Gaining Powers, Losing Control
The Impact of the Little Salmon/Carmacks First Nation Self-Government and Final Agreements

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Introduction

Little Salmon/Carmacks First Nation signed the Little Salmon/Carmacks First Nation’s Final Agreement and their Self-Government Agreement in 1997. This paper outlines the combined impact of these agreements on the ability of the First Nation to control its forests. Despite the broad powers granted in their Final Agreement and Self-Government Agreement, the Little Salmon Camracks First Nation is clearly facing major implementation issues that have undermined the First Nation’s control.

This analysis is constrained by the small size and geographic isolation of the Little Salmon/Carmacks First Nation, which essentially limits the evidence available to census data and a collection of research projects conducted in partnership with the First Nation. The focus of this essay on forest resources is much more concrete than the broad interest in economic development that was the initial focus of the research. However, the availability of evidence in these areas suggests that these concrete issues are of the greatest importance to the First Nation.

About the Community

The Little Salmon/Carmacks First Nation is a community of about 630 people located in Carmacks, Yukon (http://www.lscfn.ca/).¹ They are Northern Tutchone, part of the Athapaskan (Dene) language group.² Their community is divided into the Wolf and Crow clans, a structure that is reflected in their governance arrangements which provide for two councilors from each clan as well as an Elder Councilor and a Youth Councilor.³ Their population is quite young, with 35% of the population under 15, compared with the Yukon average of 26%.⁴

¹ Little Salmon/Carmacks First Nation, Welcome (N.d.) <http://www.lscfn.ca/> [24 February 2013], par. 1.
³ Ibid.
⁴ Ibid.
Just over half of their population lives outside their home community of Carmacks, with 28% in other location in the Yukon and 24% in the rest of Canada.\(^5\) About 65% of Carmacks’ population belongs to the First Nation.\(^6\) All resident of Carmacks speak English, with 60 (about 15%) indicating that they speak an “Other” language on the census, presumably Northern Tutche.\(^7\)

Traditionally, the Little Salmon/Carmacks First Nation traveled throughout their territory relying on hunting, trapping, fishing, and gathering flora. However, in the 1950s they were enticed by the federal government to take up permanent residence at Carmacks which was also on the new Klondike Highway.\(^8\) The site was chosen because it was a traditional trading site on the Yukon River, and was becoming a major service center for non-aboriginal miners.\(^9\) In 2006, the majority of Carmack’s labor force worked in Public Administration (135 out of 235).\(^10\) This dwarfs the next largest industrial sectors of education (20), transportation and warehousing (15), construction (15) and accommodation and food services (15).

**The Treaty Process**

For economic reasons, the federal government refused to offer treaties to First Nations in the Canadian North until required to do so by imminent development, and regularly rejected their attempts to initiate negotiations.\(^11\) For the Yukon, federal interest came with the discovery of oil and gas at Norman Wells, which led to the signing of Treaty 11. Although many Yukon First

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\(^5\) Ibid.
\(^7\) Government of the Yukon, *Profiles*, 1.
\(^8\) Government of the Yukon, *Profiles*, 1.
\(^9\) Natcher, *Political Ecology*.
Nations were signatories to Treaty 11, Little Salmon/Carmacks First Nation fell too far to the west of the area of interest to the government. However, enough ambiguity existed that that federal negotiators felt it was necessary to include a provision extinguishing any rights the First Nation may have under that treaty. From Treaty 11 to the 1970s, Canada’s north was valued largely for its natural resources and was viewed as a burden by the remote national government. As late as 1972, policy makers still believed that Aboriginal rights and title had not been established in most of the North and therefore did not exist.

Since the 1970s this policy has started to shift with the federal government undertaking substantial restructuring in order to give more control to northern governments. Until the 1990s, federal policy promoted civic institutions that were accountable to all Northern Residents, regardless of if they are Aboriginal or settlers. This federal government’s position began to shift due to legal developments, such as the Calder case that recognized the existence of Aboriginal title under common law, and a formal claim put forward in 1973 by the Yukon Indian Brotherhood. Negotiations between the Council for Yukon Indians started in 1973, reached an agreement in principle that was rejected by Yukon First nations in 1984, and in 1993 reached an Umbrella agreement, which was to be tailored to meet the needs of individual First Nations. Little Salmon/Carmacks First Nation is part of the Council of Yukon First Nations that negotiated the 1993 Umbrella Final Agreement which provided the framework for the

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15 Ibid., 193.

16 Ibid., 188.

17 Ibid., 192-4.

18 Ibid., 195.
negotiation of its own final agreement finalized in 1997.\textsuperscript{19} The Little Salmon/Carmacks First Nation Self-Government Agreement and Final Agreement between the First Nation, Government of Canada, and Government of the Yukon were signed on July 21\textsuperscript{st} 1997.\textsuperscript{20}

**Analysis of the Texts**

**Self-Government Agreement**

Under their self-government agreements, aboriginal people of the Yukon remain citizens and aboriginal people of Canada, and remain eligible for all government programs for aboriginals as well as most of the rights and benefits of the Indian Act.\textsuperscript{21} The land claims in the final agreement are recognized are constitutionally protected under s.35 of the *Constitution Act, 1982.*\textsuperscript{22} It also supersedes all federal, territorial and municipal law but is superseded in the event of any inconsistency with the Umbrella Final Agreement or Inuvialuit Final Agreement.\textsuperscript{23} With explicit constitutional protection and legislative supremacy, the agreements are a very legally powerful document.

In their self-government agreement, the Little Salmon First Nation is created as a legal entity and given the rights and powers of a natural person. The agreement gives the First Nation the power to define its own constitution and therefore governance arrangements, subject only to basic restrictions. Several specific provisions were added by Little Salmon/Carmacks First Nation to the Umbrella Final Agreement, such as provisions 2.11.7.1 which allows the First


\textsuperscript{21} Ibid., at 2.2.3 to 2.2.5.

\textsuperscript{22} Ibid., at 2.2.1.

\textsuperscript{23} Ibid., at 2.6.2.
Nation to let other legal entities fully controlled by the first nation to hold its rights, obligations and liabilities. The First Nation is also given legislative powers over its members in relation to internal administration, the management and administration of benefits under the agreement, and the provision of programs and service that relate to their culture, language, health care, social services, training programs, adoption, custody, education, inheritances, the determination of mental competency of criminals, alternative dispute resolution, marriage and licenses.24 They have broad powers to control the use and management of settlement land, including everything from the practice of traditional activities to licensing professions.25 The Yukon government can overrule the First Nation under certain circumstances, but procedural protections are in place to protect against this.26 While a long-term arrangement for the administration of justice is being arranged, the First Nation is given the power impose fines of up to $5,000 or imprisonment for six months for violations of its laws.27 It also has powers of taxation over settlement land and the power to impose direct taxation on its members. With such broad powers and multiple means of raising their own revenue, the agreement could be expected to greatly increase the ability of the First Nation to protect its forests and provide for its members.

Final Agreement
At 435 pages, the Little Salmon/Carmacks First Nation Final Agreement has too much content to cover in detail in this paper.28 This paper will just briefly touch on the arrangements that allow them to control forest resources, provide basic services such as clean water, and finance the activities of government. On settlement land, the First Nation has almost complete

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24 Ibid., at 13.2.
25 Ibid.
26 Ibid., at 13.5.6.
27 Ibid., 13.6.4.1.
28 SCC, Beckman, 14 at para 52.
control. On Crown land, Yukon Indian people are given the right to hunt, fish, trap and gather, and the First Nation is given the right to harvest timber for non-commercial purposes. In return for ceding some control over their land, Little Salmon/Carmacks First Nation received $15,568,239 in several payments, where additional revenue can be raised from sharing of resource royalties, licensing, and the First Nation’s new taxation powers. A dozen Boards are created with shared representation from the federal government and Yukon First Nations which exercise most of their power.

Impacts

Despite the broad and potent powers granted by these agreements, members of the First Nation are increasingly insecure about their control over forest resources and the community has struggled to provide even clean drinking water to its members.

An important issue for the Little Salmon Carmacks First Nation is non-timer forest resources such as berries, roots, and barks. Control over these resources is closely entwined with their control over their territory. The Final Agreement gave the First Nation control over 2590 km² of settlement lands including the power to “establish bylaws for use and occupation, to develop and administer land management programs and to levy fees for the use of land within the settlement region.” For areas outside the settlement region, the agreement created a Renewable Resource Council to make recommendations on forest management, forest resource programs and policies, and commercial allocations. The Council’s recommendations are binding

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29 AANDC, Final Agreement, at 17.2.1.
30 Ibid., 17.3.1.
31 Ibid., 19 Schedule A.
32 Ibid., 2.12.1.
33 Natcher, Political Ecology, at 345.
unless they are modified or rejected by the minister, or an application for judicial review is made with 60 days.\footnote{Ibid., 346.} In practice, decisions made by the Councils are seldom overridden.\footnote{David C. Natcher, “Co-Management: Managing Relationships, Not Resources,” \textit{Human Organization} 64(3) (2005) \texttt{<http://sfaa.metapress.com.proxy.library.carleton.ca/content/23yfnkrl2ylapjxw/fulltext.pdf>} [24 February 2013], 241.}

Despite the agreements nominally giving the First Nation much greater influence over its territory, the 83% of people in Camrack felt they would have considerably less access to forest resources in the future, with the majority citing the regulatory implications associated with the land claim as their cause pessimism.\footnote{David C. Natcher, “Implications of Tenure Insecurity for Aboriginal Land Use in Canada,” \textit{Human Organization} 68(3) (2009) \texttt{<http://sfaa.metapress.com.proxy.library.carleton.ca/content/60pp7583m183t1t1/fulltext.pdf>} [24 February 2013], 251.} As one community elder described the outcome of the umbrella final agreement, “We didn’t gain 10 percent of the Yukon Territory by signing the UFA, we lost 90 percent of our homeland.”\footnote{Ibid., 352.} For First Nations, their \textit{de facto} user rights to traditional lands were diminished in their formalization; the new steward of these resources, the Renewable Resource Council, was paralyzed by bureaucratization and had displaced older and more inclusive community institutions.\footnote{Ibid., 352.} For non-First Nations, who made similar use of non-timber resources to members of the First Nation, the increased control of the First Nation over the resources threatened their access to those resources.\footnote{Ibid., 352.} Further research has suggested that the insecurity of forest resources and particularly competition with outsiders is leading to their overexploitation, and that the Little Salmon Carmacks First Nation felt even less secure a NWT First nation under Treaty Number Eight that was also studied.\footnote{Ibid., 246.} This is peculiar because the forests near Little Salmon Carmacks First Nation are in practice of little interest to commercial forestry companies.\footnote{Ibid., 251.} The forestry resources around Little Salmon/Carmacks First Nation have
been identified as an important and green fuel source but only in the sense that it is currently being harvested by First Nations.\(^{42}\)

This concern over development was recently the basis of a major lawsuit, \textit{Beckman v. Little Salmon/Carmacks First Nation}, where the First Nation challenged an agricultural land lease that impacted the registered trapline of one of the First Nation’s elders.\(^{43}\) The process leading to this permit likely contributed to distrust in that public servants claimed meetings and discussion with the First Nation were conducted “only as a courtesy” and the First Nation was not informed when the decision was made.\(^{44}\) Despite an initial ruling in their favor, the Supreme Court of Canada ruled that only a low duty to consult with the First Nation existed, and that this duty had been discharged by the process followed.\(^{45}\) A major issue addressed in this case was the interpretation of modern treaties, where the Yukon Government argued that the treaty “nailed down and forever settled the rights and obligations of the First Nation community as Aboriginal people.”\(^{46}\) The court rejected this interpretation finding that the honor of the Crown continues to create obligations outside of treaties, but did find the scope, comprehensiveness, and fairness of the final agreement made it a solid foundation for reconciling Crown and First Nation interests that should be respected by the courts.\(^{47}\)


\(^{43}\) Natcher, \textit{Implications}, 251.

\(^{44}\) SCC, \textit{Beckman}, 26-28

\(^{45}\) Ibid., para. 7.

\(^{46}\) Ibid., para. 50.

\(^{47}\) Ibid., para. 54
Discussion

Despite broad powers granted in their Final Agreement and Self-Government Agreement, the Little Salmon Camracks First Nation is clearly facing major implementation issues that have undermined the First Nation’s control to its forests.

The complete domination of public administration sector, which employs 135 out of the 235 workers in Camracks, seems to point to a cause of the broader implementation issues faced by the First Nation: the powers and responsibilities of the First Nation are grossly disproportionate to its small population and economy. While the governance capacity of the First Nation will certainly increase over time, it is difficult to image a community as small as Camracks being able to provide the level of services and resource stewardship that its residents demand. This is partially addressed in the Yukon Umbrella Final Agreement which gives many powers to boards that can draw representatives from all the Yukon First Nations. The First Nation’s experience to date suggests that the capacity of Yukon First Nations to maintain control over their resources and provide social services to their citizens will critically depend on the strength and effectiveness of these troubled councils created under the Umbrella Final Agreement.
Works Cited


