

Vuntut Gwitchin First Nation Self-Government



Overview of Vuntut Gwitchin First Nation
Final Agreement, Self-Government Agreement, Constitution and Laws

Great Britain grants Hudson's Bay Company a **Royal Licence** to North-West Territories pursuant to the **Act for regulating the fur trade and establishing a criminal and civil jurisdiction within certain parts of North America.**

1821

Russia and Great Britain sign the **Treaty of Saint Petersburg** agreeing that the **141st Meridian** defines the territorial boundary between Russian America and British North America.

U.S. buys Russian American territory (Alaska) from Russia.

1825

Hudson's Bay Company is expelled from Fort Yukon trading post by U.S. Alaska Commercial Company for being on U.S. side of **141st Meridian.**

Dominion of Canada is created by Great Britain under the **British North America Act.**

1867

Hudson's Bay Company surrenders its royal privileges in the North-West Territories to Great Britain, who then transfers the land to Canada under the **Ruperts Land Order.**

1869

Hudson's Bay Company and many Gwich'in relocate to "New" Rampart House after U.S. surveyors identify "Old" Rampart House as being on U.S. side of **141st Meridian.**

Vuntut Gwitchin Traditional Territory is added to the Dominion of Canada under the **British North America Act.**

1870

1890

Hudson's Bay Company abandons trading posts at "New" Rampart House and LaPierre House, and retreats from Yukon river watershed to Fort McPherson.

1893

Yukon Territory is carved out from the from the North-West Territories and created under the **Yukon Territory Act.**

Joint U.S.-Canada survey party completes survey of **141st Meridian.**

1898

Canada passes and enforces strict smallpox quarantine regulations at "New" Rampart House.

Canada's **Department of Indian Affairs** opens new **Choochla Residential School** at Carcross.

1911-1912

Canada's **Royal Northwest Mounted Police** establish detachment and customs post at "New" Rampart House to enforce regulations and collect taxes at border.

Canada's **Department of Indian Affairs** introduces **Indian Act** band council system to Vuntut Gwitchin at Old Crow and holds first election for Chief and Council of the Old Crow Indian Band.

1912-1920

Canada's **Department of Indian Affairs** begins to assume role in Vuntut Gwitchin affairs through the **Indian Act.**

1920's

Canada's **Royal Northwest Mounted Police** move detachment to Old Crow.

Together Today For Our Children

Tomorrow is tabled by Council of Yukon Indians with Canada's Prime Minister.

Supreme Court of Canada releases decision on Nisga'a land claim in *Frank Calder v. B.C.*

Canada takes control of its Constitution from Great Britain under the **Constitution Act, 1982** adding the **Charter of Rights and Freedoms** and protection of **Aboriginal and Treaty Rights**.

Final Agreement and Self-Government Agreement are approved by Citizens and then signed with Canada and Yukon.

Supreme Court of Canada declines to hear Vuntut Gwitchin appeal of oil and gas regulatory approval in *Vuntut Gwitchin First Nation v. Canada and Northern Cross*.

North Yukon Regional Land Use Plan is approved pursuant to **Chapter 11** of the **Final Agreement**.

Peel Watershed Regional Land Use Plan is approved pursuant to **Chapter 11** of the **Final Agreement**.

1972

1973

1975

1982

1992

1993

1995

1998

2003

2009

2017

2019

2023

Old Crow Chief and Council submit **petition** for resolution of land claims to Parliament of Canada.

Mackenzie Valley Pipeline Inquiry is held by Justice Thomas Berger including hearings in Old Crow.

Constitution is approved by Citizens.

Final Agreement and Self-Government Agreement come into effect and the parties begin implementation.

Financial Transfer Agreement is concluded pursuant to the **Self-Government Agreement**.

Canada delegates responsibility for public lands, water and resources to Yukon under the **Yukon Act**.

Yukon Environmental and Socio-economic Assessment Act comes into effect pursuant to **Chapter 12** of the **Final Agreement**.

Supreme Court of Canada releases **Peel Watershed Regional Land Use Plan** decision in *Vuntut Gwitchin First Nation v. Yukon*.

Supreme Court of Canada decision *pending* on the application of the **Charter of Rights and Freedoms** to Vuntut Gwitchin self-government in *Cindy Dickson v. Vuntut Gwitchin First Nation*.

Constitution Act, 1982

Section 25 (Part 1)

The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including:

- (a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and
- (b) any rights or freedoms that now exist by way of land claim agreements or may be so acquired.

Section 35 (Part 2)

- (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.
- (2) In this Act, aboriginal peoples of Canada includes the Indian, Inuit and Métis peoples of Canada.
- (3) For greater certainty, in subsection (1) treaty rights includes rights that now exist by way of land claims agreements or may be so acquired.

Umbrella Final Agreement, 1993

Land Claims and Treaty Rights

- A comprehensive, non-legally binding framework of general terms and conditions for settling final land claims agreements with individual Yukon First Nations.
- A total of 41,595 km² of land (8.5% of Yukon) made available for Settlement Land to be owned by Yukon First Nations, including oil, gas and minerals to 25,900 km² of Category A Settlement Land.
- A total of \$242.6 million (1989 dollars) in financial compensation to Yukon First Nations for the surrender and release of Aboriginal title, rights and interests to Non-Settlement Land.
- The establishment of s. 35 protected Treaty rights in relation to land, water and resource ownership and management; hunting, fishing and trapping; heritage; taxation; and social and economic benefits.

Self-Government and Aboriginal Rights

- Chapter 24 established a framework for separate, standalone self-government agreements to be negotiated with individual Yukon First Nations that were legally binding but not constitutionally protected land claims agreements or treaty rights.
- The first standalone non-treaty self-government agreements in Canada to ever be negotiated, and still among remaining few of this kind.
- Replaced the Indian Act and “Status Indian” / “Non-Status Indian” divide with recognized self-government powers and Yukon First Nation’s constitutions and laws.
- Established a new fiscal relationship with access to access to self-government funding through Financial Transfer Agreements (FTA); Programs and Services Transfer Agreements (PSTA); and tax sharing and collection arrangements.

Final Agreement, 1995

Land Claim

- First four Final Agreements were only the second land claims agreements ever concluded in Canada (after 1975 James Bay).
- Final Agreement has general provisions of the Umbrella Final Agreement and specific provisions that apply only to VGFN.
- A total of 7,751 km² of Settlement Land within the Traditional Territory all in the form of Category A (includes ownership of oil, gas and minerals). About 1/5 of all Settlement Land made available to Yukon First Nations under the Umbrella Final Agreement.
- A total of 31,189 km² of protected and special management areas within the Traditional Territory.
- A total of \$19.2 million (1989 dollars) in financial compensation for the surrender of Non-Settlement Land to the Crown.

Treaty Rights

- Treaty rights were acquired under the Final Agreement in exchange for the release of unrecognized Aboriginal title, rights and interests to Non-Settlement Land within the Traditional Territory.
- The Final Agreement contains 28 Chapters on heritage rights, water management rights, economic development measures, rights to harvest fish and wildlife, and rights to harvest forest resources. The Final Agreement also provides various rights to participation in the management of land, water and resources. Each of these rights, acquired through the land claim, are Treaty rights under s. 35 of the Constitution Act, 1982.
- Treaty rights are held collectively by VGFN for the benefit of all present and future beneficiaries of the Final Agreement.

Self-Government Agreement, 1995

Self-Government Rights

- Chapter 24 of the Final Agreement enabled the negotiation of the Self-Government Agreement.
- Canada did not recognize that YFNs had an existing Aboriginal right to self-government under s. 35. As a result, Canada was not prepared to include self-government within the Final Agreement as this would have the effect of protecting the right to self-government as a Treaty right under s. 35.
- Self-Government Agreement is not a land claim agreement or treaty with constitutional status or protection, but a unique form of agreement that is legally binding on all persons and subject to the honour of the Crown.
- Final Agreement did not extinguish Aboriginal title, rights and interests other than those to Non-Settlement Land. These surviving Aboriginal rights, including the inherent right of self-government, continue to exist and are protected under s. 35 independent of the Agreements.

Self-Government Jurisdiction

- Abolished the “Old Crow Indian Band” legal entity created by Canada under the Indian Act and recognized VGFN as a distinct legal entity with the legal capacity to enter into legally binding agreements **(9.0)**.
- Recognition of VGFN Constitution as a fundamental law of the First Nation addressing core matters of citizenship, governing bodies, financial management, rights and freedoms of Citizens, challenging of laws, and selection of leaders **(10.0)**.
- Recognition of three broad areas in which VGFN has jurisdiction and may exercise law-making authority over: administration, operation and management of internal First Nation affairs **(13.1)**; program and service delivery to First Nation Citizens in Yukon **(13.2)**; control of Settlement Land **(13.3)**.
- Until VGFN passes a law or agrees to assume responsibility for delivering a particular program or service to Citizens or to regulate a matter on Settlement Land, then the Yukon and Federal laws continue to apply as is, and their governments continue to hold responsibility for providing Citizens with access to programs and services equal to those provided to other Yukoners **(13.5 and 17.0)**.

Self-Government Agreement, 1995

Unfinished Business

- Self-Government Agreement left some business unfinished and remains to be addressed or implemented.
- Recognition of VGFN's inherent right to self-government and protection of the Self-Government Agreement as a s. 35 protected treaty.
- The application of the Charter of Rights and Freedoms to VGFN self-government.
- The relationship between VGFN laws and federal laws, and which laws take priority in the event of a conflict or incompatibility (**13.5.2**).
- The negotiation of an administration of VGFN justice agreement (**13.6.0**).
- The transfer of responsibilities to VGFN under PSTAs for the management, administration and delivery of programs or services (**17.0**).
- The provision of sufficient resources under the Financial Transfer Agreement that are required by VGFN to “provide public services at levels reasonably comparable to those generally prevailing in Yukon, at reasonably comparable levels of taxation” (**16.0**).
- What is the role of the United Nations Declaration on the Rights of Indigenous Peoples in implementing the SGA moving forward?

Constitution

Supreme Law of VGFN

- Self-Government Agreement enabled VGFN to establish our own Constitution as the supreme law over internal VGFN affairs. The Constitution effectively replaces the discriminatory governance system and rules that were historically imposed and enforced upon VGFN by Canada under the Indian Act.
- The Constitution was first ratified by Citizens in 1992 prior to the coming into effect of the Self-Government Agreement. The Constitution has since been amended by the General Assembly in 2006 and 2019.
- The basic structure of the Constitution must meet the conditions set out under section **10.1** of the Self-Government which includes: citizenship code (**10.1.1**); governing bodies and their powers, duties, composition, membership and procedures (**10.1.2**); a system of financial reporting to Citizens (**10.1.3**); protection of the rights and freedoms of Citizens (**10.1.4**); process for the challenging of the validity of VGFN laws (**10.1.5**); process for Citizens to amend the Constitution (**10.1.6**); and consistency with the Self-Government Agreement (**10.1.7**).

Governance Bodies and Responsibilities

- The Constitution currently defines the formal governing “branches” of VGFN as the (1) Chief and Council, (2) General Assembly, and (3) Elders Council (**Article V**). The Chief and Council effectively functions as the “executive” and “legislative” branches of VGFN while the General Assembly and Elders Council serve as advisory and accountability functions to the Chief and Council.
- The Constitution also establishes a placeholder for a VGFN court to become the judicial “branch” of VGFN in the future through administration of justice negotiations (**Articles V**). Until then, challenges to VGFN laws are heard by Supreme Court of Yukon (e.g., *Cindy Dickson v. VGFN*).
- The Constitution also establishes the Youth Council, although it is not defined as a formal “branch” of VGFN self-government the same as the Elders Council (**Article XIII**).
- A Review Council was also mandated under the Constitution in 2019 to review certain matters (i.e., election recounts, complaints about Council conduct, appointment of interim Councillors, removal from office, citizenship/enrollment application disputes) (**Article XII**).

VGFN Laws

Law-Making

- VGFN has the power to make laws at any time on any of the areas listed under 13.0 of the SGA.
- The Constitution gives the authority to make laws to the Chief and Council.
- All VGFN laws must be consistent with and are subject to the Constitution. Any inconsistent VGFN law may be challenged by a Citizen.
- The Governance Act defines the process that Council must follow when proposing and passing any new VGFN laws, amendments to existing VGFN laws or the repeal of existing VGFN laws.
- To-date VGFN has exercised very little law-making authority under the SGA.

Laws Made To-Date

- **Governance Act.** Enacted in 2006. First VGFN law enacted under the SGA. Last amended in 2023.
- **Annual Appropriation Acts.** Annual VGFN law required by the Governance Act since 2006 to approve the appropriation of budgeted funds for the upcoming fiscal year.
- **Business Licence Act.** VGFN law regulating business licensing on Settlement Land. Last amended in 2023.
- **Heritage Act.** Enacted in 2016. VGFN law to provide direction for the management of VGFN heritage and culture, including identifying ownership of heritage resources in the Traditional Territory.
- **Community Emergency Act.** Enacted in 2020 to address emergencies on Settlement Land (e.g., COVID-19, dangerous offender, substance use).
- **Interim Elections Act.** Enacted in 2020 to maintain previous election rules that were removed from the Constitution in 2019 pending the development of a new VGFN elections law.

Council Duties and Responsibilities

Constitutional Duties

- The Constitution defines the primary responsibilities of the Chief and Council as:
 - Exercising all VGFN jurisdiction, power and authority and fulfilling any VGFN duties pursuant to the Final Agreement and SGA.
 - Exercising all VGFN powers and doing such things as may be necessary to fulfill the objectives of the Constitution.
 - Proposing and making new VGFN laws for the peace, order and good government of VGFN.
 - Establishing a system of VGFN laws according to the traditions, needs and ideals of VGFN and in accordance with the objectives of the Constitution.
 - Implementing VGFN laws.
 - Setting clear policies and guidelines and ensuring good management and reporting in all aspects of VGFN government.
 - Considering direction provided by the General Assembly through resolution.
 - Establishing any trust for the benefit of VGFN.

Fiduciary and Legal Duties

- Chief and Council also have a fiduciary relationship to Citizens as beneficiaries of the Agreements which requires Council members to exercise their authority in the best interests of present and future Citizens. This fiduciary relationship can give rise to specific obligations from time to time (e.g. when council decides whether to spend, save or invest VGFN settlement funds).
- The fiduciary relationship also requires Council members to avoid any real or perceived conflicts of interests. The duty to avoid conflicts of interests is also included in VGFN's Code of Conduct which Council is required to abide by under the Constitution.
- VGFN's Code of Conduct also addresses other Council duties, responsibilities and expectations with respect to personal and professional conduct and confidentiality.