Building Relationships with Indigenous Peoples and Aboriginal Communities:

What the Duty to Consult and Accommodate means for Ontario Planners

Preface

The following learning module was developed from the work of Carolyn King* and David J. Stinson**. They have been collaborating since 2015 to educate land use planners and economic development officers on the necessity of consultation and accommodation. They were asked by the Ontario Professional Planners Institute (OPPI) to prepare a Continuous Professional Learning (CPL) course for the professional development of its members.

In this Continuous Professional Learning course, we will explore some of the worldviews, perspectives, communities and territories that belong to the First Peoples of this Land. This will provide a context for understanding the meaning of planning in the multi-jurisdictional place we call Canada and role of planners in the Duty to Consult and Accommodate.

In our live presentations, we start with a Welcome from an Elder. Like most meetings in most societies, gatherings of any significance start with a welcome. In the contexts we are studying here, that welcome often consists of a prayer, or ritual, or ceremony. The intention is to clear the mind and open the heart of personal concerns so that the important matters at hand can be dealt with in peace. It is not about the imposition of belief, but rather an invitation to participation. You are free to participate to whatever degree you are comfortable, without prejudice.

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Module IV – History & Consultation: post-Confederation

Dominion of Canada: 1867. After Confederation, the new Dominion of Canada consolidated all existing legislation regarding First Nations into the *Indian Act, 1876* without consulting the people whose lives and lands it now presumed to regulate. It did protect what remained of native lands as reserves, but also reduced the status of the people to that of wards of the state. Eventually Inuit were included under the Act, but not Métis. For more than a century the implementing assumptions of the Act have been assimilationist, including the sad legacy of the American-style Indian school system.

In this module, we will examine the results of those strained relationships of the early and mid-nineteenth century, particularly as they played out in the late-nineteenth, early-twentieth, and mid-twentieth centuries. This will be done through the "lens" of our prime ministers and the changes they oversaw, switching in the late-twentieth and early twenty-first century to those court cases brought by indigenous communities to alter the direction of those changes. For decades, these communities were not allowed to put money towards the legal research of land issues, and lawyers were prohibited from working for communities on such cases. At one point, the government even proposed the abolition of the Indian Act and the abrogation of all land claims. Despite this impact, what has kept native culture alive over the last 150 years is the connection to land. Acknowledgement of this has been slow. But it is now officially enshrined in our constitution, affirming an enduring Aboriginal relationship to the land and their ongoing contribution to the building of the country.

Note: *the following discussion begins with a brief examination of the role of Sir John A. Macdonald. There are those who take exception to the "homo magna" (great man theory) approach to history, preferring a "homo vulgaris" (common man) theory of history from below. Without denying either context, authors such as Richard Gwyn have asserted that Canada's emergence as a nation-state was very unlikely without, as he puts it: "The Man Who Made Us". This is certainly true for the topic at hand. The approach of Canada's first Prime Minister towards the First Peoples has set a tone that lingers to this day, for better and for worse.*

Sir John A. Macdonald: 1815 - 1891. According to author Richard Gwyn, our first Prime Minster "knew more about Indian policy and the Indians themselves than any of his predecessors, or any of his successors until Jean Chrétien and Paul Martin a century later." His "attitudes" and "prescriptions" seem to have come from both his personal relationship with individual Aboriginal people and British Indian Policy. This policy was built on securing military allies, first against the French, then the Americans, who were coveting Native lands. However, its aims were contradictory, seeking to both protect indigenous peoples from the corrosive effects of the wider civilisation while at the same time seeking to "civilise" them. Macdonald was never able to overcome this paradox. [i]

Colonial Politician. As a colonial politician (1843-1867), his attitudes towards Native people were shaped by his personal relationships with them. As a lawyer, he defended individuals from local First Nations in court. As a vocalist, he sang in a Mohawk choir. As a guardian, he sent his granddaughter Daisy to a school run by Métisse **Abby Maria Harmon**. He was friends with **Kahkewaquonaby** (Reverend Peter Jones), **John Cuthbertson**, and **Oronhyatekha** (Peter Martin, who was a M.D. and established the Canadian branch of the Independent Order of Foresters). [ii]

Prime Minister. As Prime Minister (1867-1873, 1878-1891), his policy prescriptions reveal an attempt to integrate pre-existing populations, with pre-existing rights, into a newly created society; one whose constitutional framework was created almost singlehandedly by himself. His first attempts were to grant voting rights in exchange for Aboriginal & Treaty Rights in the pre-confederation 1857 *Gradual Civilisation Act* and post-confederation with the *Gradual Enfranchisement Act* in 1869. These, by and large, failed. In order to expand the size of the new Dominion, Rupert's Land was purchased from the HBC in 1869. The Aboriginal communities, whose lands were being obtained, were not consulted; which led to the Red River Rebellion of 1869-1870. This was only resolved by the creation of the Province of Manitoba in 1870. The United Colony of British Columbia joined Confederation in 1871, with a promise to be connected by rail to Ontario within ten years. The effort to build a transcontinental rail link also opened the southern prairies to agriculture, as the HBC shifted its fur-trading operation to the North, and secured the border with the U.S. from American incursions from the South. To facilitate this, the government began negotiating the so-called numbered Treaties No. 1 - 7 between 1871 and 1877. Also, during this era, the first Aboriginal (Métis) Members of Parliament, **Pierre Delorme** & **Angus McKay** were elected in 1871, as members of Macdonald's party.

The attitudes of Canadians were kindly, if on occasion paternal, towards the Native peoples. They widely viewed their government's policy as superior to that of Americans. Indeed, the early parts of our history, particularly in the East, were based on peaceful, even co-operative relationships. But as the fur trade declined and the effort to colonise the West increased, the pace of change outstripped the ability of people to adapt and was done without consultation. Macdonald understood this. In 1880, he told the Commons that … "We must remember that they are the original owners of the soil, of which they have been dispossessed by the covetousness or ambition of our ancestors. Perhaps if Columbus had not discovered this continent – had left them alone – they would have worked out a tolerable civilisation of their own… the Indians have been the great sufferers by the discovery of America and the transfer to it of a large white population." It should be pointed out, of course, that these communities were functional societies before contact and strove continually to remain so after contact. This understanding, as Gwyn concedes, "was not translated into effective action". [iii]

Superintendent General of Indian Affairs. After the U.S. Civil War, Americans began to push westward. They found vast herds of bison, alongside the peoples who used them for sustenance. As tanning technology improved, the demand for buffalo hides increased. This led to the mass-slaughter of the species and the collapse of bison herds of the Great Plains between the mid-1870s and the mid-1880s. But over-hunting was also known to directly undermine those already there, preparing the way for settlement, agriculture and ranching. On the Canadian side of the border those lifestyles adapted to the seasonal demands of hunting & gathering and the mercantilist demands of the fur-trade were deeply affected by the near-extinction of bison and led to a Great Famine on the prairies.

In this context, Macdonald assumed the Interior Ministry portfolio and became the Superintendent General of Indian Affairs between 1879 and 1887. His policies regarding what he referred to as the "Indian Question" were contradictory. On one hand, the approach was to feed people and thus avoid conflict. On the other, food was sometimes withheld to force former nomads into a settled life of agriculture. In 1883, the government funded three Indian Industrial Schools. They were modelled on those created in the United States, and laid the basis for what became the Indian School System. [iv] [v] [vi]

Enfranchisement Effort. However, Macdonald also introduced the *Franchise Act* in 1885. Amongst other things, it guaranteed voting rights to Native men without the loss of Aboriginal & Treaty Rights. He argued

that escaped slaves had gained the vote, without opposition, once arriving here. Yet those who had once "owned the whole of this country, were prevented from sitting in the House and from voting for men to represent their interests there." The bill was passed, but he was never able to fully implement its provisions once violence broke out on the Prairies. Voting rights where rescinded by a subsequent government. His obsession during this period was the construction of the Canadian Pacific Railway from 1881 to 1885. As the implications of impending settlement became obvious, the unresolved grievances of Aboriginal peoples, particularly the Métis, led to the North-West Rebellion in 1885. Louis Riel & seven other native leaders were executed in that same year. None-the-less, he appoints **Richard Charles Hardisty** as the first Métis Senator in 1888.

Legacy. Sir John was an advocate of patience in dealing with indigenous peoples and realised that four generations might pass before inclusion into the larger society was possible. He always insisted that the Treaties be honoured, but stated that: "The execution of Riel and of the Indians will, I hope, have a good effect on the Métis and convince the Indians that the white man governs". [vii] As resistance to this "governance" arose, the attitudes of Canadians soured, when violence erupted, it hardened. Propping up the notion of history rising up from below, Macdonald's policy approach in the end may not have been so much his own, "… as it was a policy of the Canadian people." [viii]

As Gwyn concludes:

"After the rebellion, all Indians ceased to be treated as independent people who had signed treaties with the government and were reduced progressively to mere wards of the state. For the better part of a century, the old ideals of protecting and civilizing Canada's Indians were replaced by the practicalities of administration and control."

On his single trip to the West, Macdonald met with Isapo-Muxika (Crowfoot), the Chief of the Blackfoot who remained loyal during the uprising and had been honoured and feted in Ottawa by the Governor General. **Isapo-Muxika** complained about the grass-fires caused by cinders from train engines, Macdonald lectured about the necessity of learning to farm. Crowfoot "…died in 1890 a deeply disappointed man, wholly uncertain whether his policy of accommodation had been the right one for his people." [ix]

Administration and Control

Alexander Mackenzie: 1873. He was a Liberal Prime Minister from 1873 to 1878. During his tenure the *Indian Act* was passed in 1876. Under this Act, what is left of Native lands are consolidated into Indian Reserves controlled by Indian Agents. The assimilation project shifts focus from enfranchisement to marriage rights. Native women who married non-native men lost their status as "Indians". So did all her descendants. However, no similar provision applied to native men. In fact, any non-native wife gained status as an "Indian". He also appoints David Mills as Minister of the Interior.

David Mills: 1876. A Liberal Politician from 1867-1882 and 1884-1896. He was the son of a pioneer family and an author & poet. He was Minister of the Interior and Superintendent General of Indian Affairs from 1876-1878, a Senator and Minister of Justice from 1896-1902, and a puisne judge of Supreme Court from 1902-1903. During the *Franchise Act* debates he quizzed Sir John A. Macdonald as to whether Indians from Manitoba and British Columbia would have the vote. They would. Militant leaders such as Poundmaker and Big Bear, would they have the vote? They would. At this point he accuses the Prime Minister of bringing "… a scalping party to the polls". At another time, he castigated Macdonald for frustrating "the doctrine of

the survival of the fittest" by providing food to those suffering from the Great Famine. Gwyn notes that the operation of this "doctrine" on those First Nations who successfully adapted to agriculture was a restriction of their efforts by the government to that of subsistence farming, so as not to compete with newcomers in "the market".

Note: *after 134 years, the federal government overturned the treason-felony conviction of Cree Chief Poundmaker in 2019. During the Riel Rebellion in present day Saskatchewan, he is credited with stopping the slaughter of Canadian troops at the Battle of Cut Knife on the 2nd of May 1885. He was however, accused, convicted, and imprisoned for inciting belligerence. He was released before his death in 1886 of tuberculosis, to avoid the embarrassment of his perishing in prison. The community was forbidden from having another chief until 1919.*

Sir Wilfred Laurier: 1896. A Liberal Politician from 1874-1919; Prime Minister from 1896-1911. In 1896, Laurier appoints Clifford Sifton as Minister of the Interior, who creates an immigration scheme to boost the number of people settling the Prairies. It involved incentives such as free homesteads, premiums for European immigration agents, and the explicit violation of Treaties to make more land available for agriculture. Sifton travels the world seeking immigrants from Great Britain, United States, Poland, Russia, the Ukraine, Germany, Italy, China, Japan and Finland. From 1897 to 1914, Canada's population increased by 60%, greatly enhancing farm production.

In 1898, all Indians are dis-enfranchised. One Liberal claimed that it had been an insult to white voters to be on the same level as "pagan and barbarian Indians". Between in 1899 and 1921 the numbered-treaty process started up again for the remaining lands of the Northwest Territories to secure and facilitate access to its natural resources. The provinces of Alberta and Saskatchewan are carved out of the NWT in 1905. Laurier appoints David Mills to the Supreme Court in 1902, and creates the Commission for the Conservation of Natural Resources in 1909. [x] [xi]

Clifford Sifton: 1896. He was a lawyer from Winnipeg and Liberal Politician from 1888-1911. He was appointed Minister of the Interior in 1896 and as Superintendent General of Indian Affairs was responsible for the removal of territory protected under Treaty for mass immigration to the Canadian West. He oversaw the creation of Alberta and Saskatchewan as provinces, with his older brother, Arthur, becoming Premier of Alberta. He was made the chairman of the Commission for the Conservation of Natural Resources in 1909.

Commission on Conservation: 1909. According to Gerald Hodge, the Commission for the Conservation of Natural Resources (1909-1918) was established to follow the example of the U.S. and Britain. Its mandate was to examine and make recommendations on: lands, forests, minerals, fisheries, game and fur-bearing animals, waters, waterpower, as well as human health. This explicitly meant improvements in housing and community planning.

Britain had already passed its *Housing and Town Planning Act* in 1909 and in 1912 four Canadian provinces: New Brunswick, Nova Scotia, Ontario, and Alberta enact similar legislation. The Commission followed suit in 1914, proposing a "Town Planning Act for Canada". That same year it hosted the 6th convention of North American and European planners in Toronto for the National City Planning Conference. It also hired Thomas Adams to act as its Town Planning Advisor.

Adams was a planner deeply involved in Britain's Garden City Movement. He founds the Town Planning Institute of Canada (Canadian Institute of Planners) in 1919. The Commission lasted until 1921, but the city of Kitchener adopts the American technique of zoning in 1924. By 1925 all provinces have enabling

legislation for planning, except Quebec. British Columbia's statute is the first to instantiate zoning bylaws. [xii] [xiii]

Duncan Campbell Scott: 1913. He was a federal civil servant from 1879-1932. He served as Deputy Superintendent of Indian Affairs under four Prime Ministers: Sir Robert Borden, Arthur Meighen, William Lyon Mackenzie King, R.B. Bennett, in six governments, over nineteen years (1913-1932). He was a poet & author, but was also the Treaty Commissioner present at the 1905 negotiation of Treaty No. 9 in Northern Ontario. He oversaw the 1920 attempt at assimilation, via the amendments of Bill 14 to the *Indian Act* and is reported to have said:

> "I want to get rid of the Indian problem. I do not think as a matter of fact, that the country ought to continuously protect a class of people who are able to stand alone… Our objective is to continue until there is not a single Indian in Canada that has not been absorbed into the body politic and there is no Indian question, and no Indian Department, that is the whole object of this Bill."

The Bill made it mandatory for all native children between the ages of seven and fifteen to attend school though no type of school was specified. It is estimated that approximately 150,000 Aboriginal children were compelled to attend the educational system set up for them, which were largely day-schools in or near their communities. However, Scott felt that removing children from their communities would increase the assimilation of Aboriginal peoples into the wider society. If a residential school was the only one available, children were then required to go there. In these isolated circumstances, children were often forbidden from speaking their languages or practicing their rituals. Sexual assault was also known to occur. As many as 6,000 children[xiv] may not have survived. His attempt at assimilation was praised as it was in keeping with the thinking during that era. It is now recognised as cultural genocide. [xv]

In the 1920s, the government began to purchase the boarding schools as they fell into disrepair, while the churches continued to run them. By the 1930s, the residential school system was failing both financially and as an assimilation strategy. Between 1945 and 1955, the day school system run by Indian Affairs was expanded, along with agreements between governments to integrate Aboriginal children into provincial and territorial school systems.[xvi]

Note: *these arrangements still left First Nations participating under duress. Over time, the number of students, teachers, even School Board Trustees have increased. However, where the will exists, where the funding and resources are available, and where the numbers warrant, communities often opt for their own schools.*

Louis St. Laurent: 1948. He was a Liberal Politician from 1942 to 1957, and Prime Minister from 1948 to 1957. Significant amendments were made to the Indian Act in 1951. One was the establishment of agreements to allow the education of Aboriginal children in provincial and territorial schools systems, based on the notion that integration would provide a better education than one based on assimilation. However, it also allowed the application of provincial laws On-reserve, if no federal law was in place. This included child welfare, which once again led to the removal of native children from their communities. It is commonly referred to as the "Sixties Scoop" (~1960-1990) where eleven to twenty thousand children may have been taken. The other assimilationist amendment, was the insertion of a "double-mother" clause that deprived native men of Indian Status if both their mother and grandmother were not "Indians". [xvii]

John Diefenbaker: 1957. He was a Conservative Politician from 1940 to 1979, and Prime Minister from 1957 to 1963. He appoints the first Status Indian to the Canadian Senate in 1958. The newly minted senator, **Akay-na-muka** (James Gladstone) begins to push for Aboriginal re-enfranchisement. Federal voting rights are finally restored to Aboriginal citizens in 1960. [xviii]

Note: *Métis had always been allowed to vote federally and provincially, if they met age, gender, and property requirements. The Inuit were federally enfranchised in 1950, but ballot boxes only arrived in their communities in 1962. Status Indians were disenfranchised in all provinces/territories except N.S. & Nfld. These voting rights were eventually restored: B.C. (1949), Man. (1952), Ont. (1954), Sask., the N.W.T. & Yk. (1960), N.B. & P.E.I. (1963), Alta. (1965), P.Q. (1969).*[xix]

Pierre Elliot Trudeau: 1969. He was a Liberal Politician from 1965 to 1984, and Prime Minister from 1969 through 1978 and from 1980 to 1984. In 1969, his government produced a "white paper" proposing the elimination of special status for Indians, the abolition of the Indian Act, and the abrogation of all land claims and inherent rights. This spurred the Indigenous Rights movement in Canada. In the same year the government took sole control over the residential schools. The last one, the Gordon Indian Residential School, Saskatchewan, was closed in 1996.

In 1971, he accepted an invitation by B.C. Premier W.A.C. Bennett to discuss constitutional patriation with the other premiers. The talks resulted in the "Victoria Charter". The proposal was eventually dropped due Quebec's opposition, but it is important to note that no Native organisations such as: the National Indian Brotherhood (now the Assembly of First Nations), or the Inuit Tapirisat of Canada (now the Inuit Tapiriit Kanatami), or the Native Council of Canada (now the Congress of Aboriginal Peoples), or the Métis National Council were invited to participate. [xx] [xxi] [xxii]

Formal multi-culturalism was also instituted in 1971. However, even as we revived our accommodationist roots, "Indians" resisted becoming just another ethnic group. They increasingly begin to assert their rights as Nations.

Evolving Relationships

Calder Case: 1973. The Nisga'a peoples had long asserted that title to their traditional lands of the Nass River Valley in northwestern British Columbia had never been ceded. They had met with the Premier in 1887, formed a Land committee in 1890, and petitioned the British Privy Council in 1913 for a treaty. In 1949, Nisga'a hereditary **Chief Frank Calder**, became the first Status Indian elected to the BC legislature (the 1st in any Canadian legislature), and soon began pursuing a land claim with the Province. He continued this work in 1955, as President of the Nisga'a Tribal Council, and later became BC's first Aboriginal cabinet minister (1972). Along with a group of like-minded elders, he asked lawyer Thomas Berger to sue the government of British Columbia in 1967. Both the BC Supreme Court and the Court of Appeal dismissed the case. It was appealed to the Supreme Court of Canada.

Though thrown out on a technicality (they had not asked the BC Attorney General for permission), *Calder v. Attorney-General of British Columbia, 1973* became a turning point in the recognition of Aboriginal title. Since it had existed at the time of the Royal Proclamation of 1763, it was independent to, and not simply derivative of, the Canadian legal system.

In August of that year, the federal government immediately released a policy on comprehensive land claims, and started negotiations with the Nisga'a Tribal Council in 1976. By 1989, they had a framework agreement, which the Province joined in 1990. An agreement-in-principle was reached in 1996, and signed by 1999. The

Canadian and British Columbia governments passed the appropriate legislation ratifying the Treaty, with the Nisga'a finally achieving self-government over 2,000 km^2 of their ancestral home in 2000.

The significance of this case is that the Nisga'a Treaty now serves as a model for modern treaties and self-government agreements. It has initiated the co-management of lands and their resources along with the opportunity for First Nations to participate in the creation of land-use plans. It has become a precedent for subsequent land claims and court cases, and is even cited in other commonwealth countries such as Australia and New Zealand. [xxiii] [xxiv] [xxv] [xxvi]

James Bay Agreement: 1975. Before the foundation of Canada, the lands of northern Quebec had been a part of Rupert's Land - the territory administered by the HBC. In 1870, all of Rupert's Land was ceded to Canada, and in 1895 the region between the province of Quebec and the Hudson Strait became the District of Ungava of the Northwest Territories. In 1898, the border of Quebec was extended north to the Eastmain River. Quebec continued to claim the remaining District of Ungava, north of the Eastmain River, and in 1912 the area was transferred to Quebec, subject to the condition that a treaty be negotiated with the native peoples of the region recognising their cultural rights and surrendering their title to the land to Quebec and Canada. There was at the time no pre-existing treaty covering that area. The government of Quebec did not immediately undertake such negotiations.

In the 1960s, Quebec began developing potential hydroelectric resources in the north, and in 1971 created the James Bay Development Corporation to pursue the development of mining, forestry and other potential resources starting with the James Bay Hydroelectric Project. This massive undertaking, which had been directed by an increasingly assertive government of Quebec without consulting native people, was opposed by most of northern Quebec's Cree and Inuit. The Quebec Association of Indians - an ad hoc representative body of native northern Quebecers - sued the government and, on the 15th of November 1973, won an injunction in the Quebec Superior Court blocking hydroelectric development until the province had negotiated an agreement with the people of the region. The judgment was overruled by the Quebec Court of Appeal seven days later, after the government's efforts to quickly negotiate an agreement failed. Construction continued, but the legal requirement that Quebec negotiate a Treaty covering the territory had not been overturned.

Negotiations proceeded and on the 15th of November 1974 – exactly a year after the Superior Court decision – an agreement-in-principle was signed between the governments of Canada, Quebec, publicly owned Hydro-Québec, the Grand Council of the Crees, headed by **Billy Diamond**, and the Northern Quebec Inuit Association. The final accord - the James Bay and Northern Quebec Agreement - was signed on the 11th of November 1975. This convention originally only covered claims made by the Quebec Cree and Inuit, however, on the 31st of January 1978; the Naskapi Indians of Quebec signed a parallel agreement - the Northeastern Quebec Agreement - and joined the institutions established under the 1975 accord.

It has been modified by 20 additional accords affecting details of the original agreement and its implementation, as well as expanding their provisions. Furthermore, the *Constitution Act, 1982* entrenched in the Constitution of Canada all the rights granted in Treaties and land claims agreements enacted before 1982, giving the rights outlined in the original agreement the status of constitutional rights. The planning provisions covering ᐃᔨᔫ ᐊᔅᒌ / ᐃᓅ ᐊᔅᒌ *(pronounced Eeyou Istchee; Cree: The People's Land)* give the Cree exclusive control over their settlements, extensive control over family harvesting areas, and consultation and impact benefit rights in the rest of their traditional territory. [xxvii]

Berger Inquiry: 1977. As early as the 1950s, both natural gas and oil deposits were discovered in the Beaufort Sea. By the 1970s, pipelines were being considered to ship natural gas to the South through several routes in the Yukon and the Northwest Territories. On the 21st of March 1974, the Government of Canada commissioned the Mackenzie Valley Pipeline Inquiry (1974-1977), to investigate the social, environmental, and economic impacts of such a pipeline.

It was also known as the Berger Inquiry after its head, **Justice Thomas Berger** of the British Columbia Supreme Court. To prepare for the hearings, he travelled throughout the North, consulting with the Dene, Inuit, and Métis peoples, as well as non-aboriginal residents. The commission held hearings in cities across the country including Yellowknife. But the commission is also notable for its community hearings held across the Yukon and the Northwest Territories, including all 35 communities of the Mackenzie River Valley.

He heard testimony from fourteen different groups, who all became full participants in the inquiry. It gave particular voice to the Aboriginal peoples whose traditional territory would be affected. The commission produced 283 volumes, with over 40,000 pages of text and evidence. The commission recommended that no pipeline be built through the northern Yukon and that a pipeline through the Mackenzie Valley should be delayed for 10 years, while land claims were settled and treaties signed. [xxviii] The Inquiry is considered both unprecedented and unduplicated in terms of its extensive process of consultation with Aboriginal communities. [xxix]

Canada Act: 1982. In 1931, the British government offered sovereignty to the Dominions of Australia, New Zealand, Newfoundland, the Irish Free State, the Union of South Africa, and Canada via the Statute of Westminster. However, the federal and provincial governments in Canada disagreed on how to amend the various British North America Acts (twenty from 1867 to 1975), excluding them from application of the Statute for fifty years. The "breakthrough" came during the constitutional patriation negotiations of the early 1980s, though Quebec refused and still remains a non-signatory to the constitution. None-the-less, the British Parliament passed the *Canada Act*, with the Queen signing the Proclamation of the *Constitution Act* at Parliament Hill on the 17th of April 1982.

The Statute of Westminster was finally adopted by embedding the *Canada Act* in Section 52(2) (a) of the *Constitution Act*. Though, sections 4, excepting it from applying to the BNA acts, and 7(1), ending Westminster's power to amend Canada's constitution upon request, were repealed by the Canadian parliament. It ended appeals to the Judicial Committee of the British Privy Council or automatic acceptance of British changes of the succession to the throne. [xxx]

Constitution Act: 1982. There were several constitutional conferences called, in order to finally take advantage of the Statute of Westminster. The one that achieved patriation was called by the federal government in May 1980, after the first referendum on Quebec separation was defeated. However, the National Indian Brotherhood (NIB) had been denied access to negotiating a constitutional framework with the first ministers, and left for London to petition for a direct meeting with the Queen. Though she was advised by the federal government not to meet with them, the Master of the Rolls and Records of the Chancery of England, Britain's second highest judge, did legitimise this direct relationship via the Treaty-making process. In response, the NIB was allowed to speak at subsequent meetings with the Premiers.

The acknowledgement of relationships with the Crown and the assertion of rights based on those relationships was not intended by the negotiators at the patriation table, nor made unequivocal in the early versions of the text. In October of 1980, what eventually became Section 26 simply said that the Charter

could not be interpreted to deny the existence of non-Charter rights, e.g., Aboriginal, or Treaty, or etc. The weakness of this provision led to fears that patriation would lead to an even further erosion of constitutional rights, than had already been experienced since Confederation. Protests ensued. Native leaders successfully advocated for stronger protections that were eventually noted in Section 25, as well as enshrined in Section 35 of the *Constitution Act, 1982*. [xxxi] [xxxii] [xxxiii]

Charter of Rights: 1982. Included in the constitutional package was a Canadian Charter of Rights and Freedoms, which occupied the first 34 sections. Though not appearing in the original text, Section 25 under the "General" heading, now states, that aboriginal, treaty, or other rights or freedoms are not abrogated or derogated by the Charter. It also makes specific reference to the Royal Proclamation of October 7, 1763 with a vague reference to existing or future land claims agreements. [xxxiv] [xxxv]

Existing Aboriginal and Treaty Rights: 1982. Section 35 of the *Constitution Act, 1982* is a more robust assertion of rights for First Peoples than that found in Section 25. It explicitly recognized and affirmed:

- the "aboriginal peoples of Canada", namely: Indians, Inuit, and Métis
- the "treaty rights" that exist now by way of land claims agreements, or may be so acquired
- and that they are guaranteed equally to male and female persons [xxxvi]

Sparrow Case: 1990. The *1990 R. v. Sparrow* case proved seminal in asserting the rights of First Nations, and was ranked among the 20 most significant legal events nationally over the last 100 years by the Canadian Bar Association's National magazine. In 1984, **Ron Sparrow** defied the Department of Fisheries and Oceans by fishing the Fraser River with a net almost double the legal length. When caught, his defence was that he was exercising his Aboriginal right to fish, protected under the Constitution. The **Musqueam** Band member's case was eventually heard by the Supreme Court of Canada, which ruled Aboriginal fishing rights take priority over commercial and sport fishing.

Since then, the courts have been attempting to define Aboriginal rights to land. In the 1990 *R. v. Sparrow* case, the Supreme Court affirmed that our constitution protects Aboriginal title and that it can only be infringed in very specific ways. The government must, among other things, be acting in the **best interests of society**, it must **maintain its fiduciary** obligation towards native communities, and it **must consult** with them. [xxxvii]

Oka Crisis: 1990. The Mohawks have requested recognition of their claims to land near Oka, Quebec by authorities since the 1700s. Despite this, the municipality built a nine-hole golf course in "the Pines" in 1961. This land was used by the Mohawk community of Kanesatake as a commons area and burial ground. In 1989, the mayor of Oka, Jean Ouellette, announced the further expansion of its municipal golf course onto Mohawk territory. The development involved extending the links to 18 holes and the construction of 60 luxury condominiums in the Pines. Even though community members from Kanesatake began to protest and both the Québec Ministers for the Environment and Native Affairs expressed qualms, the municipality approved the project.

The Mohawk community of Kanesatake then blockaded the road to the golf links. When the Sûreté du Québec confronted the protestors, violence erupted, leading to the death of one police officer. As more protestors joined the blockade, the SQ erected their own near Oka and Kanesatake. In response, Mohawk

from the nearby Kahnawake reserve blockaded the Mercier Bridge in Montréal. The SQ requested assistance from the Royal Canadian Mounted Police and the Quebec government asked the Federal government to mobilise the Canadian army. The military moved in and began to surround and isolate those on the frontline. Negotiations led to the reopening of the bridge. After 78 days the armed standoff was resolved when the last of the protestors surrendered. Though purchased by the federal government, the actual land issue languished for decades. [xxxviii]

In July 2019, the current developer offered to transfer his interest in the land to Kanesatake via a programme of Environment and Climate Change Canada. However, Oka Mayor Pascal Quevillon expressed qualms about being surrounded by smoke & pot shacks that would lower property values, calling for public consultations by the federal government. But three Oka Councillors distanced themselves from his comments. Grand Chief of Kanesatake **Serge Simon** was incensed by the characterisation of community members as criminals, and the notion that the issue would plunge the region into another crisis. He demanded and eventually received an apology. He publicly shook hands with the mayor stating that the two had agreed to "start talking again… and reset the relationship…"[xxxix] [xl]

MNO: 1993. In 1993, representatives from historic Métis communities and of Métis people across the province met to establish the Métis Nation of Ontario. They created a Métis-specific governance structure to implement the inherent right to self-government, establishing an identification system for Métis people, foster collective 'nation building', assert rights as a distinct Aboriginal people within Ontario, preserve the distinct culture of the Métis Nation, as well as improve the social well-being of Métis families and economic opportunities for Métis communities throughout the province. [xli]

Sewell Commission: 1993. The government of Bob Rae established a commission to reform planning in Ontario. They took the time to consult with First Nations concerned about the role of Aboriginal interests in the planning process. They recommended that:

- First Nations be treated as governments, not "a special-interest group, stakeholders, or third parties"
- Development of a process for consultation
- Protocols for mutual dialogue between First nations and municipalities
- Joint Planning processes

During the 1994 public hearings, First Nations made deputations calling for official standing in the new *Planning Act* and the right to appeal municipal decisions. None of this was incorporated into Ontario's planning framework. [xlii]

Ipperwash Crisis: 1995. In 1936, Ontario creates Ipperwash Provincial Park on 56 hectares of land claimed by Kettle and Stoney Point First Nation. The next year, the community begins petitioning the government to protect a burial site on the grounds. In 1942, the Canadian government expropriates more of their land for an army training base. The residents were offered compensation for the homes that are removed and a promise that the land would be returned after the war (1939-1945). Cadet training continues until 1995.

In an effort to end the Second World War, the Stoney Point Ojibway began protesting the military occupation in July of 1990 and reoccupied the base in 1993. The Canadian Forces withdrew in 1995. Protestors occupy the Provincial Park that summer. The government of Premier Michael Harris responded by sending in an Ontario Provincial Police tactical unit, who kill community member **Dudley George**. [xliii] [xliv] [xlv] [xlvi]

RCAP: 1996. Born of conflict, the Royal Commission on Aboriginal Peoples was established shortly after a 78-day armed standoff — known as the Oka Crisis — between the Mohawk community of Kanesatake, the Sûreté du Québec, and the Canadian army. The commission was meant to "help restore justice to the relationship between aboriginal and non-aboriginal people in Canada, and to propose practical solutions to stubborn problems," according to the final report.

In 1996, when the commission released its final five-volume, 4,000-page report, it contained recommendations for dealing with a breadth of issues, including self-governance, Treaties, health, housing, the north, economic development and education.

After 20 years:

- "There is a very powerful lesson there, which is that today still, I don't think it's changed much," [xlvii]

- "[The TRC] was really one of the biggest recommendations that came out [of RCAP] and I was happy to see that it was carried out." [xlviii] [xlix]

Delgamuukw: 1997. In the 1997 *Delgamuukw v. British Columbia* case, Aboriginal interest in the use being made of traditional territory was legitimised, provided the community could demonstrate a substantive and ongoing relationship with that territory. If it can, then infringement of Aboriginal title is not justified without consultation, since the "Honour of the Crown" is at stake. The assertion of British sovereignty created "a protectorate relationship with indigenous peoples" because **they were not conquered**.

"In 1984, the Gitxsan and Wet'suwet'en peoples of northwest British Columbia launched a claim for their traditional territories that is now generally known simply as Delgamuukw… In its 1997 decision overruling the original decision, the Supreme Court not only held that the traditional knowledge of the Gitxsan and Wet'suwet'en should have been given greater weight, but established as a general principle that in similar cases oral evidence should be given the same weight as written… to the consternation of the (original) trial judge, **Mary Johnson**, chief Antgulilibix of the Firewood clan, *sang* part of the oral tradition known as the *adaawk*…" [l] [li]

Nunavut: 1999. The Arctic Archipelago became part of Canada in 1880. William Wakeham, co-chairman of the international boundary commission planted a flag in 1897, at the whaling station on Kekerten Island in Cumberland Sound. Active administration only began in 1921, with the creation of the territorial council. It was composed of appointed civil servants, all based in Ottawa. In 1933, the Nunavut Land Settlement Agreement was signed. It was the largest land claim in Canadian history and the basis for the eventual creation of a new jurisdiction out of the old Northwest Territories. Inuit finally became "**aboriginal citizens**" with the 1939 *Re: Eskimos* case, wherein the Supreme Court determined that they were a federal, not provincial, responsibility. "… [h]owever, Inuit were not directly consulted about the governance of their lands and communities until the late fifties."

Abraham Okpik was the first Inuk appointed to the territorial council, in 1965. Elected seats were added in 1966, with **Simonie Michael** being the first elected Inuk. While the council evolved into a representative body, the Inuit also organised themselves into the Inuit Tapirisat of Canada (ITC) to preserve their culture and advance their interests in the 1970s.

Nunavut *(Inuktitut: Our Land)* is the eastern Artic, composed of Baffin Island, the surrounding islands, and the areas adjacent to Hudson's Bay. It was formally proposed by the ITC in 1976. It was to be a public, rather than an aboriginal government, with the Inuit majority holding sway. Political negotiations over the next decade and a half led to the recommendations of the Nunavut Implementation Commission headed by **John Amagoalik**, "father" of the new territory. **Jack Anawak**, former MP, was appointed to implement the recommendations that lead to the founding of Nunavut in 1999. [lii]

Other parts of the Arctic have been set aside for other groups of Inuit, such as:

Inuvialuit Nunangit Sannaiqtuaq *(Inuvialuktun: Inuvialuit Settlement Region)* composed of the western Arctic islands and mainland to the Alaska border. It was created in 1984 through the Inuvialuit Final Agreement (IFA). The Inuvialuit Regional Corporation (IRC) was established at that time to manage the settlement outlined in the IFA. In 1996 the IRC, along with the Gwich'in Tribal Council, began negotiating self-government agreements. These talks eventually broke down, but 2006 the IRC began negotiating separately. An agreement-in-principle was reach in 2015, with the details currently being finalised. [liii] [liv]

Nunavik *(Inuktitut: Great Land)* occupying the northern third of Quebec. In the 2000s, negotiations began to resolve outstanding land claims and determine the level of regional autonomy. They are still under way. A financial settlement and apology regarding the forced relocation of people in the 1950s, from Nunavik to the high Arctic to substantiate Canadian sovereignty claims, was finalised in 2010. [lv]

Nunatsiavut *(Inuttitut: Our Beautiful Land)* carved out of eastern Labrador. The original land claim was made in 1977; the Labrador Inuit Lands Claims Agreement was signed in 2005. It is a self-government Treaty involving control over culture, health, education, lands, and economic development. It also contained compensation of forced relocations during the 1950s. [lvi]

Powley: 2003. The Métis were **affirmed as Aboriginal people** by the Supreme Court of Canada in September 2003 by *R. v. Powley,* [2003] 2 S.C.R. 207. The case revolved around the harvesting rights of the Métis community in the Sault Ste. Marie region of Ontario. The court ruled that they have existing Aboriginal rights equal to that of First Nations under Section 35 of the *Constitution Act, 1982*.

Base on this acknowledgement, the Métis Nation of Ontario and the Ministry of Natural Resources entered into an interim Métis harvesting agreement in July 2004. This accommodation is based on harvesting claims throughout the province within traditional territories identified by MNO. In July 2007, the Ontario Court of Justice in the *R. v. Laurin, Lemieux and Lemieux*, [2007] O.J. No. 2344 (O.C.J.) case upholds "the MNO-Ontario harvesting agreement as legally defensible and highly principled in light of the Haida Nation and Taku River decisions."

"Troika" cases: 2004-2005. The federal government often references three main cases from early in the new millennium in its discussions and guidelines for the "Duty to Consult". In the 2004 *Haida Nation v. British Columbia* case, the relationship with the Crown was found to have been violated because the First Nation was not consulted. In similar landmark decisions, such as the *Taku River Tlingit First Nation v. British Columbia, 2004 and* the *Mikisew Cree First Nation v. Canada, 2005 the* Supreme Court affirmed that the Crown has a duty to consult when it **contemplates doing something**, that may have an **adverse impact**, and there are

potential or established **Aboriginal or Treaty rights**. These three cases are now taken to be definitive of the Crown's obligations regarding consultation. [lvii]

Caledonia Land Dispute: 2006. In 2006, Haldimand County grants approval to begin construction of houses on a 40-hectare property in the town of Caledonia. Protestors from the nearby native community occupy the site claiming it as part of the Haldimand Tract granted to Six Nations by the Crown in 1784. The Ontario Provincial Police are sent to patrol and monitor, but no tactical unit is sent in. In an effort to learn from the Oka debacle, the Ontario government of Premier Dalton McGinty purchases the property to resolve the crisis. As of 2020, the actual issue of the land has not been resolved. In 2007, a one-day protest ended peacefully in Deseronto, but for similar reasons. Proposed construction of a housing project was to take place on land claimed as Tyendinaga Mohawk Territory.

Hiawatha: 2007. The seven Williams Treaty First Nations, of Hiawatha, Alderville, Beausoleil, Georgia Island, Rama, Curve Lake, and Scugog Island went to court over the Seaton Lands development in the Hiawatha *First Nation v. Ontario, 2007* case. The court set aside the duty to consult due to mitigating circumstances. However, they firmly upheld that duty as enshrined in statutes such as the *Environmental Assessment Act*, the *Planning Act*, or the *Cemeteries Act*. [lviii]

Ipperwash Inquiry: 2007. A new Ontario government led by Premier Dalton McGinty, holds a public inquiry into the Ipperwash Crisis. Former Premier Harris is called to testify. The result was a four-volume, 1,533-page report that found the Ontario Provincial Police, the provincial government led by Premier Mike Harris, and the federal government all bore responsibility for the events that led to George's death. Many of the 98 recommendations were implemented, including the return of Camp Ipperwash–along with compensation–to the Kettle and Stony Point First Nation, the creation of the Ministry of Aboriginal Affairs (then the Ministry of Indigenous Relations and Reconciliation, now Ministry of Indigenous Affairs) out of the Ontario Native Affairs Secretariat, and the development of the "New Relationship Fund" that paid for consultation liaisons in the communities. Ipperwash Provincial Park was surrendered to the federal government, in order to transfer it to the First Nation. All lands were eventually returned, with a final settlement on the 14th of April 2016. [lix] [lx] [lxi] [lxii]

PPS: 2014. In 2014, the Ontario government of Premier Kathleen Wynn releases the ***Provincial Policy Statement*** under the *Planning Act*. It encourages municipalities to co-ordinate planning with Aboriginal communities, and to consider interests of aboriginal communities in conserving cultural; heritage and archeological resources. It also insists that implementation of the PPS be consistent with Sec. 35 *Constitution Act, 1982*. In short; it requests that municipalities be aware of their Aboriginal neighbours, but without any legislation or regulations to back it up. [lxiii] [lxiv]

TFN: 2014. In the 26th of June 2014, *Tsilhqot'in Nation v British Columbia* decision of the Supreme Court of Canada (2014 SCC44), land title for the Tsilhqot'in First Nation was established. The immediate significance is that the province of British Columbia could no longer claim a right to clear-cut logging on these lands without approval from the Tsilhqot'in. The wider significance is that First Nation title was recognised in a non-treaty area. The implications of this decision for planners could be wide-ranging…

LN & SN: 2014. Two First Nations, the Lil'wat Nation and the Squamish Nation, were apparently solicited regarding an update of the Official Community Plan for the Resort Municipality of Whistler. Despite pursuing consultation in good faith, they were told that the municipality had no obligation or ability to consider their concerns. The town felt that the First Nation's issues were "provincial" matters. Faced with

this non-participation, the communities then launched a court case against both Whistler and the B.C. government because the British Colombia Ministry of Municipal Affairs and Housing approved a plan which had not received sufficient consultation. The B.C. Supreme Court agreed. Without the full participation of the First Nations, the municipality had to revert to its pre-update plan. [lxv]

TRC: 2015. On the 2nd of June 2015, Archbishop Fred Hiltz read an ecumenical response on behalf of Anglican, Presbyterian, Roman Catholic and United church leaders "Acknowledging that their apologies for harms done at Indian residential schools 'are not enough,'… [and] welcomed the recommendations of the Truth and Reconciliation Commission (TRC), which they say will offer direction to their 'continuing commitment to reconciliation' with Indigenous peoples."… Recommendation #52 of the TRCs "Call to Action" asks governments… and the courts to accept Aboriginal title over land once a "claimant has established occupation over a particular territory at a particular point in time" and that the burden of proving any limitations on these rights shifts to those who assert that such limitations exist.

The implementation of this recommendation would have a profound affect. Not only would it be a step in healing the wounded relationship between our larger society and its Indigenous peoples, it would profoundly change Planning across every jurisdiction in the country, including both Ontario and its municipalities… [lxvi]

Métis and non-status Indians are 'Indians': 2016. In 1999, Métis leader **Harry Daniels** and the Congress of Aboriginal Peoples filed a court case claiming that:

- the Métis and non-status Indians were "Indians" under section 91(24) of the *Constitution Act, 1867*
- the federal government has a fiduciary duty towards them
- the federal government has an obligation to negotiate and consult on their rights

Though Daniels died in 2004, the case eventually went to trial in 2011. It went to the Supreme Court in 2015. The court agreed with the first point, in effect creating approximately 600,000 new "Indians". The other two points where laid aside since those have already been settled. Justice Rosalie Abella stated that: "There is no consensus on who is considered Metis or a non-status Indian, nor need there be. Culture and ethnic labels do not lend themselves to neat boundaries." [lxvii]

UNDRIP: 2016. On Thursday, 13 September 2007, the General Assembly of the United Nations adopted the United Nations Declaration on the Rights of Indigenous Peoples by a majority of 144 states in favour. The Declaration contains Articles that include a relationship with and access to the lands and resources traditional to their communities. Actions taken regarding those lands and resources must involve **"free, prior and informed consent"**. Four voted against: Australia, Canada, New Zealand, and the United States. Eleven countries abstained (Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russian Federation, Samoa, and Ukraine). Australia and New Zealand eventually endorsed it in 2009, then the United States in 2010, and ***lastly*** Canada in 2016. [lxviii]

Minister of Indigenous and Northern Affairs (INAC), Carolyn Bennett stated: "Today's announcement that Canada is now a full supporter of the Declaration, without qualification, is an important step in the vital work of reconciliation. Adopting and implementing the Declaration means that we will be breathing life into Section 35 of Canada's Constitution, which provides a full box of rights for Indigenous peoples."

INAC hailed this announcement as confirming "…Canada's commitment to a renewed, nation-to-nation relationship… based on recognition of rights, respect, co-operation and partnership." None-the-less, the government does not feel this should extend to the development of legislation that affects First Nations. On

the day of the 2018 OPPI Planning Symposium (11th of October) the Supreme Court of Canada released its decision in *Mikisew Cree First Nation v Canada (Governor General in Council),* stating that the duty to consult is not triggered by the development of legislation. While this may have legal (judicial vs legislative) justification, it probably does not respect the "Nation to Nation" relationship. [lxix]

SON: 2017. The Saugeen Ojibway Nation went to court over a quarry license in the *Saugeen First Nation and Chippewas of Nawash Unceded First Nation v. Ontario Minister of Natural Resources and Forestry and T & P Hayes Ltd., 2017*. The Saugeen First Nation and Chippewas of Nawash Unceded First Nation collectively comprise SON, and were subject to a half-hearted and bungled consultation from the Ontario Ministry of Natural Resources and Forestry (MNRF) who issued a private company a licence to mine limestone in SON's traditional territory. MNRF waffled regarding who, when, and how much consultation was needed, as well as possible funding for SON's consultation response. The court, however, ruled that **formal notice, information, peer-review funding,** and **accommodation of SON's concerns** was required. Though the government had encouraged the firm to engage SON in consultation, the court said that the third party was not required to do so. However, it noted that the company risked delaying its own project, by its refusal to participate. Further, that even without a statutory requirement to consider cumulative effects, it is a proper subject of consultation. The court concluded that the **"Crown should not reasonably expect SON to absorb consultation costs from SON's general resources"**.

MMIWG: 2019. By 2004, numerous cases of homicide and disappearances of native women rose to the attention of Amnesty International who published a report entitled: Stolen Sisters. In 2005, the Native Women's Association of Canada began conducting research and keeping statistics regarding such crimes. By 2014, a Legal Strategy Coalition on Violence against Indigenous Women is formed to support an inquiry. [lxx] That same year, the RCMP release a study reporting 1181 cases of missing and murdered Indigenous women across all police jurisdictions in Canada between 1980 and 2012. Of those, 225 cases were unsolved. Though controversy existed about the actual number of cases, the ethnicity of perpetrators, and their relationship to victims, statistically, 67% of the cases were murders, 20% went missing, 4% were suspicious deaths, and 9% were unknown. Though the actual number of murders for Aboriginal females is low, the call for an inquiry was based on the rate of murder which runs 5-6 times the rate for non-Aboriginal females.

During the 2015 federal election campaign, Justin Trudeau promised to set up an inquiry which was launched in 2016. It was plagued by its mandate, resignations of commissioners and key staff, apparent lack of transparency, poor data management, truncated timelines, and frustrated families angered by inadequate opportunities to tell their story. None-the-less, the report raised issues surrounding the accuracy of information about or numbers of the missing and murdered, the lack of resources for remote communities, inadequate communication by the police with families, communities, and other service providers, and a lack of trust in the police due to attitudes of indifference or bigotry. [lxxi] [lxxii]

Métis self-government: 2019. The Métis Nation of Alberta, the Métis Nation of Saskatchewan, and the Métis Nation of Ontario sign self-government agreements with the federal government. It is regarded as a correction of an historic lack of recognition of Métis as distinct peoples with Aboriginal rights. The Manitoba Metis Federation (land-claims pending) and the Metis Nation of British Columbia were not part of these proceedings, but may choose to sign their own agreements in the future. However, extemporaneous groups claiming Métis status from Eastern and Atlantic Canada were rebuffed by Crown Indigenous Relations Minister Carolyn Bennett. It appears that the Powley case will be the test for evaluating such claims.

It would constitute a third level of government equivalent to First Nations. They would have the right to represent their citizens, draft constitutions, and pass laws. They would be able to control education, child welfare, medical services, and the preservation of their language and culture. It would also involve the protection of their lands, hunting and fishing rights, the negotiation of land claims, and consultation over resources. [lxxiii] [lxxiv]

Peel: 2019. In 2005, the Yukon government set up the Peel Watershed Planning Commission to create a land-use plan for this region of the Territory. The Commission spent 5 years using both consultation & accommodation principles and ecosystem-based planning principles to establish a developable land base level of 20%. However, after the 2011 election the government rejected the recommendations of its own commission, and arbitrarily reassigned the development level to 70%. The First Nations and conservation groups took the government to court over this alteration to the plan in *The First Nation of Nacho Nyak Dun v. Yukon, 2014*. On the 2nd of December 2014, the Yukon Supreme Court found that the government's modifications of the Peel Watershed Plan did not respect the land-use planning process set out in the Territory's final agreements with First Nations. Their right to be consulted and be full participants in land management was recognised.

The Yukon government's response was less than enthusiastic, forcing the First Nations and environmental groups to seek clarification of government commitments through an appeal to the Supreme Court of Canada. On the 1st of December 2017, they unanimously ruled in favour of the Tr'ondëk Hwëch'in, Na-Cho Nyäk Dün, and Vuntut Gwitchin First Nations, Canadian Parks and Wilderness Society, and the Yukon Conservation Society. They also found that the changes made by the government "did not respect the Chapter 11 process" of the Territory's Agreement. The significance of this is that the planning area included traditional territories of First Nations within non-settlement areas. The government was ordered to respect the planning expertise of an independent commission and consider the final recommendation it submitted.

The struggle regarding such a large-scale regional plan came down to a simple principle: could years of planning work be undone when, as both courts noted, the actions of Yukon Territorial Government were **"not becoming of the honour of the Crown".** [lxxv] The revived process led to a renewed plan that was signed on the 22nd of August 2019 in Mayo, Yukon by the Territorial government, the three First Nations, as well as the Gwich'in Tribal Council of the Northwest Territories. In reference to this approximately 68,000 km² area, covering 16% of the Territory, Tr'ondëk Hwëch'in **Chief Roberta Joseph** said "… I am so pleased the pristine nature of this landscape will exist for our citizens yet to come." Of the Plan, it "… completes our journey to defend the integrity of our agreements." Na-cho Nyäk Dun **Chief Simon Mervyn** exclaimed that it was "… truly a great day… but… the real work was just beginning." Of the process, "… we have confirmed… the rights of our people to sit at the decision-making table when the fate of our ancestral lands is determined."

The implications of these decisions for the planning profession could be wide-ranging…

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[iii] *Richard Gwyn. 2011. Nation Maker: Sir John A. Macdonald. Random House, Canada*

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[xix] *[https://www.thecanadianencyclopedia.ca/en/article/indigenous-suffrage] 6 January 2020*

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