



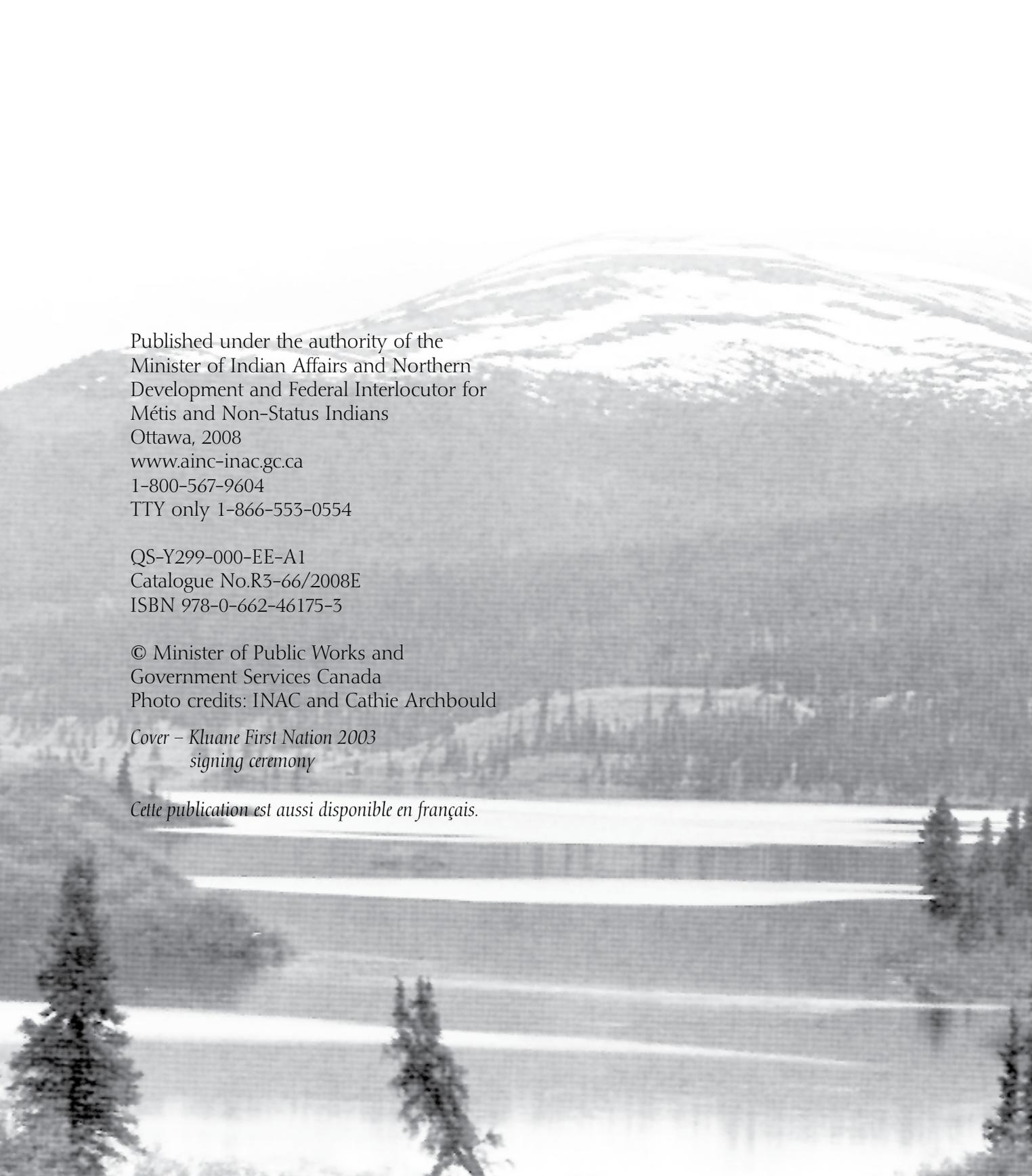
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Building THE Future

Yukon First Nation Self-Government





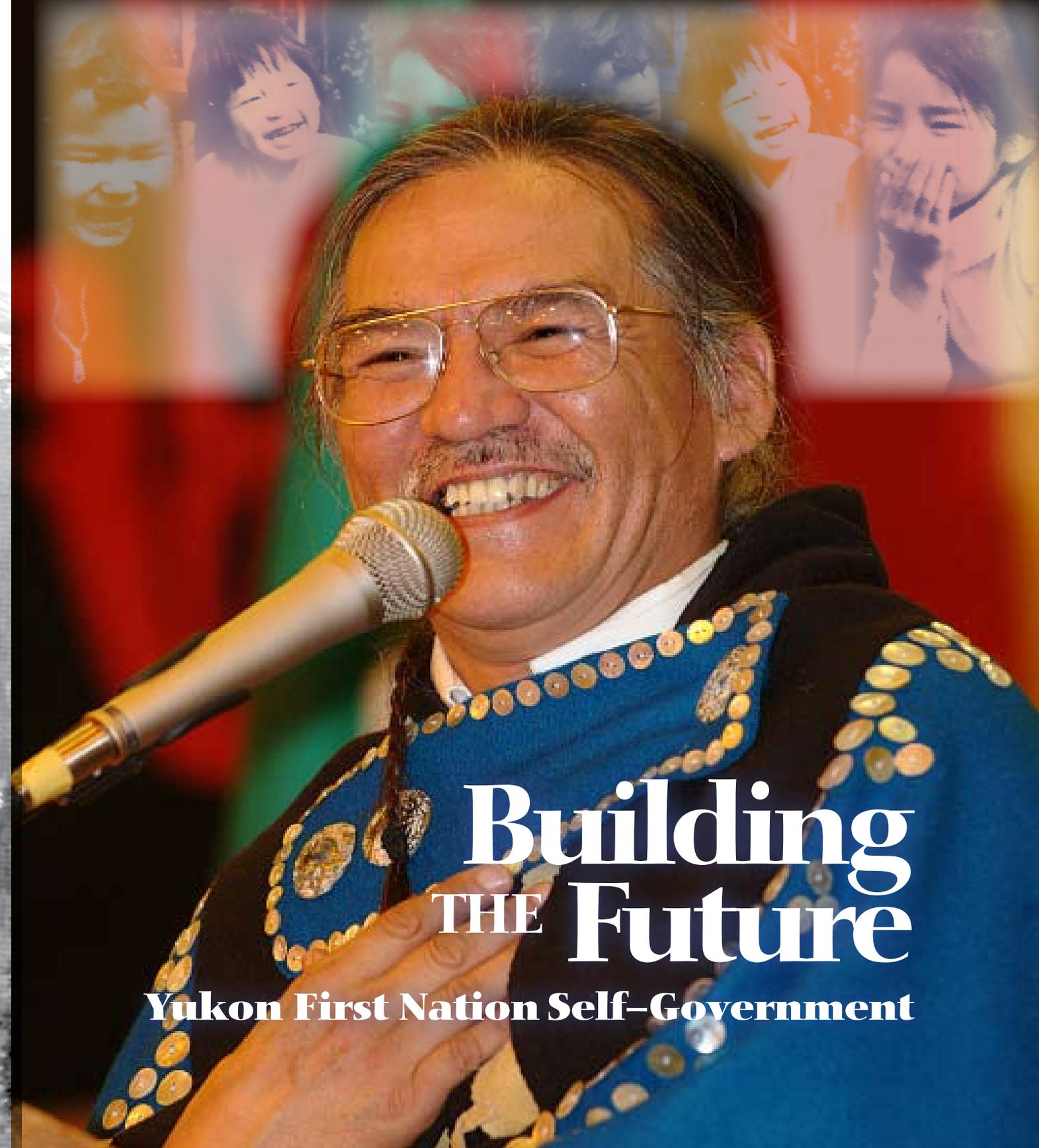
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*Cover – Kluane First Nation 2003
signing ceremony*

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Building THE Future

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Introduction

Yukon land claim and self-government agreements are changing the face of governance in the Yukon and altering the relationship between self-governing Yukon First Nations (SGYFNs), the Government of Yukon, and the Government of Canada. Self-government empowers a SGYFN to govern itself in a manner that is responsive to the needs and interests of its people. Implementation of self-government provides SGYFNs with the necessary tools to achieve this objective.

On May 29, 1993, the Government of Canada, the Government of Yukon, and the Council for Yukon Indians – now known as the Council of Yukon First Nations, signed an Umbrella Final Agreement (UFA). The UFA forms the basis for the negotiation of each First Nation's final agreement. The final agreements provide for the negotiation of self-government agreements, which allow SGYFNs to make decisions in relation to their lands, resources, governments and programs.

Land claims and self-government agreements came into effect for eleven SGYFNs on the following dates:

Vuntut Gwitchin First Nation *February 14, 1995*

Champagne and Aishihik First Nations *February 14, 1995*

First Nation of Nacho Nyak Dun *February 14, 1995*

Teslin Tlingit Council *February 14, 1995*

Selkirk First Nation *October 1, 1997*

Little Salmon/Carmacks First Nation *October 1, 1997*

Tr'ondëk Hwëch'in *September 15, 1998*

Ta'an Kwach'an Council *April 1, 2002*

Kluane First Nation *February 2, 2004*

Kwanlin Dun First Nation *April 1, 2005*

Carcross/Tagish First Nation *January 9, 2006*

The White River First Nation, Ross River Dena Council and Liard First Nation have not settled their land claims and remain as bands under the Indian Act.

Yukon Governance Landscape

The plans and agreements for each self-governing Yukon First Nation are interrelated and work together to structure self-government and program/service delivery in the Yukon.

UMBRELLA FINAL AGREEMENT (UFA)

Final agreements are based on the UFA with specific provisions for each First Nation. The UFA creates public government institutions, defines the quantum of settlement land, and includes a commitment to negotiate self-government agreements.

FINAL AGREEMENTS

Final agreements are modern day treaties that are protected under section 35 of the Constitution of Canada on the rights of Aboriginal peoples. Final agreements provide for financial compensation, identify settlement land for each SGYFN, and outline land and resource ownership, tenure, and management issues.

Final Agreement Implementation Plans

Identify the activities, timeframes and resources that have been agreed upon to give effect to the final agreement.

DEVOLUTION TRANSFER AGREEMENT

The devolution agreement transferred the federal government's lands and resources authorities related to the Northern Affairs Program in the Yukon to the Yukon government. Responsibility for public lands, water, forestry, mineral resources and environmental assessment was devolved to the Yukon government on April 1, 2003.



Vuntut Gwitchin First Nation, Champagne and Aishihik First Nations, First Nation of Nacho Nyak Dun and Teslin Tlingit Council 1993 signing ceremony

SELF-GOVERNMENT AGREEMENTS

Self-government agreements recognise SGYFNs as governments (as opposed to Indian Act bands) and establish the framework for intergovernmental relationships. Self-government agreements provide SGYFNs with the power to enact laws of a local or private nature on settlement land. A self-government agreement is not afforded constitutional protection under section 35 of the Constitution of Canada on the rights of Aboriginal peoples.

Self-government Agreement Implementation Plans

The implementation plans identify the activities, timeframes and resources that have been agreed upon to give effect to self-government agreements.

Programs and Services Transfer Agreements (PSTAs)

PSTAs enable SGYFNs to assume responsibility for federal or territorial programs falling within SGYFN law-making authority.

Self-Government Financial Transfer Agreements

The financial transfer agreements establish new financial relationships and provide a financial mechanism to flow funding from various sources and to trigger adjustments.

Taxation Agreements

Provide for the coordination of taxation powers between the Government of Canada, the Government of Yukon and SGYFNs within their respective areas of jurisdiction.

Administration of Justice Agreements

The administration of justice agreements may include provisions in relation to adjudication, civil remedies, punitive sanctions (including fine, penalty and imprisonment), prosecution, corrections, law enforcement, the relation of SGYFN courts to other courts, and any other related matter.



Land

Before final agreements were negotiated, the ownership of lands and resources in the Yukon was uncertain as Yukon First Nations asserted claims to land and resources, based on their traditional use and occupancy of the land. These land claims were settled by the final agreements. Final agreements provide for the resolution of comprehensive land claims issues relating to land and resource ownership, tenure, and management. Each final agreement identifies settlement land that is owned and managed by the self-governing Yukon First Nation and sets out rules regarding access to these lands. To determine the boundaries of settlement lands, and the rules around access for personal or commercial purposes, one must review each SGYFN's final agreement.

Self-government agreements require each SGYFN, the Yukon government and municipalities to promote compatible land uses of specified settlement lands and adjacent non-settlement lands which are in or near municipalities. The purpose of these provisions is to avoid land uses which have significant adverse impacts on the peaceful use and enjoyment of neighbouring properties.



Carcross/Tagish First Nation 2005 signing ceremony

Legal Status of Self-Governing Yukon First Nations

Prior to becoming self-governing, Yukon First Nations were Indian Act bands, with limited responsibilities for administering Indian Affairs programs for status Indians. Indian Act bands serve as delivery agents for programs designed by Indian and Northern Affairs Canada (INAC) and other federal agencies, with limited authority to modify them. On the effective date of a self-government agreement, the Indian Act band ceases to exist and is succeeded by the self-governing Yukon First Nation, a legal entity having the capacity and powers of a natural person, including the ability to enter contracts and hold property.

SGYFNs are recognised governments, having many of the authorities and responsibilities of both territorial and municipal governments. SGYFNs provide autonomous governance and government programs for all their citizens throughout the Yukon. They collaborate with the federal and territorial governments in a government-to-government relationship to ensure that their citizens receive programs and services comparable to those provided across the territory. They have rights and benefits under their final agreements and power over their lands, resources, and the management and administration of their governments. SGYFNs are responsible for program/service design, management, delivery, and spending. With only a few exceptions, the Indian Act no longer applies to SGYFNs, their citizens or to settlement land.

SGYFNs are responsible for developing and maintaining constitutions that recognise and protect the rights and freedoms of their citizens. Generally, a SGYFN constitution will function to:

- recognise and protect the rights and freedoms of its citizens;
- provide the mechanism to challenge the validity of SGYFN laws;
- outline a system of reporting to ensure financial accountability to its citizens;
- establish the SGYFN's governing bodies; and
- provide a citizenship code.

Legislative Powers to Enact Laws

The Yukon First Nations Self-Government Act provides for self-governing Yukon First Nations law-making authority in four general areas:

- (1) internal management of the SGYFN and administration of certain rights and benefits realised under its land claim agreement;
- (2) provision of programs and services in relation to the SGYFN's citizens throughout the Yukon;
- (3) laws of a local or private nature on settlement land in relation to a number of listed matters; and,
- (4) taxation of interests on settlement land and other modes of direct taxation of SGYFN citizens on settlement land.

Application of Federal and Territorial Laws

As with all Canadian governments, self-governing Yukon First Nations operate within the framework of the Canadian Constitution. SGYFN jurisdictions and authorities are intended to operate in a manner consistent with federal and territorial jurisdictions. It is in the interest of all governments to develop cooperative arrangements that will ensure the harmonious relationship of laws. To this end, the relationship of laws in the Yukon is as follows:

- Federal laws continue to apply to SGYFNs, their citizens and on settlement land. In the event of a conflict between a federal law and a SGYFN law, the federal law prevails to the extent of the conflict.
- Territorial laws continue to apply to SGYFNs, their citizens and on settlement land. However, a SGYFN may replace a territorial law by enacting a law that provides for the same matter. Once replaced by a law of the SGYFN, a Yukon law is inoperative to the extent that it deals with the same matter as the SGYFN law. Within its jurisdiction, a law of the First Nation prevails over territorial laws where there is an inconsistency or conflict.

In order to avoid conflicts between a SGYFN law and Yukon laws of general application, each self-government agreement obliges the SGYFN to consult with the Yukon government before enacting a law it would reasonably foresee as impacting on a Yukon law. Conversely, the Government of Yukon is obliged to consult with SGYFNs before enacting a law it would reasonably foresee as impacting on a SGYFN law. Furthermore, the Yukon government may declare that a Yukon law ceases to apply in whole or in part to a SGYFN where a SGYFN law makes a Yukon law partially inoperative and unreasonably or unduly difficult to administer.

Under self-government legislation, the Government of Yukon has the power to act to relieve an emergency, notwithstanding that a SGYFN law may apply to that emergency. A reciprocal provision allows the SGYFN to respond to an emergency; notwithstanding that it is a Yukon law that applies to the emergency. Self-government legislation also provides that Yukon laws apply in the case of an emergency on settlement land that may also affect neighbouring non-settlement land.



Kwanlin Dun First Nation 2005 signing ceremony



Administration of Justice

Self-governing Yukon First Nations have the authority to enact laws in relation to the administration of justice. Self-government agreements provide for the negotiation of administration of justice agreements which may include matters in relation to adjudication, civil remedies, punitive sanctions (including fine, penalty and imprisonment), prosecution, corrections, law enforcement, or the relation of SGYFN courts to other courts. An administration of justice agreement provides an opportunity to clarify the nature and scope of each SGYFN's justice power, and to ensure that the exercise of this power is coordinated with the mainstream justice system.

Self-government agreements set out how offenses against First Nations laws will be dealt with until administration of justice agreements are concluded. Essentially, such offenses would be prosecuted in Yukon courts for up to five years after the effective date of the self-government agreement. During this time, certain limits are also placed on the penalties for various offenses. This period of time can be extended by the parties to the agreement if necessary. Once an administration of justice agreement is concluded, the provisions of the agreement replace the time-limited provisions of the self-government agreement.



*Little Salmon/
Carmacks First
Nation 1997 signing
ceremony*

Transfer of Programs and Services

An overarching objective of the federal government is to transfer authorities and decision-making to local governments for programs of a local or regional nature, while maintaining federal decision-making power for programs of a national nature; Yukon self-government agreements and the Yukon Northern Affairs Program Devolution Transfer Agreement are examples of this.

Programs and Services Transfer Agreements

Programs and Services Transfer Agreements (PSTAs) enable self-governing Yukon First Nations to assume responsibility for federal or territorial program areas falling within the SGYFN's law-making authority. PSTAs are based on negotiations regarding the transfer of programs, responsibilities and resources. When a SGYFN assumes responsibility for a program or service area through a PSTA, other governments cease to be responsible to the citizens of that First Nation for the delivery of programs or services within the transferred area of responsibility. As an example, responsibility for INAC programs and services in the areas of health, social services and housing was transferred by the Government of Canada to First Nations by means of a PSTA.

Yukon self-government agreements are written in a way that recognise that SGYFNs may not wish to assume responsibility for a full range of programs and services related to their authority immediately upon becoming self-governing. Self-government agreements are structured so that responsibility for program design and delivery can be taken up immediately in some areas, while responsibility for others can be assumed over time, in accordance with SGYFN needs, capacities, and priorities.

Self-Government Financial Transfer Agreement

Financing self-government is a shared responsibility among the federal, territorial, and self-governing Yukon First Nation governments. Self-government financial



Selkirk First Nation
1997 signing ceremony

transfer agreements are the primary funding instrument between the Government of Canada and SGYFNs, and provide the financial mechanism to flow funding to SGYFNs and to trigger adjustments.

Funding provided to SGYFNs under their financial transfer agreements include:

- land claim implementation funding;
- funding provided toward the cost of operating self-government institutions; and
- an allocation of the direct and indirect costs to SGYFNs for programs and services previously managed, administered or delivered by other governments.

An objective of self-government financial transfer agreements is to provide the SGYFN with resources to enable it to provide public services for which it is responsible at levels reasonably comparable to those offered elsewhere in the Yukon, at reasonably comparable levels of taxation.

For each transfer of programs and services from the Yukon government to the SGYFN government, the savings to the Government of Yukon resulting from the transfer are calculated. Any savings to the Yukon government resulting from a decrease in its program or service responsibilities are paid to the Government of Canada, less any amount of its taxes that the Yukon government has agreed to allow the SGYFN government to receive.

Self-government financial transfer agreements also incorporate the principle of SGYFN fiscal responsibility and cost-sharing. Therefore, a self-government financial transfer agreement considers the revenue capacity of the SGYFN and reduces the Government of Canada funding to the SGYFN according to an agreed-to formula.

Taxation Powers

Self-governing Yukon First Nations share some taxation powers with the Government of Yukon and the Government of Canada. SGYFNs have the power to tax interests on settlement land; however, this power does not diminish the property taxation powers of other governments. Where a SGYFN assumes responsibility for the delivery of local government services, the Yukon government will share room with that SGYFN with respect to property taxes.

A SGYFN may also enact laws for the direct taxation of its citizens within its settlement land. Again, this SGYFN taxation power does not diminish the taxation powers of the Government of Canada or the Government of Yukon. The Government of Canada and SGYFNs have negotiated the coordination of SGYFN tax laws within the existing federal tax system, as well as the extent to which the SGYFN taxation power may apply to non-citizens or entities within settlement land. The Government of Yukon has also entered into similar taxation agreements with SGYFNs.

Conclusion

The agreements finalised to date have achieved many positive changes in the Yukon. The complete implementation of self-government will take time; all parties continue to work collaboratively to ensure that implementation efforts will realise



the full potential of the agreements. The process is complex and the negotiation of interrelated agreements, such as programs and services transfer agreements and administration of justice agreements is on-going.

The Government of Canada, the Government of Yukon and self-governing Yukon First Nations continue to move forward in building government-to-government-to-government relationships that are unprecedented in Canada. Together we are working to strengthen governance in the territory and presenting to the rest of Canada a new standard for intergovernmental collaboration.



*Tr'ondëk Hwëch'in
1998 signing
ceremony*

GLOSSARY

BAND

A body of Indians for whose collective use and benefit lands have been set apart or money is held by the Crown, or declared to be a band for the purposes of the Indian Act. Each band has its own governing band council, usually consisting of one chief and several councillors. Community members choose the chief and councillors by election, or sometimes through custom. The members of a band generally share common values, traditions and practices rooted in their ancestral heritage. Today, many bands prefer to be known as First Nations.

EFFECTIVE DATE

The date on which an agreement takes effect. An agreement may take effect at the time it is signed, or at a later date specified in the agreement.

FIRST NATION

A term that came into common usage in the 1970s to replace the word "Indian," which was considered offensive to some. Although the term First Nation is widely used, no legal definition of it exists. Among its uses, the term "First Nations peoples" refers to the Indian peoples in Canada, both Status and non-Status. Some Indian peoples have also adopted the term "First Nation" to replace the word "band" in the name of their community.

INDIAN

Indian peoples are one of three groups of people recognized as Aboriginal in the Constitution Act, 1982. It specifies that Aboriginal people in Canada consist of Indians, Inuit and Métis. Indians in Canada are often referred to as: Status Indians, non-Status Indians, Treaty Indians, and First Nations.

INDIAN ACT

Canadian federal legislation, first passed in 1876, and amended several times since. It sets out certain federal government obligations and regulates the management of Indian reserve lands, Indian moneys and other resources.



LAND CLAIMS

Land claims are the claims of Aboriginal groups to land and resources, based on traditional use and occupancy of the land. A land claims agreement is a modern-day “treaty” between the government and Aboriginal people. It finalises and provides certainty about ownership of land and resources, as well as other things.

In 1973, the federal government recognised two broad classes of land claims– comprehensive and specific. Comprehensive claims are based on the assessment that there may be continuing Aboriginal rights to lands and natural resources. These kinds of claims come up in those parts of Canada where Aboriginal title has not previously been dealt with by treaty and other legal means. The claims are called “comprehensive” because of their wide scope. They include such things as land title, fishing and trapping rights and financial compensation. Specific claims deal with specific grievances that First Nations may have regarding the fulfillment of treaties. Specific claims



Ta’an Kwach’an Council 2002 signing ceremony

also cover grievances relating to the administration of First Nations lands and assets under the Indian Act.

LAND SET ASIDE

Land in the Yukon reserved or set aside by INAC for the use of an Indian program for Yukon Indian people.

RESERVE

Tract of land, the legal title to which is held by the Crown, set apart for the use and benefit of an Indian band.

SETTLEMENT LAND

In total, the Umbrella Final Agreement (UFA) allocated 41,595 km² [16,060 miles²] of Settlement Land in the Yukon to be divided amongst all 14 Yukon First Nations. Settlement Land occupies about 8.5 per cent of the total land area of the Yukon. Upon the effective date of a final agreement, the self-governing Yukon First Nation (SGYFN) becomes the legal owner of its Settlement Land.

- There are 25,899 km² [10,000 miles²] of Category A Settlement Land – which the SGYFN fully owns, including both surface and sub-surface (mines and minerals).
- There are 15,539 km² [6,000 miles²] of Category B and Fee Simple Settlement Land – on which the SGYFN has rights to the surface only. Mines and mineral rights are retained by the Yukon government.

At this time, three of the 14 Yukon First Nations have not settled their land claims.

STATUS INDIAN

A person who is registered as an Indian under the Indian Act. The Act sets out the requirements for determining who is an Indian for the purposes of the Indian Act.





TRADITIONAL TERRITORY

The geographic area claimed to have been traditionally used and occupied in the past by each of the 14 Yukon First Nations. Some areas were used by more than one First Nation, and these areas are called “overlap” areas.

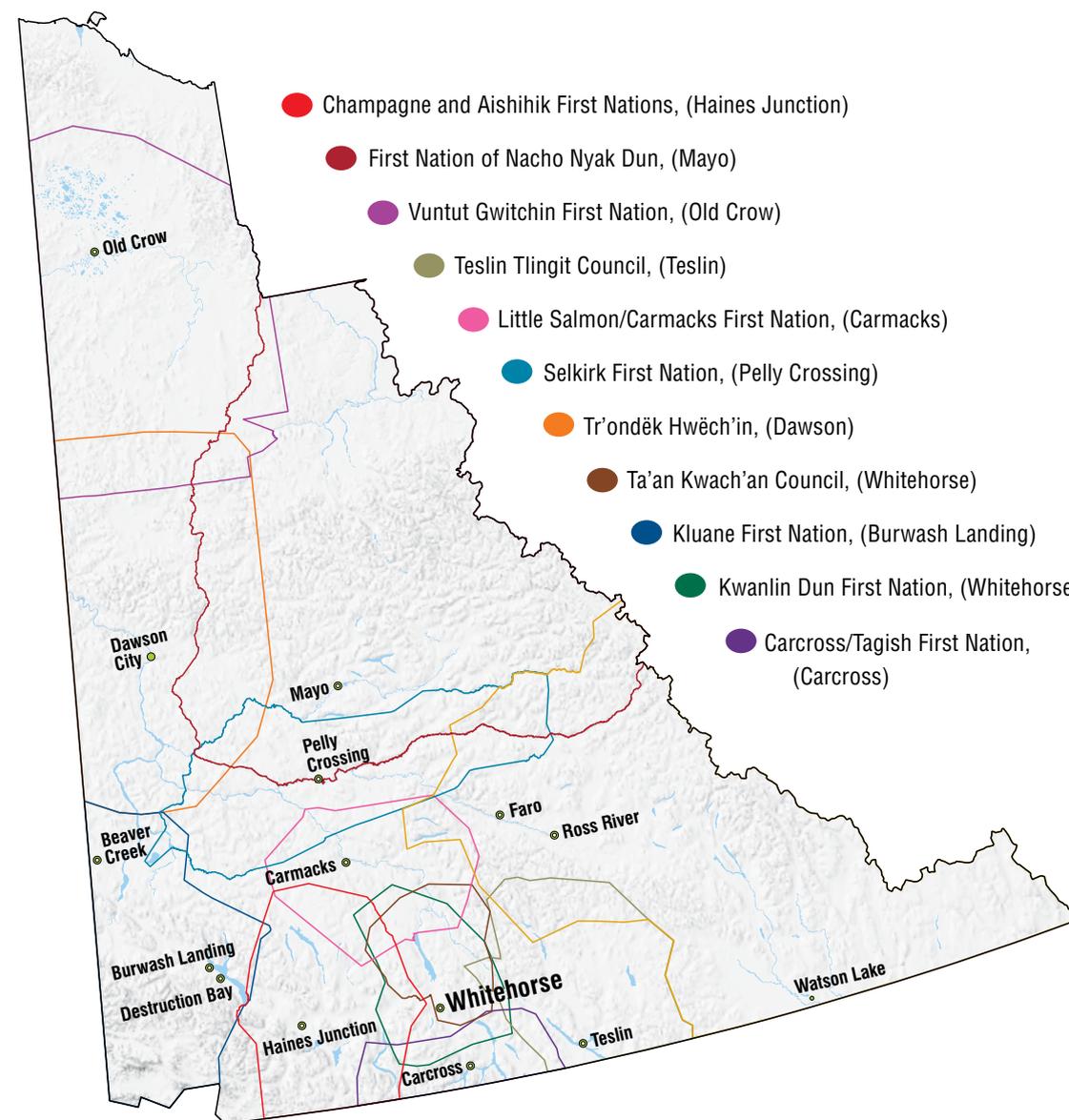


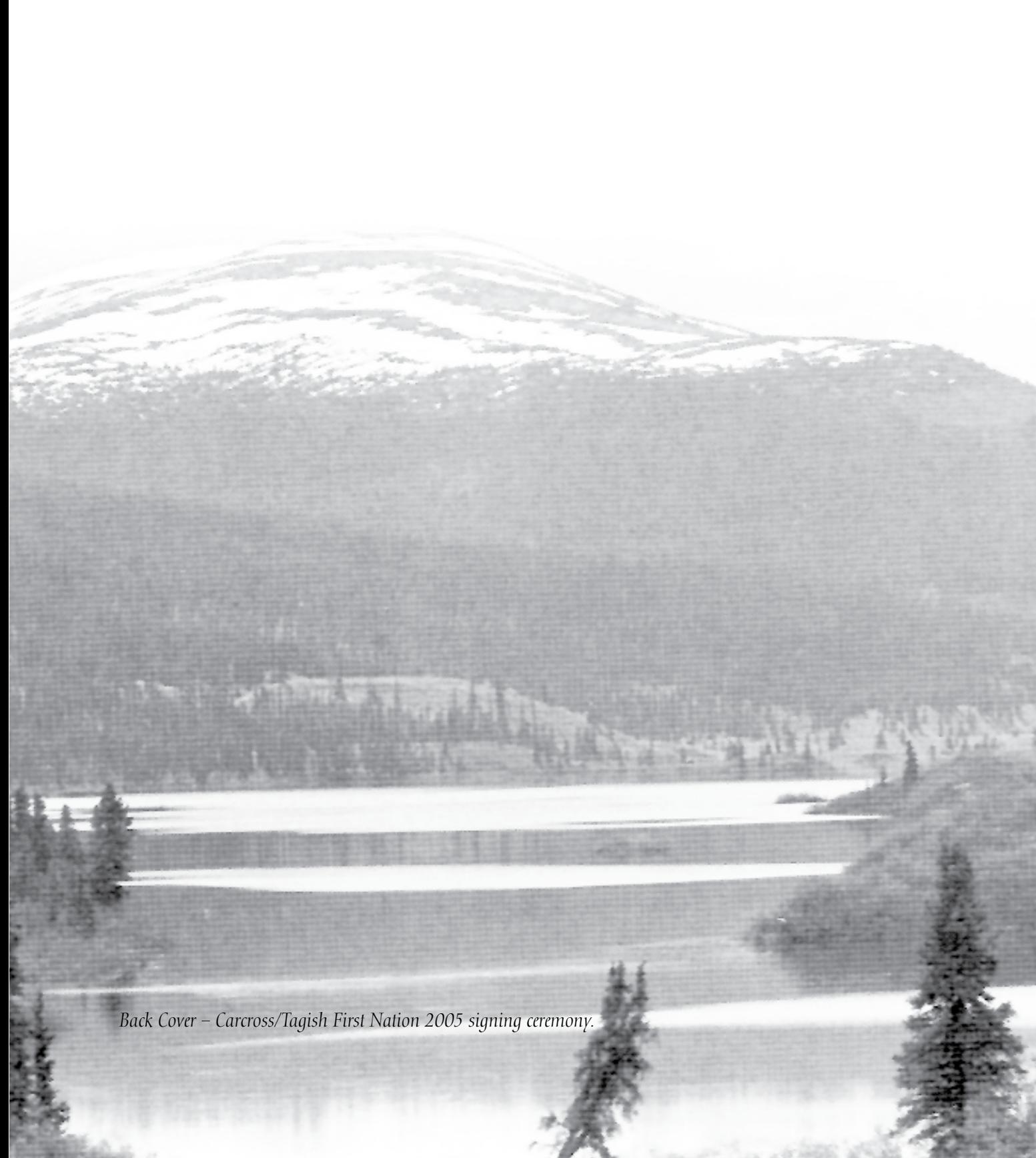
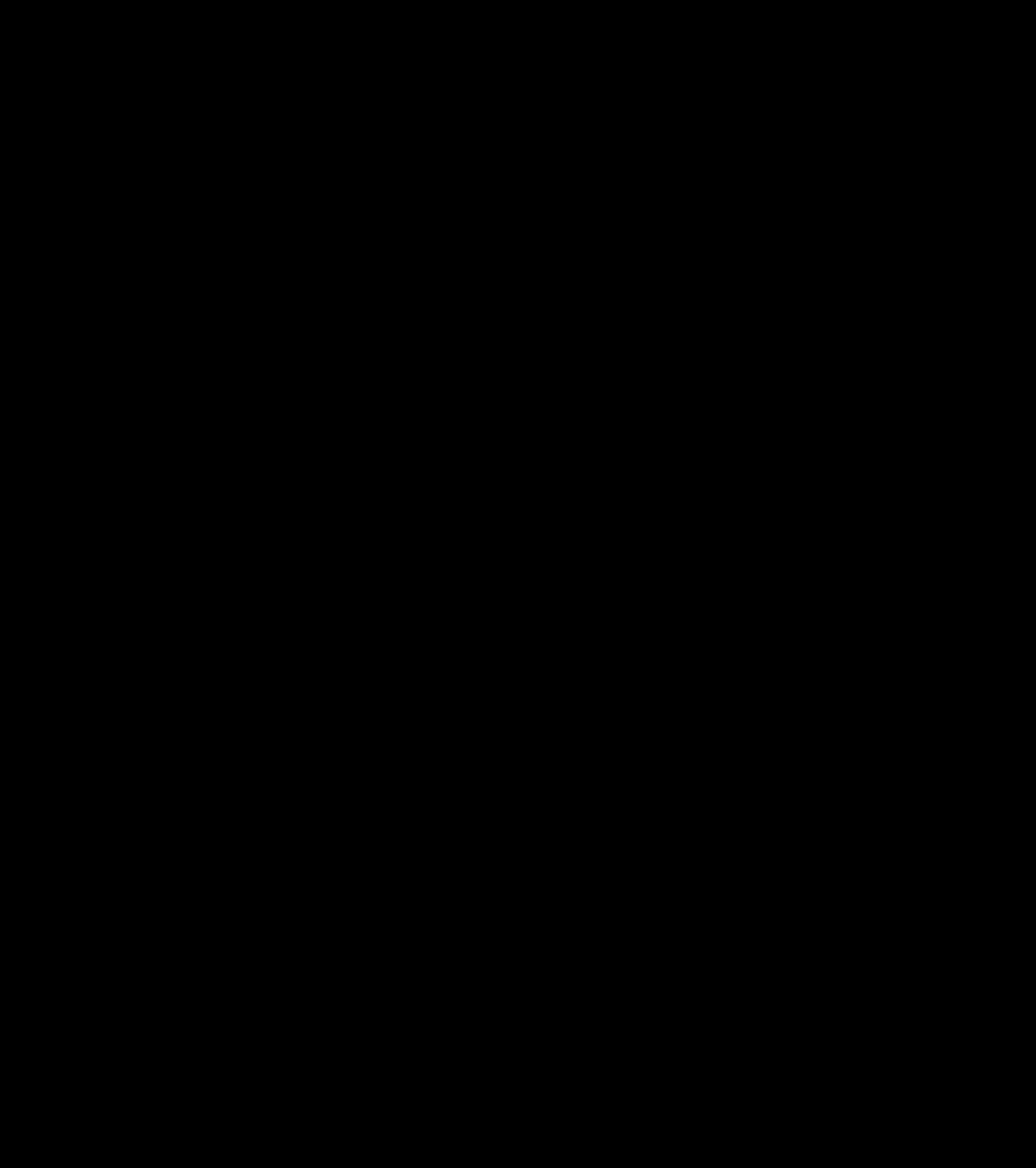
*Kluane First Nation
2003 signing
ceremony*

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FRIST NATIONS TRADITIONAL TERRITORIES

The lines on this graphic represent the approximate boundaries of traditional territories. For legal reference to traditional territory boundaries please see the maps provided under section 2.9.1 of the Umbrella Final Agreement.





Back Cover – Carcross/Tagish First Nation 2005 signing ceremony.



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