

MODERN TREATY  
IMPLEMENTATION  
RESEARCH PROJECT

# UND RIP AND MODERN TREATY IMPLEMENTATION

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Presentation to the NWT Legislative Assembly Committee on Reconciliation and Indigenous Affairs

Dr. John B. Zoe, LLD (Hon.) Lands Theme Co-Lead

Dr. Stephanie Irlbacher-Fox, PhD, Principal Investigator, July 2021

The contents reflect the views of the MTIRP, not any agency or institution associated with the project.

# PRESENTATION OVERVIEW



- About the Modern Treaty Implementation Research Project;
- Understanding UNDRIP: the K'alaàghaa;
- Organizing principles of modern treaties: culture and healing;
- Risks of not implementing UNDRIP are known;
- UNDRIP as a whole-of-government organizing principle for coordinated action;
- UNDRIP and implementing treaties: not a contest;
- Current examples of how GNWT is implementing UNDRIP;
- Recommendations.

## PROJECT PARTNERS



**Carleton**  
UNIVERSITY



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Tłı̨chǫ Ndek'àowo



Tłı̨chǫ Government

## LAND CLAIMS AGREEMENTS COALITION



Carcross/Tagish First Nation  
Council of Yukon First Nations  
Gwich'in Tribal Council  
Ka:yu:k't'h'/Che:k'tles7et'h' First Nations

Kwanlin Dun First Nation  
Maa-Nulth First Nations  
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c/o NVision Insight Group Inc., 488 Gladstone Ave., Ottawa, ON, K1R 3N8  
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# PEOPLE



- Principal Investigator: Dr. Stephanie Irlbacher-Fox, Carleton University and Tlicho Government; Project Coordinator Jessica Simpson, Tlicho Government; Project Administrator Gen Harrison, Carleton University.
- Five theme areas co-led by academics and practitioners. They include:
  1. Land Relationship (Dr. John B. Zoe, Tlicho Government, and Dr. Hayden King, Ryerson University);
  2. Intergovernmental Relations and Multilevel Governance (Dr. Adam Perry and Mr. Bobby Clark, Nisga'a Lisims Government, and Dr. Martin Papillon, Universite de Montreal);
  3. Fiscal Relationships (Mr. Matt Mehaffey, Carcross Tagish First Nation, and Dr. Frances Abele, Carleton University);
  4. Evaluation and Socioeconomic Issues (Mr. Alastair Campbell, Nunavut Tunngavik Inc., and Dr. Thierry Rodon, Laval University); and,
  5. Indigenous and Settler Law (Mr. Bruce Uviliq, Nunavut Tunngavik Inc., and Dr. Janna Promislow, University of Victoria).
- Each theme is co-led by an academic and an LCAC member representative. Theme co-leads support research projects in their theme areas.

Original research included in this presentation by:

- Monica Pishew (Anishnaabe)
- John B. Zoe (Tlicho)
- Stephanie Irlbacher-Fox

# PRODUCTS



[Home](#) > [Research](#) > [Report on Wellbeing Indicators](#)

## Report on Wellbeing Indicators

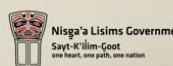
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Category: Implementation Evaluation and Socio-Economic Impacts

This report contributes to the work undertaken as part of the Modern Treaties Implementation Research Project's Implementation Evaluation and Socio-Economic Impacts research theme, which aims to develop an approach to gathering evidence that will assist policy makers in improving Modern Treaty implementation. The following review of literature was conducted to identify potentially relevant and culturally adapted quantitative and qualitative indicators of well-being for measuring the impacts of treaties on indigenous peoples in Canada. Drawing on current initiatives in Canada and abroad, this report explores the processes, approaches and benchmarks used to identify, measure and monitor indigenous well-being through indicators.

### SURVEYING BY ONE OF CANADA'S SELF-GOVERNING INDIGENOUS GOVERNMENTS: SAMPLING LESSONS LEARNED FROM THE NISGAA LISIMS GOVERNMENT (NLG)

ADAM PERRY AND SHANNON WEST-JOHNSON



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### Modern Treaty Dispute Resolution: Taking Stock and Looking Forward

David V. Wright, Assistant Professor, Faculty of Law, University of Calgary  
Janna Promislow, Associate Professor, Faculty of Law, University of Victoria

## Final Report

August 2020

### A NEW RELATIONSHIP? REFLECTIONS ON THE COLLABORATIVE FEDERAL FISCAL POLICY DEVELOPMENT PROCESS

Rosanna Nicol, Adam Perry, Bobby Clark, & Martin Papillon

No relationship is more important to me and to Canada than the one with Indigenous Peoples. It is time for a renewed, nation-to-nation relationship with Indigenous Peoples, based on recognition of rights, respect, co-operation and partnership.

— Justin Trudeau, Mandate Letter, Minister of Crown-Indigenous Relations, October 2017.

Canada recognizes that implementing this new fiscal relationship requires systemic change within the federal government and the way it works with Indigenous governments. This renewed fiscal relationship represents an important step in that direction.

— Paragraph 17, Canada's Collaborative Self-Government Fiscal Policy, January 2019.

# UNDERSTANDING UNDRIP: K'ÀLAÀGHAA



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- Fish were important for survival, for feeding people and dogs, it was part of the rhythm of life, every summer;
- Dried, fish could be cached, it saved people from starvation, it saved lives;
- Fishnets were made of willows stripped to their bark, similar method used by all Dene;
- Stripped willows are supple and must be kept wet in birch baskets with moss;
- Traders replaced willows with twine, and in Treaty 11, one of the benefits was twine to make nets with;
- K'alaaghaa (net mending shuttle) is the tool made from a living birch tree that is used to make nets and repair the nets.



# UNDERSTANDING UNDRIP: K'ÀLAÀGHAA



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## APPLYING THE METAPHOR TO UNDERSTAND UNDRIP

- We can use the metaphor of the fish net as a way to understand the connection between all the laws, agreements, policies, programs, services that hold up Indigenous rights.
- Together with our own laws, ways of doing things, and knowledge, all of these together form a net which holds up Indigenous rights.
- Some strands in the net are the responsibility of non-Indigenous governments, some are the responsibility of Indigenous governments;
- Some strands are weak, some are broken, some are strong, some have not yet come into being;
- UNDRIP provides human rights standards to measure how strong all of these different strands need to be, and what strands are missing that are needed to make a strong net, and to make it whole;
- Treaties are just one strand in the net;
- Like the k'alaaghhaa, UNDRIP is the tool we use to fix the net.

## WHY WE NEED A K'ÀLAÀGHAA : FIXING HOLES IN THE NET

- Modern treaties (land claim and self government agreements) are intended to recognize Indigenous peoples rights, to their lands, resources, and governance, and to the means to operate their own institutions;
- As government policies and laws change, Indigenous governments must continually talk to governments about improving the treaties, including settling disputes over government's treaty obligations;
- The federal government also sees UNDRIP as a K'alaaghhaa, by passing a law on June 21, 2021 in the Senate, that will establish a framework for Canada to implement UNDRIP;
- The federal government will now have a statutory basis for using UNDRIP to guide how it implements treaties.

## HOLES IN THE NET



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- Treaties, laws, policies, programs, services, initiatives targeting Indigenous peoples variously are intended to recognize and implement Indigenous peoples rights, and rights as Canadian citizens;
- In practice, we know that there are holes in this net: laws, policies, programs, services can be harmful to or fail Indigenous peoples;
- Implementing treaties properly also depends on the other strands in the net – if there are policies and programs that are not implementing rights as they should, it makes it more difficult for treaties to be effective.

# HOW ARE MODERN TREATY HOLDERS IMPLEMENTING TREATIES?



- Analysis of publicly available information about 21 modern treaty holders and self governing Indigenous governments in Canada (LCAC members) undertaken by Monica Pishew (Anishnaabe), MA. Analysis developed by Ms. Pishew and Dr. Irlbacher-Fox (academic paper currently under development) ;
- Modern treaty holders and self governing Indigenous governments across Canada all:
  - Root their programs in cultural values and practices;
  - Have a strong focus on lands, with programs and services structured around cultural beliefs and practices;
  - Generally suffuse their governance approaches with cultural values and practices;
  - Programs and services have an emphasis on restoration and revitalization of language, culture, and being land based;
  - All work is contextualized by re-building capacities and overcoming past and ongoing harms of colonization.

# MODERN TREATY HOLDERS (MT'S): IMPLEMENTATION APPROACHES



## Dene Laws

- 1) Share what you have
- 2) Help each other
- 3) Love each other as much as possible
- 4) Be respectful of elders & everything around you
- 5) Pass on the teaching
- 6) Be happy at all times
- 7) Sleep at nights and work during the day
- 8) Be polite and don't argue with anyone
- 9) Young girls and boys should behave respectfully



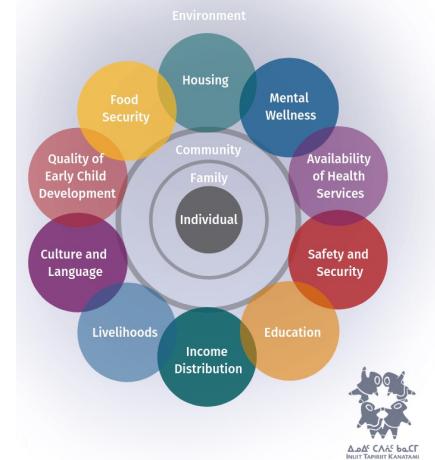
## Inuit Qaujimajatuqangit “that which Inuit have always known to be true” Principles:

- 1) Inuugatigiitserniq: Respecting others, relationships and caring for people.
- 2) Tunnganarniq: Fostering good spirits by being open, welcoming and inclusive.
- 3) Piijtsirniq: Serving and providing for family and/or community.
- 4) Aajiiqatigiiniq: Decision making through discussion and consensus.
- 5) Pilimmaksarniq/Pijariuqsarniq: Development of skills through observation, mentoring, practice, and effort.
- 6) Piliriqatigiiniq/Ikajuqiginniq: Working together for a common cause.
- 7) Qanuqtuurniq: Being innovative and resourceful.
- 8) Avatittinnik Kamatsiarniq: Respect and care for the land, animals and the environment.

## Maligait (four big laws) contribute to living a good life which is the purpose of being:

- 1) Working for the common good
- 2) Respecting all living things
- 3) Maintaining harmony and balance
- 4) Continually planning and preparing for the future

## Social Determinants of Inuit Health



# PRELIMINARY RESULTS: ORGANIZING PRINCIPLES OF TREATY IMPLEMENTATION



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- Culture, language, and land-based ways of life are at the foundation of MT approaches to developing and delivering programs: land claims implementation approaches are shaped primarily by culture, not by non-Indigenous values or principles;
  - MTs organize their governments and responsibilities through cultural values and practices;
  - Programs and services tend to respond directly to specific local context through the lens of culture, and reflect cultural values, practices, and protocol in terms of design and delivery;
- Addressing colonization harms burden MT's work in all areas – land, health, education, governance;
- A key organizing principle across all modern treaty holders/self governing Indigenous governments is implementation in ways promoting healing from colonization harms, through culture-based restoration of capacities damaged by colonization events, legacies, and ongoing policies and institutional structures;
- The potential of modern treaties can be undercut by government laws and policies that do not uphold Indigenous rights, and that result in dire socio-economic conditions in the present, as well as the need to re-build due to the damages of colonization.

# THE RISKS OF NOT IMPLEMENTING UNDRIP



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- Some presenters to date have talked about the risks of looking at the net that exists, and whether it can be fixed, or insist that there are no holes in the net;
- We know that federal and territorial programs and services are failing Indigenous peoples, therefore we know there are holes in the net;
- Federal Bill C-15, passed by the Senate on June 21, preamble acknowledges the status of the principles of UNDRIP as “the minimum standards for the survival, dignity and well-being of Indigenous peoples of the world”;
- What are the risks of **not** implementing UNDRIP, based on the evidence we see with respect to how modern treaty implementation is impacted by the socio-economic conditions of Indigenous peoples in the NWT?

# HUMAN RIGHTS STANDARDS TO GUIDE WHAT NEEDS TO BE FIXED



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- Adopting a UNDRIP law will benefit treaty implementation in three ways, by:
  1. Aligning GNWT treaty negotiating and implementation mandates with a clear framework for human rights standards that must be reflected in treaties.
  2. Addressing the holes in the net with respect to programs and services provided by federal and territorial governments, to Indigenous peoples, which affect socio-economic conditions in which treaties are implemented;
  3. Create a statutory basis for a coordinated approach to UNDRIP implementation, which would recognize that all of the different strands in the net are connected and affect each other.
- Federal and GNWT laws, policies, programs and services for Indigenous peoples, create the context for treaty implementation, by creating socio-economic outcomes and conditions of Indigenous peoples.
- There are significant socio-economic gaps between Indigenous and non-Indigenous people in Canada and in the NWT; poor socio-economic status undermines treaty implementation.
- Modern treaties are one strand in the net that rely on other strands being strong, for treaties to be effective.

## ARTICLE 37 SPECIFIES THAT ADOPTING UNDRIP CANNOT UNDERMINE TREATY RIGHTS



- *UNDRIP Article 37*
  - 1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.
  - 2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.
- UNDRIP article 37 serves to ensure that modern treaty negotiations and implementation would not be negatively impacted by GNWT passing a law to implement UNDRIP.
- Article 37 is not a basis for creating a contest between UNDRIP and treaty implementation; nor is it a basis on which not pursuing UNDRIP can be justified.
- UNDRIP provides articles that can be used to measure both whether negotiating mandates are compliant with human rights standards (do negotiating mandates meet the minimum human rights standards described in the UNDRIP articles?), and, to measure whether approaches to implementing treaties uphold UNDRIP human rights standards.

## NWT TREATY NEGOTIATIONS AND UNDRIP

- The GNWT is negotiating lands and self government agreements with Indigenous governments as a party alongside Canada.
- Negotiating mandates of the GNWT require revision to align them with UNDRIP – Canada has already been revising their mandates, so GNWT is behind and that gap between the two governments is problematic;
- In self government negotiations, GNWT mandates do not meet UNDRIP standards, while in some subject matters, Canada's mandate does meet UNDRIP standards. This results in Indigenous negotiators being forced to leave potential authorities for the future, when GNWT mandates align with UNDRIP, resulting in opportunities lost for improving the lives of Indigenous peoples in the NWT in the immediate future;
- Leaving authorities on the table to be negotiating in future imposes a significant economic cost on communities.

# HOW IS GNWT IMPLEMENTING UNDRIP ALREADY?



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- There are a number of examples where GNWT departments are already doing things to implement UNDRIP, generally in response to clear needs and the result of efforts of individuals:
  - Cultural safety action plan and training of the department of health;
  - Cultural competency training for all GNWT employees;
  - Language and culture based programs in education;
  - Adding an Indigenous Knowledge Holders Council to the governance structure of the new polytechnic.
- What is missing is a coordinated, cohesive, whole-of-government approach to implementing UNDRIP – currently, individual departments and individuals exercise discretion, or may not be able to make positive changes, instead of being required to approach their work, by law, in ways that implement UNDRIP;
- It is essential that UNDRIP be passed in law, to provide a statutory whole-of-government basis for taking action in every department, policy, program, and service to close the social well being gaps between Indigenous and non-Indigenous NWT residents.

# RECOMMENDATIONS



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- Passing a law would establish the **legacy of this assembly** as the one that created a tool to fix the net;
- **Implementing UNDRIP will be a process**, not an event: GNWT will have to work with Indigenous government partners to learn how to use its k'alaaghhaa, and it will take many years to fix the whole net;
- **Change must be comprehensive, and coordinating that within government** is a task that legislation should also speak to, **providing a central authority with the ability to oversee and report** on UNDRIP implementation progress.



**Mahsi  
Quyanini  
Thank You**  
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