the breach arose. From there, Yukon can elect to propose modifications, and if it does, do so properly. Or, it can choose

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[108] *Provincial Court Judges*, para. 44, BOA, Tab 20; *Fédération franco-ténoise c. Canada (Procureur général)*, 2008 NWTCA 6, paras. 90-91, BOA, Tab 7 (leave to appeal refused, [2008] S.C.C.A. No. 432, BOA, Tab 8); Kent Roach, *Constitutional Remedies in Canada*, 2d ed., looseleaf (Toronto: Canada Law Book, 2014), at 3-19 – 3-21, BOA, Tab 29

[109] *Giguère v. Chambre des notaires du Québec*, [2004] 1 S.C.R. 3, paras. 66-68, BOA, Tab 9

[110] Court of Appeal reasons, para. 169, AR, Vol. I, Tab 4, p. 144

[111] *Dene Tha' First Nation v. Canada (Minister of Environment)*, 2006 FC 1354, para. 126, BOA, Tab 4; *Haida Nation*, para. 14, BOA, Tab 10; *Platinex Inc. v. Kitchenuhmaykoosib*, [2006] O.J. No. 3140 (S.C.J.), para. 136, BOA, Tab 19; *Nunavik Inuit v. Canada (Minister of Canadian Heritage)*, [1998] F.C.J. No. 1114 (F.C.T.D), para. 105, BOA, Tab 18; *Nunatsiavut Government v. Newfoundland and Labrador (Minister of the Department of Municipal Affairs)*, 2013 NLTD(G) 142, paras. 57, 63-77, BOA, Tab 16; Jai, p. 9, BOA, Tab 28

[112] *Rio Tinto Alcan Inc. and British Columbia Hydro and Power Authority v. Carrier Sekani Tribal Council*, [2010] 2 S.C.R. 650, para. 38, BOA, Tab 24

to accept the Recommended Plan. In either case, this will permit the process to unfold as it was intended to. As Professor Kent Roach explains, "fair treaties, not court orders or calculations of damages, remain the purposive remedial goal for addressing violations of Aboriginal rights."[113] Modern treaties are specifically intended to replace "*ad hoc* remedies to smooth the way to reconciliation."[114] The Court of Appeal's remedy is consistent with these principles because it relies on the parties operating under the treaty process, rather than a court-imposed solution, to resolve the consequences of Yukon's breach of the Final Agreements.

65. The Court of Appeal's remedy also furthers reconciliation by recognizing Yukon's institutional role. Yukon is obliged to weigh competing interests and to have regard to the interests of all affected parties.[115] There may be times in the process of reconciliation when the First Nations' interests conflict with those of the broader community.[116] It is the obligation of Yukon to "[balance] Aboriginal and other interests" in the "aim of reconciliation."[117] Remitting the matter for consultation on the Recommended Plan provides Yukon with an opportunity to "listen in good faith to the concerns of the First Nation[s]" regarding any proposed modifications Yukon may wish to make to the Recommended Plan, while also permitting Yukon to fulfill its "duty to weigh those concerns against other public interests that the Crown represents."[118]

The trial judge's remedy does not restore the status quo ante and does not further reconciliation

66. By contrast, the remedy ordered by the trial judge and sought by the appellants – that the matter be remitted to the s. 11.6.3.2 stage – would not put the parties in the position they would have been in but for Yukon's breach of the Final Agreements. It would also disentitle Yukon (and the First Nations, in a similar situation where Yukon's and the First Nations' roles are

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[113] Kent Roach, "Remedies for Violations of Aboriginal Rights," (1991-1992) 21 *Manitoba Law Journal* 498, p. 500, BOA, Tab 30; *Moses*, para. 99, BOA, Tab 21; Jai, p. 9, BOA, Tab 28

[114] *Little Salmon*, para. 12, BOA, Tab 1

[115] *Little Salmon*, paras. 80-84, BOA, Tab 1

[116] *Little Salmon*, paras. 80-84, BOA, Tab 1

[117] *Inuit of Nunavut*, paras. 38-39, BOA, Tab 12; *Haida Nation*, para. 14, BOA, Tab 10

[118] *Coldwater Indian Band v. Canada (Minister of Indian Affairs and Northern Development)*, 2013 FC 1138, para. 60, BOA, Tab 3

reversed) from returning to an earlier stage in the land use plan approval process to remedy an improper exercise of the obligation to "approve, reject or propose modifications to" a recommended plan. It is well established that remedies must be fair to the party against whom they are made. [119] Returning the matter to the s. 11.6.3.2 stage would be inconsistent with this principle, and inconsistent with the goal of reconciliation.

No error in concluding that the parties can reject a final recommended plan

67. As set out above, the order of the Court of Appeal does not address the scope of Yukon's ability under s. 11.6.3.2 (or the corresponding ability of the affected First Nations under s. 11.6.5.2) to reject a final recommended plan. Nor was there any finding in the courts below that Yukon's modifications to the Final Recommended Plan amounted to a rejection. It would therefore be open to this Court, in respect of the third issue raised by the appellants, to apply the principle that an appeal lies from the judgment, not the reasons for judgment, and decline to consider this issue.[120] The submissions below assume that the Court wishes to address the issue.

68. The Court of Appeal correctly determined that it would have been open to Yukon to reject the Final Recommended Plan to the extent it applies to Non-Settlement Land, subject to Yukon's obligation to act honourably in its dealings with First Nations, regardless of whether it proposed modifications to the Recommended Plan. Because the Final Agreements create a reciprocal process which gives Yukon and the affected First Nations final say over land under their control, it would have been equally open to the affected First Nations to reject the Final Recommended Plan to the extent it applies to Settlement Land. This interpretation is consistent with the text and scheme of the Final Agreements, the decision-making authority that the Final Agreements grant to Yukon and the affected First Nations, and the goal of reconciliation.

Ability to reject is consistent with the text and scheme of the Final Agreements

69. As set out above, this Court has made it clear that text matters in the interpretation of modern treaties.[121] The text of s. 11.6.3.2 is clear: it provides that "after Consultation with any

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[119] *Vancouver (City) v. Ward*, [2010] 2 S.C.R. 28, para. 20, BOA, Tab 25

[120] *R. v. Sheppard*, [2002] 1 S.C.R. 869, para. 4, BOA, Tab 22

[121] See above at paragraphs 50-53

affected Yukon First Nation and any affected Yukon community," Yukon shall "approve, reject or modify" the final recommended plan as it applies to Non-Settlement Land. Similarly, the text of s. 11.6.5.2 is clear in stating that "the affected Yukon First Nation shall … then approve, reject or modify" the final recommended plan as it applies to Settlement Land, after Consultation with Government. The Final Agreements were "negotiated at length with the aim of finding mutually respectful terms of relationships."[122] Their clear language should be respected.

70. Like all of Yukon's rights and obligations under the Final Agreements, any decision to reject or modify a final plan must be taken in a manner that upholds the honour of the Crown.[123] In this context, that means "act[ing] in a way that accomplishes the intended purposes of" the Final Agreements.[124] But there is nothing in the text of these provisions or anywhere else in the Final Agreements that otherwise restricts either Yukon or the affected First Nations from rejecting or modifying a final recommended plan. In this respect s. 11.6.3.2, and the First Nations' corresponding right under s. 11.6.5.2, are consistent with the overall scheme of Chapter 11, which gives Yukon final say for land use plans as they apply to Non-Settlement Land and the affected First Nations final say as they apply to Settlement Land.

71. In particular, there is nothing in the text or scheme of the Final Agreements that prevents a party from rejecting a final recommended plan, whether or not it has proposed modifications to the recommended plan. A decision to propose modifications to a recommended plan cannot properly be regarded as a tacit approval of the balance of the Plan.

Ability to reject is consistent with Yukon's and the First Nations' decision-making authority under the Final Agreements

72. The Final Agreements give decision-making authority to Yukon and the affected First Nations, not land use planning commissions. However, the appellants' submission, if accepted, would bar Yukon and the First Nations from rejecting a final recommended plan if either proposes modifications to the recommended plan.

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[122] Newman, p. 490, BOA, Tab 27

[123] *Little Salmon*, para. 12, BOA, Tab 1

[124] *Manitoba Metis Federation*, paras. 73, 80, BOA, Tab 14

73. There are many possible reasons why Yukon or the First Nations may want to reject a final recommended plan even after proposing modifications to a recommended plan (rather than rejecting it). As the Court of Appeal observed, the changes made to the final recommended plan in response to proposed modifications may make the final plan as a whole unacceptable.[125] This may occur because the final recommended plan reflects new changes that the parties had not previously had an opportunity to consider.[126] Circumstances may also change; for instance, a new government with a different mandate might be elected while the land use plan approval process is ongoing. Moreover, new issues may arise in consultation on the final recommended plan that compel one or multiple parties to reject it.

74. The appellants' submission, if accepted, would foreclose Yukon and the affected First Nations from rejecting a final plan under these circumstances and others. In other words, a land use planning commission's final plan would be binding on Yukon (and by extension Yukon's residents) and the First Nations, despite concerns that Yukon or the First Nations may have with the final recommended plan. This would have the effect of turning the final land use plan approval decision over to the commission, contrary to the scheme of the Final Agreements.

75. The appellants acknowledge the risk that a commission might put forward a final plan containing changes that are "unacceptable" to Yukon.[127] There is a similar risk that in the future a commission might also put forward a final plan that is unacceptable to the First Nations. However, the appellants dismiss this concern, claiming that Yukon could simply "modify the Final Recommended Plan to read as it had earlier proposed, if the Commission were to exceed its mandate and propose new changes to the plan which Yukon had not previously considered."[128] This interpretation would tie the hands of both Yukon and the affected First Nations, contrary to the scheme of the Final Agreements. If the parties adopted the course proposed by the appellants and approached final consultation with the intention of simply restoring the modifications

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[125] Court of Appeal reasons, para. 159, AR, Vol. I, Tab 4, p. 141

[126] Court of Appeal reasons, para. 159, AR, Vol. I, Tab 4, p. 141

[127] Appellant's factum, para. 131

[128] Appellant's factum, para. 131

proposed to the recommended plan, that would also render consultation on the final recommended plan meaningless.

Ability to reject a final recommended plan furthers reconciliation

76. The principle that the Final Agreements should be interpreted in a manner that promotes reconciliation between the Crown and the First Nations applies in this context as well. If proposed modifications are to be treated as approvals, and turned against a proposing party to constrain the options subsequently available to it, both Yukon and the First Nations will be encouraged to reject, rather than propose modifications that seek to improve upon, recommended plans that do not fully reflect their desired outcomes. An incentive to prematurely terminate – or, worse yet, avoid altogether – the Final Agreements' land use plan approval process is at odds with the object of reconciliation.

PART IV – SUBMISSIONS ON COSTS

77. Yukon submits that each party should bear its own costs throughout.

PART V – ORDER SOUGHT

78. Yukon requests that the appeal be dismissed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

John B. Laskin / John Terry / Nick Kennedy / Mark Radke
Counsel for the Respondent

PART VI – TABLE OF AUTHORITIES

	Authority	Paragraph(s)
1.	*Beckman v. Little Salmon/Carmacks First Nation*, [2010] 3 SCR 103	13, 49-52, 64-65, 70
2.	*Behn v. Moulton Contracting Ltd.,* [2013] 2 SCR 227	49
3.	Chief Elijah Smith, *Together Today for our Children Tomorrow: A Statement of Grievances and an Approach to Settlement by the Yukon Indian People*, January 1973	11
4.	*Coldwater Indian Band v. Canada (Minister of Indian Affairs and Northern Development),* 2013 FC 1138	65
5.	*Dene Tha' First Nation v. Canada (Minister of Environment)*, 2006 FC 1354	63
6.	Dwight Newman, "Contractual and Covenantal Conceptions of Modern Treaty Interpretation," 54 *The Supreme Court Law Review* 17, 488	51, 69
7.	*Eastmain Band v. Robinson,* [1993] 1 F.C. 501 (C.A.)	89
8.	*Eastmain Band v. Robinson,* [1993] S.C.C.A. No. 23	89
9.	*Fédération franco-ténoise c. Canada (Procureur général)*, 2008 NWTCA 6	61
10.	*Fédération franco-ténoise c. Canada (Procureur général)*, [2008] S.C.C.A. No. 432	61
11.	*Giguère v. Chambre des notaires du Québec*, [2004] 1 SCR 3	61
12.	*Haida Nation v. British Columbia (Minister of Forests),* [2004] 3 SCR 511	50, 63, 65
13.	Hansard, Legislative Assembly of Yukon, June 3, 1992	15
14.	Hansard, Legislative Assembly of Yukon, March 16, 1993	15
15.	*House of Sga'nisim v. Canada (Attorney General)*, 2013 BCCA 49	50-51
16.	*Inuit of Nunavut v. Canada (Attorney General),* 2014 NUCA 2	51, 65
17.	Julie Jai, "The Interpretation of Modern Treaties and the Honour of the Crown: Why Modern Treaties Deserve Judicial Deference," 26 *National Journal of Constitutional Law* 25	51, 63-64

	Authority	Paragraph(s)
18.	Kent Roach, *Constitutional Remedies in Canada*, 2d ed., looseleaf (Toronto: Canada Law Book, 2014)	61
19.	Kent Roach, "Remedies for Violations of Aboriginal Rights," 21 *Manitoba Law Journal* 498	64
20.	*Little Salmon/Carmacks First Nation v. Yukon (Director, Agriculture Branch, Department of Energy, Mines & Resources)*, 2008 YKCA 13	51
21.	*Manitoba Metis Federation Inc. v. Canada (Attorney General),* [2013] 1 SCR 623	55, 70
22.	*Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage),* [2005] 3 SCR 388	50
23.	*Nunatsiavut Government v. Newfoundland and Labrador (Municipal Affairs)*, 2013 NLTD(G) 142	63
24.	*Nunatsiavut v. Canada (Department of Fisheries and Oceans),* 2015 FC 492	51
25.	*Nunavik Inuit v. Canada (Minister of Canadian Heritage)*, [1998] F.C.J. No. 1114	63
26.	*Platinex Inc. v. Kitchenuhmaykoosib*, [2006] O.J. No. 3140	63
27.	*Provincial Court Judges' Assn. of New Brunswick v. New Brunswick,* [2005] 2 S.C.R. 286	55, 61
28.	*Quebec (Attorney General) v. Moses*, [2010] 1 SCR 557	51, 64
29.	*R. v. Sheppard*, [2002] 1 S.C.R. 869	67
30.	*R. v. Van der Peet,* [1996] 2 SCR 507	49
31.	*Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, [2010] 2 SCR 650	63
32.	*Vancouver (City) v. Ward,* [2010] 2 S.C.R. 28	66

PART VII – STATUTORY PROVISIONS

English	French
First Nation of Nacho Nyak Dun Final Agreement	*Entente définitive de la Première nation des Nacho Nyak Dun*
"Consult" or "Consultation" means to provide: (a) to the party to be consulted, notice of a matter to be decided in sufficient form and detail to allow that party to prepare its views on the matter; (b) a reasonable period of time in which the party to be consulted may prepare its views on the matter, and an opportunity to present such views to the party obliged to consult; and (c) full and fair consideration by the party obliged to consult of any views presented. **2.2.15** Settlement Agreements shall be the entire agreement between the parties thereto and there shall be no representation, warranty, collateral agreement or condition affecting those Agreements except as expressed in them. **2.6.3** There shall not be any presumption that doubtful expressions in a Settlement Agreement be resolved in favour of any party to a Settlement Agreement or any beneficiary of a Settlement Agreement. **Specific Provision** **10.3.2.1** The Horseshoe Slough Habitat Protection Area shall be established as a Special	«consulter» ou «consultation» La procédure selon laquelle : a) un avis suffisamment détaillé concernant la question à trancher doit être communiqué à la partie devant être consultée afin de lui permettre de préparer sa position sur la question; b) la partie devant être consultée doit se voir accorder un délai suffisant pour lui permettre de préparer sa position sur la question, ainsi que l'occasion de présenter cette position à la partie obligée de tenir la consultation; c) la partie obligée de tenir la consultation doit procéder à un examen complet et équitable de toutes les positions présentées. «date d'entrée en vigueur» Date à laquelle l'entente définitive conclue par une première nation du Yukon prend effet. **2.2.15** Chaque entente portant règlement constitue l'entente complète intervenue entre les parties à cette entente et il n'existe aucune autre assertion, garantie, convention accessoire ou condition touchant cette entente que celles qui sont exprimées dans cette dernière. **2.6.3** Il n'existe aucune présomption que les expressions ambiguës d'une entente portant règlement doivent être interprétées en faveur soit d'une partie à cette entente soit de quelque personne en bénéficiant. **Dispositions spécifiques**

Management Area and the specific provisions in respect of the Horseshoe Slough Habitat Protection Area are set out in Schedule B - The Horseshoe Slough Habitat Protection Area, attached to this chapter. **10.3.2.2** Provisions in respect of the possible establishment of Special Management Areas in the Peel River Watershed are set out in Schedule C - The Peel River Watershed, attached to this chapter. **11.4.1** Government and any affected Yukon First Nation may agree to establish a Regional Land Use Planning Commission to develop a regional land use plan. **11.6.0 Approval Process for Land Use Plans** **11.6.1** A Regional Land Use Planning Commission shall forward its recommended regional land use plan to Government and each affected Yukon First Nation. **11.6.2** Government, after Consultation with any affected Yukon First Nation and any affected Yukon community, shall approve, reject or propose modifications to that part of the recommended regional land use plan applying on Non-Settlement Land. **11.6.3** If Government rejects or proposes modifications to the recommended plan, it shall forward either the proposed modifications with written reasons, or written	**10.3.2.1** Est constitué en zone spéciale de gestion l'habitat protégé du marais Horseshoe et les dispositions spécifiques applicables à cet habitat protégé sont énoncées à l'Annexe B - Habitat protégé du marais Horseshoe, qui est jointe au présent chapitre. **10.3.2.2** Les dispositions touchant l'établissement possible de zones spéciales de gestion dans le bassin de la rivière Peel sont énoncées à l'Annexe C - Bassin de la rivière Peel, qui est jointe au présent chapitre. **11.4.1** Le gouvernement et toute première nation du Yukon touchée peuvent convenir de constituer une commission régionale d'aménagement du territoire en vue de l'élaboration d'un plan régional d'aménagement du territoire. **11.6.0 Mécanisme d'approbation des plans d'aménagement du territoire** **11.6.1** La Commission régionale d'aménagement du territoire transmet au gouvernement et à chaque première nation du Yukon touchée le plan régional d'aménagement du territoire dont elle recommande l'approbation. **11.6.2** Le gouvernement, après avoir consulté les premières nations du Yukon et les collectivités du Yukon touchées, approuve ou rejette la partie du plan régional d'aménagement du territoire recommandé qui s'applique aux terres non visées par un règlement ou y apporte des modifications.

reasons for rejecting the recommended plan to the Regional Land Use Planning Commission, and thereupon:	**11.6.3** Si le gouvernement rejette le plan recommandé ou y propose des modifications, il communique à la Commission régionale d'aménagement du territoire soit les modifications proposées, accompagnées de justifications écrites, soit, par écrit, les motifs du rejet du plan recommandé, après quoi:
11.6.3.1 the Regional Land Use Planning Commission shall reconsider the plan and make a final recommendation for a regional land use plan to Government, with written reasons; and	**11.6.3.1** la Commission régionale d'aménagement du territoire examine à nouveau le plan et présente au gouvernement sa recommandation finale, accompagnée de motifs écrits, quant au plan régional d'aménagement du territoire;
11.6.3.2 Government shall then approve, reject or modify that part of the plan recommended under 11.6.3.1 applying on Non-Settlement Land, after Consultation with any affected Yukon First Nation and any affected Yukon community.	**11.6.3.2** après avoir consulté les premières nations du Yukon et les collectivités du Yukon touchées, le gouvernement approuve, rejette ou modifie la partie du plan recommandé en application de l'article 11.6.3.1 qui s'applique aux terres non visées par un règlement.
11.6.4 Each affected Yukon First Nation, after Consultation with Government, shall approve, reject or propose modifications to that part of the recommended regional land use plan applying to the Settlement Land of that Yukon First Nation.	**11.6.4** Chaque première nation du Yukon touchée, après avoir consulté le gouvernement, approuve ou rejette la partie du plan régional d'aménagement du territoire recommandé qui s'applique à ses terres visées par le règlement, ou y propose des modifications.
11.6.5 If an affected Yukon First Nation rejects or proposes modifications to the recommended plan, it shall forward either the proposed modifications with written reasons or written reasons for rejecting the recommended plan to the Regional Land Use Planning Commission, and thereupon:	**11.6.5** Si une première nation du Yukon touchée rejette le plan recommandé ou y propose des modifications, elle communique à la Commission régionale d'aménagement du territoire soit les modifications proposées, accompagnées de justifications écrites, soit, par écrit, les motifs du rejet du plan recommandé, après quoi:
11.6.5.1 the Regional Land Use Planning Commission shall reconsider the plan and make a final recommendation for a regional land use plan	

to that affected Yukon First Nation, with written reasons; and **11.6.5.2** the affected Yukon First Nation shall then approve, reject or modify the plan recommended under 11.6.5.1, after Consultation with Government. **11.7.0 Implementation** **11.7.1** Subject to 12.17.0, Government shall exercise any discretion it has in granting an interest in, or authorizing the use of, land, water or other resources in conformity with the part of a regional land use plan approved by Government under 11.6.2 or 11.6.3. **11.7.2** Subject to 12.17.0, a Yukon First Nation shall exercise any discretion it has in granting an interest in, or authorizing the use of, land, water or other resources in conformity with the part of a regional land use plan approved by that Yukon First Nation under 11.6.4 or 11.6.5.	**11.6.5.1** la Commission régionale d'aménagement du territoire examine à nouveau le plan et présente à la première nation du Yukon touchée sa recommandation finale, motivée par écrit, du plan régional d'aménagement du territoire; **11.6.5.2** la première nation du Yukon touchée, après avoir consulté le gouvernement, approuve, rejette ou modifie le plan recommandé en vertu de l'article 11.6.5.1. **11.7.0 Mise en œuvre** **11.7.1** Sous réserve de la section 12.17.0, le gouvernement exerce les pouvoirs discrétionnaires dont il dispose soit pour accorder un intérêt dans des terres, des eaux ou d'autres ressources, soit pour en autoriser l'utilisation, en conformité avec la partie du plan régional d'aménagement du territoire approuvé par le gouvernement en application de l'article 11.6.2 ou 11.6.3. **11.7.2** Sous réserve de la section 12.17.0, la première nation du Yukon concernée exerce les pouvoirs discrétionnaires dont elle dispose soit pour accorder un intérêt dans des terres, des eaux ou d'autres ressources, soit pour en autoriser l'utilisation, en conformité avec la partie du plan régional d'aménagement du territoire qu'elle a approuvé en application de l'article 11.6.4 ou 11.6.5.
SCHEDULE C	**ANNEXE C** **BASSIN DE LA RIVIÈRE PEEL**

THE PEEL RIVER WATERSHED	1.0 Comité consultatif du bassin de la rivière Peel
1.0 Peel River Watershed Advisory Committee	
1.1	**1.1**
A Peel River Watershed Advisory Committee ("the Committee") shall be established at the date of the Legislation giving effect to the Gwich'in Final Agreement and shall continue for a period of not more than two years from that date, unless the parties to this Agreement and the Tetlit Gwich'in otherwise agree.	Est constitué un comité consultatif du bassin de la rivière Peel à la date d'entrée en vigueur de la législation donnant effet à l'entente définitive des Gwich'in. Le comité consultatif exerce ses activités pour une période d'au plus deux ans à compter de cette date, sauf entente contraire des parties à la présente entente et des Gwich'in Tetlit.
1.2	**1.2**
The composition of the Committee shall be as follows:	Le comité consultatif se compose :
1.2.1	**1.2.1**
the Committee shall include at least one nominee of each of the First Nation of Nacho Nyak Dun, the Tetlit Gwich'in, Canada, the Yukon and the Government of the Northwest Territories; and	d'au moins une personne proposée par la première nation des Nacho Nyak Dun, d'une autre proposée par les Gwich'in Tetlit, d'une autre proposée par le Canada, d'une autre proposée par le gouvernement du Yukon et d'une dernière proposée par le gouvernement des Territoires du Nord- Ouest;
1.2.2	**1.2.2**
50 percent of the members of the Committee shall be nominees of the Tetlit Gwich'in or the First Nation of Nacho Nyak Dun, and 50 percent shall be nominees of Canada, the Yukon or the Government of the Northwest Territories.	de 50 p. 100 de membres proposés par les Gwich'in Tetlit ou la première nation des Nacho Nyak Dun, et de 50 p. 100 de membres proposés par le Canada, le gouvernement du Yukon ou le gouvernement des Territoires du Nord-Ouest.
1.3	**1.3**
The Committee shall consider and make recommendations respecting:	Le comité étudie les questions suivantes et formule des recommandations à leur égard :
1.3.1	**1.3.1**
	la mise en place d'un accord sur la gestion des eaux du bassin de la rivière Peel;

the establishment of a water management agreement for the Peel River Watershed;	**1.3.2**
1.3.2	la mise sur pied d'une commission régionale d'aménagement du territoire ou d'un organisme analogue au Yukon pour tout secteur géographique comprenant le bassin de la rivière Peel;
the establishment of a Regional Land Use Planning Commission or similar agency within Yukon for any area which includes the Peel River Watershed; and	**1.3.3**
1.3.3	le besoin de créer et la création elle-même, dans les bassins des rivières Peel et Arctic Red, de zones spéciales de gestion ou de zones protégées au sens de l'entente définitive des Gwich'in.
the need for, and establishment of, Special Management Areas, or protected areas, as defined in the Gwich'in Final Agreement, in the Peel River Watershed and Arctic Red River Watershed.	**1.4**
1.4	II est interdit au comité consultatif d'examiner une question ou de formuler des recommandations à l'égard de celle-ci, si :
The Committee shall not consider or make recommendations concerning any matter where:	**1.4.1**
1.4.1	d'une part, l'examen de cette question relève d'un autre organisme qui a le pouvoir de faire des recommandations à ce sujet au gouvernement;
another body is empowered to consider and make recommendations to government on that matter; and	**1.4.2**
1.4.2	d'autre part, cet autre organisme compte des représentants de toutes les parties mentionnées à l'article 1.2.1, cette représentation étant soumise aux prescriptions énoncées aux articles 1.7 et 1.8.
that other body has representation by all the parties described in 1.2.1, which representation is subject to the same limitations set out in 1.7 and 1.8.	**1.5**
1.5	Le Canada étudie les recommandations du comité consultatif.
Canada shall consider the recommendations of the Committee.	**1.6**
1.6	Le comité consultatif peut établir ses propres règles de procédure.

The Committee may establish its own rules of procedure.	
1.7	**1.7**
The Committee member nominated by the Yukon shall not participate when the Committee is considering or making recommendations on any matter solely within the jurisdiction of the Government of the Northwest Territories.	Lorsque le comité consultatif étudie des questions qui sont du ressort exclusif du gouvernement des Territoires du Nord-Ouest, ou formule des recommandations à cet égard, le membre du comité consultatif nommé par le Yukon ne peut participer aux délibérations.
1.8	**1.8**
The Committee member nominated by the Government of Northwest Territories shall not participate when the Committee is considering or making recommendations on any matter solely within the jurisdiction of the Yukon.	Lorsque le comité consultatif étudie des questions qui sont du ressort exclusif du Yukon, ou formule des recommandations à cet égard, le membre du comité consultatif nommé par le gouvernement des Territoires du Nord-Ouest ne peut participer aux délibérations.
1.9	**1.9**
The costs of the Committee shall be the responsibility of Canada. The Committee shall prepare an annual budget subject to review and approval by Canada.	Le Canada assume les dépenses de fonctionnement du comité consultatif. Le comité consultatif prépare un budget annuel qui est soumis à l'examen et à l'approbation du Canada.
1.10	**1.10**
The Committee may carry out its functions notwithstanding the failure of a party to nominate a Committee member.	Le comité consultatif peut s'acquitter de ses responsabilités nonobstant le défaut d'une des parties de nommer un membre au sein du comité consultatif.
2.0 Peel River Watershed	**2.0 Bassin de la rivière Peel**
2.1	**2.1**
For the purposes of this schedule, the Peel River Watershed excludes areas of overlap with the Traditional Territories of the Dawson First Nation and the Vuntut Gwitchin First Nation.	Pour l'application de la présente annexe, sont exclus du bassin de la rivière Peel les secteurs géographiques qui chevauchent le territoire traditionnel de la première nation de Dawson et celui de la première nation des Gwitchin Vuntut.

English	French
The Tr'ondëk Hwëch'in Final Agreement	*Entente définitive des Tr'ondëk Hwëch'in*
"Consult" or "Consultation" means to provide: (a) to the party to be consulted, notice of a matter to be decided in sufficient form and detail to allow that party to prepare its views on the matter; (b) a reasonable period of time in which the party to be consulted may prepare its views on the matter, and an opportunity to present such views to the party obliged to consult; and (c) full and fair consideration by the party obliged to consult of any views presented. **2.2.15** Settlement Agreements shall be the entire agreement between the parties thereto and there shall be no representation, warranty, collateral agreement or condition affecting those Agreements except as expressed in them. **2.6.3** There shall not be any presumption that doubtful expressions in a Settlement Agreement be resolved in favour of any party to a Settlement Agreement or any beneficiary of a Settlement Agreement.	«consulter» ou «consultation» La procédure selon laquelle : a) un avis suffisamment détaillé concernant la question à trancher doit être communiqué à la partie devant être consultée afin de lui permettre de préparer sa position sur la question; b) la partie devant être consultée doit se voir accorder un délai suffisant pour lui permettre de préparer sa position sur la question, ainsi que l'occasion de présenter cette position à la partie obligée de tenir la consultation; c) la partie obligée de tenir la consultation doit procéder à un examen complet et équitable de toutes les positions présentées. «date d'entrée en vigueur» Date à laquelle l'entente définitive conclue par une première nation du Yukon prend effet. **2.2.15** Chaque entente portant règlement constitue l'entente complète intervenue entre les parties à cette entente et il n'existe aucune autre assertion, garantie, convention accessoire ou condition touchant cette entente que celles qui sont exprimées dans cette dernière. **2.6.3** Il n'existe aucune présomption que les expressions ambiguës d'une entente portant règlement doivent être interprétées en faveur soit d'une partie à cette entente soit de quelque personne en bénéficiant.

11.4.1 Government and any affected Yukon First Nation may agree to establish a Regional Land Use Planning Commission to develop a regional land use plan. **11.6.0 Approval Process for Land Use Plans** **11.6.1** A Regional Land Use Planning Commission shall forward its recommended regional land use plan to Government and each affected Yukon First Nation. **11.6.2** Government, after Consultation with any affected Yukon First Nation and any affected Yukon community, shall approve, reject or propose modifications to that part of the recommended regional land use plan applying on Non-Settlement Land. **11.6.3** If Government rejects or proposes modifications to the recommended plan, it shall forward either the proposed modifications with written reasons, or written reasons for rejecting the recommended plan to the Regional Land Use Planning Commission, and thereupon: **11.6.3.1** the Regional Land Use Planning Commission shall reconsider the plan and make a final recommendation for a regional land use plan to Government, with written reasons; and **11.6.3.2**	**11.4.1** Le gouvernement et toute première nation du Yukon touchée peuvent convenir de constituer une commission régionale d'aménagement du territoire en vue de l'élaboration d'un plan régional d'aménagement du territoire. **11.6.0 Mécanisme d'approbation des plans d'aménagement du territoire** **11.6.1** La Commission régionale d'aménagement du territoire transmet au gouvernement et à chaque première nation du Yukon touchée le plan régional d'aménagement du territoire dont elle recommande l'approbation. **11.6.2** Le gouvernement, après avoir consulté les premières nations du Yukon et les collectivités du Yukon touchées, approuve ou rejette la partie du plan régional d'aménagement du territoire recommandé qui s'applique aux terres non visées par un règlement ou y apporte des modifications. **11.6.3** Si le gouvernement rejette le plan recommandé ou y propose des modifications, il communique à la Commission régionale d'aménagement du territoire soit les modifications proposées, accompagnées de justifications écrites, soit, par écrit, les motifs du rejet du plan recommandé, après quoi: **11.6.3.1** la Commission régionale d'aménagement du territoire examine à nouveau le plan et présente au gouvernement sa recommandation

Government shall then approve, reject or modify that part of the plan recommended under 11.6.3.1 applying on Non-Settlement Land, after Consultation with any affected Yukon First Nation and any affected Yukon community.	finale, accompagnée de motifs écrits, quant au plan régional d'aménagement du territoire;
	11.6.3.2
	après avoir consulté les premières nations du Yukon et les collectivités du Yukon touchées, le gouvernement approuve, rejette ou modifie la partie du plan recommandé en application de l'article 11.6.3.1 qui s'applique aux terres non visées par un règlement.
11.6.4	**11.6.4**
Each affected Yukon First Nation, after Consultation with Government, shall approve, reject or propose modifications to that part of the recommended regional land use plan applying to the Settlement Land of that Yukon First Nation.	Chaque première nation du Yukon touchée, après avoir consulté le gouvernement, approuve ou rejette la partie du plan régional d'aménagement du territoire recommandé qui s'applique à ses terres visées par le règlement, ou y propose des modifications.
11.6.5	**11.6.5**
If an affected Yukon First Nation rejects or proposes modifications to the recommended plan, it shall forward either the proposed modifications with written reasons or written reasons for rejecting the recommended plan to the Regional Land Use Planning Commission, and thereupon:	Si une première nation du Yukon touchée rejette le plan recommandé ou y propose des modifications, elle communique à la Commission régionale d'aménagement du territoire soit les modifications proposées, accompagnées de justifications écrites, soit, par écrit, les motifs du rejet du plan recommandé, après quoi:
11.6.5.1	**11.6.5.1**
the Regional Land Use Planning Commission shall reconsider the plan and make a final recommendation for a regional land use plan to that affected Yukon First Nation, with written reasons; and	la Commission régionale d'aménagement du territoire examine à nouveau le plan et présente à la première nation du Yukon touchée sa recommandation finale, motivée par écrit, du plan régional d'aménagement du territoire;
11.6.5.2	**11.6.5.2**
the affected Yukon First Nation shall then approve, reject or modify the plan recommended under 11.6.5.1, after Consultation with Government.	la première nation du Yukon touchée, après avoir consulté le gouvernement, approuve, rejette ou modifie le plan recommandé en vertu de l'article 11.6.5.1.
11.7.0 Implementation	
11.7.1	

Subject to 12.17.0, Government shall exercise any discretion it has in granting an interest in, or authorizing the use of, land, water or other resources in conformity with the part of a regional land use plan approved by Government under 11.6.2 or 11.6.3. **11.7.2** Subject to 12.17.0, a Yukon First Nation shall exercise any discretion it has in granting an interest in, or authorizing the use of, land, water or other resources in conformity with the part of a regional land use plan approved by that Yukon First Nation under 11.6.4 or 11.6.5.	**11.7.0 Mise en œuvre** **11.7.1** Sous réserve de la section 12.17.0, le gouvernement exerce les pouvoirs discrétionnaires dont il dispose soit pour accorder un intérêt dans des terres, des eaux ou d'autres ressources, soit pour en autoriser l'utilisation, en conformité avec la partie du plan régional d'aménagement du territoire approuvé par le gouvernement en application de l'article 11.6.2 ou 11.6.3. **11.7.2** Sous réserve de la section 12.17.0, la première nation du Yukon concernée exerce les pouvoirs discrétionnaires dont elle dispose soit pour accorder un intérêt dans des terres, des eaux ou d'autres ressources, soit pour en autoriser l'utilisation, en conformité avec la partie du plan régional d'aménagement du territoire qu'elle a approuvé en application de l'article 11.6.4 ou 11.6.5.

<table>
<tr><th>English</th><th>French</th></tr>
<tr><td>Vuntut Gwitchin First Nation Final Agreement</td><td>Entente définitive de la Première nation des Gwitchin</td></tr>
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(a) to the party to be consulted, notice of a matter to be decided in sufficient form and detail to allow that party to prepare its views on the matter;

(b) a reasonable period of time in which the party to be consulted may prepare its views on the matter, and an opportunity to present such views to the party obliged to consult; and

(c) full and fair consideration by the party obliged to consult of any views presented.

2.2.15

Settlement Agreements shall be the entire agreement between the parties thereto and there shall be no representation, warranty, collateral agreement or condition affecting those Agreements except as expressed in them.

2.6.3

There shall not be any presumption that doubtful expressions in a Settlement Agreement be resolved in favour of any party to a Settlement Agreement or any beneficiary of a Settlement Agreement.

11.4.1

Government and any affected Yukon First Nation may agree to establish a Regional Land Use Planning Commission to develop a regional land use plan.</td><td>«consulter» ou «consultation» La procédure selon laquelle :

a) un avis suffisamment détaillé concernant la question à trancher doit être communiqué à la partie devant être consultée afin de lui permettre de préparer sa position sur la question;

b) la partie devant être consultée doit se voir accorder un délai suffisant pour lui permettre de préparer sa position sur la question, ainsi que l'occasion de présenter cette position à la partie obligée de tenir la consultation;

c) la partie obligée de tenir la consultation doit procéder à un examen complet et équitable de toutes les positions présentées. «date d'entrée en vigueur» Date à laquelle l'entente définitive conclue par une première nation du Yukon prend effet.

2.2.15

Chaque entente portant règlement constitue l'entente complète intervenue entre les parties à cette entente et il n'existe aucune autre assertion, garantie, convention accessoire ou condition touchant cette entente que celles qui sont exprimées dans cette dernière.

2.6.3

Il n'existe aucune présomption que les expressions ambiguës d'une entente portant règlement doivent être interprétées en faveur soit d'une partie à cette entente soit de quelque personne en bénéficiant.

11.4.1</td></tr>
</table>

11.6.0 Approval Process for Land Use Plans **11.6.1** A Regional Land Use Planning Commission shall forward its recommended regional land use plan to Government and each affected Yukon First Nation. **11.6.2** Government, after Consultation with any affected Yukon First Nation and any affected Yukon community, shall approve, reject or propose modifications to that part of the recommended regional land use plan applying on Non-Settlement Land. **11.6.3** If Government rejects or proposes modifications to the recommended plan, it shall forward either the proposed modifications with written reasons, or written reasons for rejecting the recommended plan to the Regional Land Use Planning Commission, and thereupon: **11.6.3.1** the Regional Land Use Planning Commission shall reconsider the plan and make a final recommendation for a regional land use plan to Government, with written reasons; and **11.6.3.2** Government shall then approve, reject or modify that part of the plan recommended under 11.6.3.1 applying on Non-Settlement Land, after Consultation with any affected Yukon First Nation and any affected Yukon community.	Le gouvernement et toute première nation du Yukon touchée peuvent convenir de constituer une commission régionale d'aménagement du territoire en vue de l'élaboration d'un plan régional d'aménagement du territoire. **11.6.0 Mécanisme d'approbation des plans d'aménagement du territoire** **11.6.1** La Commission régionale d'aménagement du territoire transmet au gouvernement et à chaque première nation du Yukon touchée le plan régional d'aménagement du territoire dont elle recommande l'approbation. **11.6.2** Le gouvernement, après avoir consulté les premières nations du Yukon et les collectivités du Yukon touchées, approuve ou rejette la partie du plan régional d'aménagement du territoire recommandé qui s'applique aux terres non visées par un règlement ou y apporte des modifications. **11.6.3** Si le gouvernement rejette le plan recommandé ou y propose des modifications, il communique à la Commission régionale d'aménagement du territoire soit les modifications proposées, accompagnées de justifications écrites, soit, par écrit, les motifs du rejet du plan recommandé, après quoi: **11.6.3.1** la Commission régionale d'aménagement du territoire examine à nouveau le plan et présente au gouvernement sa recommandation finale, accompagnée de motifs écrits, quant au plan régional d'aménagement du territoire;

11.6.4

Each affected Yukon First Nation, after Consultation with Government, shall approve, reject or propose modifications to that part of the recommended regional land use plan applying to the Settlement Land of that Yukon First Nation.

11.6.5

If an affected Yukon First Nation rejects or proposes modifications to the recommended plan, it shall forward either the proposed modifications with written reasons or written reasons for rejecting the recommended plan to the Regional Land Use Planning Commission, and thereupon:

11.6.5.1

the Regional Land Use Planning Commission shall reconsider the plan and make a final recommendation for a regional land use plan to that affected Yukon First Nation, with written reasons; and

11.6.5.2

the affected Yukon First Nation shall then approve, reject or modify the plan recommended under 11.6.5.1, after Consultation with Government.

11.7.0 Implementation

11.7.1

Subject to 12.17.0, Government shall exercise any discretion it has in granting an interest in, or authorizing the use of, land, water or other resources in conformity with the part of a regional land use plan approved by Government under 11.6.2 or 11.6.3.

11.6.3.2

après avoir consulté les premières nations du Yukon et les collectivités du Yukon touchées, le gouvernement approuve, rejette ou modifie la partie du plan recommandé en application de l'article 11.6.3.1 qui s'applique aux terres non visées par un règlement.

11.6.4

Chaque première nation du Yukon touchée, après avoir consulté le gouvernement, approuve ou rejette la partie du plan régional d'aménagement du territoire recommandé qui s'applique à ses terres visées par le règlement, ou y propose des modifications.

11.6.5

Si une première nation du Yukon touchée rejette le plan recommandé ou y propose des modifications, elle communique à la Commission régionale d'aménagement du territoire soit les modifications proposées, accompagnées de justifications écrites, soit, par écrit, les motifs du rejet du plan recommandé, après quoi:

11.6.5.1

la Commission régionale d'aménagement du territoire examine à nouveau le plan et présente à la première nation du Yukon touchée sa recommandation finale, motivée par écrit, du plan régional d'aménagement du territoire;

11.6.5.2

la première nation du Yukon touchée, après avoir consulté le gouvernement, approuve, rejette ou modifie le plan recommandé en vertu de l'article 11.6.5.1.

11.7.0 Mise en œuvre

11.7.2 Subject to 12.17.0, a Yukon First Nation shall exercise any discretion it has in granting an interest in, or authorizing the use of, land, water or other resources in conformity with the part of a regional land use plan approved by that Yukon First Nation under 11.6.4 or 11.6.5.	**11.7.1** Sous réserve de la section 12.17.0, le gouvernement exerce les pouvoirs discrétionnaires dont il dispose soit pour accorder un intérêt dans des terres, des eaux ou d'autres ressources, soit pour en autoriser l'utilisation, en conformité avec la partie du plan régional d'aménagement du territoire approuvé par le gouvernement en application de l'article 11.6.2 ou 11.6.3. **11.7.2** Sous réserve de la section 12.17.0, la première nation du Yukon concernée exerce les pouvoirs discrétionnaires dont elle dispose soit pour accorder un intérêt dans des terres, des eaux ou d'autres ressources, soit pour en autoriser l'utilisation, en conformité avec la partie du plan régional d'aménagement du territoire qu'elle a approuvé en application de l'article 11.6.4 ou 11.6.5.