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

MODERN TREATY IMPLEMENTATION RESEARCH PROJECT

SSHRC CRSH
Social Sciences and Humanities Research Council of Canada
Conseil de recherches en sciences humaines du Canada

TABLE OF CONTENTS

EXECUTIVE SUMMARY

Experience with the formal dispute resolution mechanisms under modern treaties has been sparse. Although disputes between treaty parties are not rare, a notably small number of disputes have been settled through the processes set out in the treaties. With the support of the Gwich'in Tribal Council, the Nisga'a Lisims Government, and Nunavut Tunngavik Inc., and with funding and support from the Modern Treaty Implementation Research Project (SSHRC partnership grant with the Land Claims Agreement Coalition), this report explores and documents this limited experience, investigating possible reasons for the limited access to treaty-based dispute resolution processes and possible lessons to be drawn from this experience.

Treaty-based dispute resolution provisions are varied, but can be grouped into two broad categories. The pre-1999 agreements created arbitration boards or panels that did not require or set out a process for negotiations or mediations before arbitration, while the post-1999 agreements included a staged approach that typically requires discussion, negotiation and mediation before the parties can engage arbitration. Across both models, and with a small number of exceptions, consent of all the parties is required for one party to engage arbitration. It is also exceptional to find explicit references to Indigenous law and dispute resolution traditions in the dispute resolution chapters; only the Nisga'a Agreement refers explicitly to an elders advisory council.

Within the scope of this research project, we identified fifteen disputes in which Indigenous treaty parties have engaged the treaty-based formal dispute resolution processes. We were also able to identify a slightly larger number of disputes that did not engage the treaty-dispute resolution processes (both sets of numbers are subject to change based on further review and research). The subject matters of the disputes in both lists varied, although it stands out that treaty dispute resolution processes were not accessed for disputes relating core funding of Indigenous governments. This is owing to a federal position, rooted in government policy, that the federal government will not agree to arbitration on funding levels. Treaty dispute resolution processes were also more likely to be used – and used repeatedly – by Indigenous treaty parties who did not require the consent of the other parties to engage arbitration (such as the Inuvialuit, and Nunavut Tunngavik Corporation following the amendment of their dispute resolution chapter). In several treaty contexts, particularly in the pre-1999 arbitration board model, the treaty dispute resolution mechanisms have never been used.

Beyond noting the formal differences between the processes that have been engaged more often versus those that have never been engaged, our exploration of the reasons for the phenomenon of low engagement leans heavily on what we learned from our interviewees. Reasons cited by the interviewees include: perceptions of inaccessibility of the mechanisms due to the lack of implementation and gaps in personnel of the dispute resolution institutions established under the treaties, and a variety of reasons – such as costs to engage the processes, perceptions of resorting to formal processes as political failures (and political considerations more generally); and cultural perspectives on the dispute resolution processes as foreign. Such concerns lead treaty parties to prefer negotiations through technical and political officials to resolve disputes over the formal dispute resolution processes under their treaty.

Reflecting on the broader modern treaty context, disputes are to be expected in the course of implementing and living under the treaties. The inclusion of dispute resolution chapters in the treaties recognizes this reality. Moreover, there are resource and relationship costs to leaving disputes unresolved or to having to pursue litigation to resolve treaty parties' disputes. However, it would appear based on experiences to date and based on our

observations set out in this report, that in many modern treaty contexts the dispute resolution processes are far from optimal. There is room to improve treaty dispute resolution processes so that they can better support modern treaty implementation, including the process of re-balancing power between the treaty parties.

At this time of rapid policy development and discussions of treaty modernization, there is an opportunity to revisit dispute resolution chapters to make processes more accessible and to re-calibrate processes to better reflect treaty parties' values. Such adjustments may help ensure that the treaties better serve their stated objectives as well as the broader purposes of creating and maintaining positive relationships between the Crown and Indigenous peoples.

1. Introduction

1.1. Research context

Comprehensive land claim agreements - also referred to as modern treaties - include provisions prescribing how disputes between treaty parties are to be resolved.[1] However, experiences with these dispute resolution mechanisms vary across land claim agreement regimes. Overall, use of these mechanisms has been infrequent. In some contexts, these mechanisms have rarely been used by treaty parties, while in other contexts they have been used several times. To date, this aspect of modern treaty implementation has received minimal scholarly attention, in spite of calls for such research,[2] findings from the Office of the Auditor General regarding treaty implementation shortcomings,[3] and litigation by Indigenous treaty parties.[4]

Uneven experiences with modern treaty dispute resolution processes are situated in a broader context of Indigenous treaty parties' ongoing dissatisfaction with treaty implementation generally.[5] These experiences also exist within a recognized reality that dispute resolution between different cultures is inherently complex,[6] and such complexity is intensified by Crown-Indigenous relations in Canada that have been shaped by the extremely negative impacts of colonization and persistent power imbalances.[7]

In this research project we examined existing modern treaty dispute resolution mechanisms and treaty parties' experiences with them to date. Our research was particularly focused on the two main models of dispute resolution in modern treaties: the arbitration board approach (as included in most pre-1999 agreements),[8] and the staged approach (as included in most post-1999 agreements).[9] To do so, we present and synthesize academic, expert and judicial commentary regarding these dispute resolution mechanisms. Next, we review a diverse set of modern treaty dispute resolution mechanisms, identifying similarities, differences and notable features. We then summarize key points from semi-structured interviews that we conducted with professionals working in the area, including individuals within the federal government, the Government of the Northwest Territories, and Indigenous treaty parties. In the final part of this report, we offer concluding reflections and several suggestions on next research steps.

This research is timely for several reasons. First, a significant number of modern treaties are now 20 years old or more and dispute resolution provisions contained in them are dated. Second, since 2015, the federal government has demonstrated an increased willingness to discuss changes and updates to modern treaty implementation, including changes to dispute resolution practices and, in some cases, associated treaty amendment and self-government agreements.[10] Third, the settlement of the Nunavut Tunngavik Inc. (NTI) litigation in 2015 resulted in a new dispute resolution chapter in the Nunavut Land Claim Agreement (Nunavut Agreement) that moved away from a requirement for all parties consent to access dispute resolution processes; this is a change that other groups may wish to pursue. Fourth and finally, disputes continue to arise across modern treaty contexts but little to no research has been conducted to provide a consolidated account of experiences to date. As a result, there is currently little empirical basis to inform treaty parties' discussions regarding options for changes to dispute resolution practices and provisions.

This research project is focused on dispute resolution as part of a project addressing the broader topic of the implementation of modern treaties (the "Modern Treaty Implementation Research Project" (MTIRP), funded by a five-year Social Sciences and Humanities Research Council (SSHRC) Partnership Grant secured

by the Land Claims Agreements Coalition (LCAC)). Carleton University is the academic host organization for the project, and the Tłı̨chǫ Government is the LCAC host of the project's National Hub. This initiative is expected to support research and associated outputs - such as this report – that generate a basis for better understanding the challenges and opportunities associated with modern treaty implementation.[11] Within this larger research project there are five themes: Indigenous Relationships to Land, Intergovernmental Relations and Multilevel Governance, Treaty Financing and Fiscal Relationships, Implementation Evaluation and Socio-Economic Impacts, and Indigenous and Settler Legal Systems. The dispute resolution research project falls under the themes of Indigenous and Settler Legal Systems and Intergovernmental Relations and Multilevel Governance. Three LCAC member organizations are formal partners in this project on dispute resolution: the Gwich'in Tribal Council, Nisga'a Lisims Government, and Nunavut Tunngavik Inc.

1.2. Research objectives and methodology

The overarching objective of this project is to generate an evidence-based understanding of treaty parties' experiences with modern treaty dispute resolution mechanisms to date and to reflect on that experience. To do that, we have collected information to: 1) identify the types of disputes that arise in modern treaty implementation; 2) identify when the dispute resolutions processes agreed to as part of the treaties were engaged to address disputes and when they were not engaged; and, 3) generate a qualitative account of the challenges associated with engaging treaty dispute resolution mechanisms and resolving implementation disputes more generally. We have also reviewed relevant literature, as well as dispute resolution provisions in existing modern treaties, as detailed in Appendix A of this report.

Research objectives guiding this project include:

i. Generating an evidence-based account of the use and non-use of modern treaty dispute resolution mechanisms,

ii. Comparing similarities and differences between dispute resolution provisions across modern treaties,

iii. Situating modern treaty dispute resolution mechanisms and practices within the broader landscape of civil dispute resolution in Indigenous contexts, and;

iv. Setting a foundation for further research, including gathering community-level perspectives in modern treaty Indigenous communities with respect to civil dispute resolution.

Outcomes of this project may support modern treaty parties by providing a foundation for further research and for work on modernizing dispute resolution chapters in modern treaties.

1.3. Roadmap of report

This report is set out in the following sequence. Part two provides deeper context regarding dispute resolution and the challenges of modern treaty implementation, including discussion of relevant litigation and judicial intervention. Part two also includes an overview of the broader federal law and policy context and recent changes on that front. Part three explains the different types of dispute resolution mechanisms

present in modern treaties to date, providing detailed examples from different chapters of different agreements. Part four summarizes preliminary findings from the research, including a description of different disputes, resolution (or not) of such disputes, and the use or non-use of dispute resolution mechanisms in these contexts. Part five summarizes perspectives we heard from interviewees. Finally, part six offers succinct reflections on research findings, including several themes and suggestions for next steps.

2. Background and context

2.1. Modern treaties overview

Canada continues to enter into treaties with Indigenous Peoples. In recent decades, these agreements are typically referred to as "modern treaties" or comprehensive land claim agreements. This period of treaty making began in the wake of the 1973 *Calder* decision, in which the Supreme Court recognized the concept of Aboriginal title and three of seven justices agreed that Nisga'a Aboriginal (Nisga'a) title continued in BC and had never been extinguished.[12] *Calder* and litigation brought by the Cree Nation of Eeyou Istchee and the Inuit of Nunavik to stop Quebec's James Bay hydro-electric project[13] laid the legal foundation for the *James Bay and Northern Quebec Agreement* in 1975, often referred to as the first modern treaty negotiated between the Crown and First Nations.[14] Canada and Indigenous communities are currently implementing 25 such final agreements, and the federal government reports approximately 100 comprehensive land claim and self-government negotiation processes that are ongoing across the country.[15] Most modern treaties to date are in Yukon, Northwest Territories and Nunavut, although modern treaties also cover significant portions of Quebec and Labrador and smaller areas of British Columbia.[16] Like their historic counterparts, modern treaty rights are constitutionally protected under s. 35 of the *Constitution Act, 1982*.[17]

These treaties are lengthy, sophisticated power sharing agreements. The agreements typically include chapters on heritage resources, land management, wildlife management, development assessment, land use planning, economic development, resource royalties, parks and protected areas, expropriation, and more.[18] Justice Binnie in *Beckman vs. Little Salmon/Carmacks First Nation*, described modern treaties as representing a "quantum leap beyond" historical treaties.[19] A key purpose of modern treaties, as stated by the Supreme Court of Canada, is "to foster a positive and mutually respectful long-term relationship[s] between the signatories".[20] As settlements of disagreements about rights of ownership and benefits from land as well as governmental authority and jurisdiction, these treaties themselves resolve, or at least represent attempts to resolve, longstanding disputes. Within them, modern treaties anticipate further discussions and negotiations, including further disputes, as represented by the inclusion of dispute resolution chapters.

As a result, modern treaties are not, as government parties have sometimes argued, a "complete code".[21] The experience of implementing modern treaties reinforces characterizations of the treaties as "living agreements" rather than complete (and final) codes. Disagreements in the implementation process arise in part because Indigenous communities and governments have different interpretations of the treaty text and different expectations regarding the anticipated benefits, redistributions, and governmental authorities outlined in in the treaties. With these different perspectives and expectations, implementation processes are an important focus for understanding dispute resolution under modern treaties.

2.2. Dispute resolution under modern treaties

Disputes in the course of treaty implementation relate to a large range of subjects, including disagreements over interpretation, over the scope of a parties' authority or rights, over the processes involved when decisions are made by government parties (including consultation), and over the funding and resources available to implement the agreement. Disputes in modern treaty contexts can be seen as distinct from other Crown-Indigenous contexts because the parties have decided to engage in a modern treaty relationship to address long-standing disputes over key matters such as Aboriginal rights and title and governmental authority.[22] Nevertheless, disputes in the course of implementation demonstrate that signing a treaty does not resolve all aspects of the larger dispute over land, resources and jurisdictions that the treaty itself addresses. Implementation disputes are typically more focused than those larger claims, but still highlight concerns over access to resources, the sharing of power, recognition of rights, and adequate funding and supports to ensure that the agreement reached through the treaty is sustained.

Within the agreements and the relationships they sustain, parties often seek to negotiate through their disagreements, either through discussion and negotiation by respective senior officials, or through seeking direction and resolution from political leadership. When these efforts fail and disputes persist, treaty partners must consider whether to seek resolutions from courts or whether the dispute resolution mechanisms negotiated as part of modern treaties are preferable to litigation. Such decisions depend in part on the availability and nature of dispute resolution under the treaties, and in part on the principles and remedies that judges have applied to similar disputes. In contexts where the treaty dispute resolution mechanism requires that parties consent to arbitration, the Indigenous parties have, on occasion, resorted to courts to resolve their disputes after multiple attempts to access arbitration under their treaty[23] or otherwise resolve their issues through consultation and negotiation. The disputes Indigenous parties have taken to court have been centred on a variety of issues, including consultation[24] or the financing of treaty implementation.[25] We discuss such examples in section 4 below.

Indigenous parties' litigation efforts have been largely successful, demonstrating that first, in spite of interpretive principles that *prefer* negotiated solutions to court interventions in treaty disputes, courts grasp the need for judicial intervention to support living treaties and strong treaty relationships.[26] Second, interpretive principles developed by the Supreme Court balance attention to the text as representing the parties' agreement, which involves examining the provision in issue in light of the treaty text as a whole and the treaty's objectives, with constitutional limits on interpretive possibilities, such as upholding the honour of the Crown.[27] Such approaches affirm that modern treaties are not "complete codes", and that strong relationships occasionally require course correction. An important question is whether such correction can be found through dispute resolution mechanisms under the treaties, rather than litigation, which as described in the next section, is more time-consuming, expensive and adversarial.

2.3. Dispute resolution theory and modern treaties

Litigation as a dispute resolution option presents challenges for all parties, including time, expense and strains on treaty party relationships.[28] To some degree, these limitations resemble broader concerns with the conventional adversarial model based in western approaches to resolving disputes, namely, that it does not provide a forum that is sufficiently responsive to parties' actual interests and needs.[29] Instead, the adversarial nature of litigation confines dispute resolution within a positional paradigm that often leads to zero-sum exchanges of rigid offers and fails to find alternatives that satisfy the parties' respective interests.[30] These archetypal concerns with litigation led to a significant expansion of "alternative dispute resolution" (ADR) since the 1970s.[31] "Alternative" dispute resolution processes (i.e. alternative to a traditional litigation-based adversarial model) are thought to provide opportunities for parties to resolve conflicts in a form that achieves each parties' goals concurrently and efficiently.[32] Proponents of ADR typically prescribe an "integrative" or "interest-based" approach within the ADR space, which involves disputing parties engaging with each other's goals, priorities and preferences and then collaboratively exploring a range of settlement options.[33]

The appropriateness of different integrative dispute resolution methods in the Crown-Indigenous context is, however, a matter of debate. Professor David Kahane, for example, suggests that while ADR methods may appear to be a common sense, universally applicable template for conflict resolution that can overcome cultural differences, these ADR methodologies may actually favour dominant cultural perspectives and systematically favour more powerful parties.[34] He suggests a more nuanced approach to address complex dimensions of culture and power through building cultural sensitivity and building diversity and representation into process design.[35] Meanwhile, Professor Michael Coyle acknowledges such complexities and critiques, but suggests that an integrative approach is preferable over the positional alternative (such as litigation) because it at least provides forum for "open discussion of the various ways by which such value concerns might be addressed".[36] He suggests that an integrative approach may be particularly helpful in an Indigenous governance negotiation context where there are more than two parties involved because it provides a process and space through which the parties can reach agreement on an ultimate outcome and then generate potential options that are sensitive to an Indigenous parties' interests and traditional values.[37] He goes on to suggest that, "where Aboriginal groups have decided to engage with the state, adopting an integrative approach appears to be a wise response to the potential impacts of power imbalance".[38]

Relating this to today's modern treaty context, there are substantial differences in the degree to which treaties provide a basis for addressing ongoing power imbalances and cross-cultural complexities through an integrative approach. This is a product of the significant variance across dispute resolution mechanisms present in different treaties. Overall, while resolution of disputes through litigation is an ever-present option, the mechanisms for non-litigation dispute resolution articulated in modern treaties have, to date, provided limited opportunities for a less adversarial process through direct negotiation or mediation.

As detailed in Part 5 of this report, modern treaty parties formally agreed to specific mechanisms as part of their treaty; however, the rationales for those mechanisms have become, in most cases, defeated or forgotten by practices and experience that have made them inaccessible. The extent to which these dispute resolution mechanisms were carefully designed and calibrated to navigate culture and power is not clear. Now, in some

cases several decades after finalizing treaty text, and with federal willingness to "modernize" the earliest agreements, it is reasonable to expect that parties may be interested in revisiting dispute resolution options in the future. Such revisiting could steer toward inclusion of less adversarial processes that are better suited for addressing power imbalances and cultural differences as a way to build stronger treaty relationships.

2.4. Evolving federal law and policy context

Dispute resolution in modern treaty contexts exists in a broader law and policy context that is changing relatively quickly. The last several years have been a particularly intense period of announcements and changes at the federal law and policy level. In 2015, for example, the federal government put in place the Cabinet Directive on the Federal Approach to Modern Treaty Implementation[39] and released the Statement of Principles on the Federal Approach to Modern Treaty Implementation.[40] The former sets out the federal government's "operational framework for the management of the Crown's modern treaty obligations" and "guides federal departments and agencies to fulfill their responsibilities".[41] In addition to setting out departmental roles, it includes several specific requirements, including an obligation on all departments and agencies to consider modern treaty implications when developing policy, plan and program proposals to submit to Cabinet. It also created the Deputy Ministers' Oversight Committee "to provide executive oversight of the implementation of the Directive, and by extension, of Canada's roles and responsibilities under modern treaties".[42] Finally, it created the Modern Treaty Implementation Office (MTIO) to "provide ongoing coordination and oversight of Canada's modern treaty obligations, and to support the mandate of the Deputy Ministers' Oversight Committee". While the Cabinet Directive was welcomed by modern treaty parties,[43] it has also attracted criticism.[44] For example, some have noted that the location of MTIO within INAC instead of the Privy Council Office hampers the office's effectiveness and ability to drive change across federal government departments.[45]

The Statement of Principles on the Federal Approach to Modern Treaty Implementation includes 12 principles that are "intended to provide guidance to the Crown in right of Canada on the approach to modern treaty implementation to which it should aspire".[46] These principles include reference to reconciliation, honour of the Crown, s.35, Crown accountability for its "obligations", a "whole of government approach", and "shared responsibility". Although the document refers to constitutional principles and rights, these principles do not add any legally binding commitments, and the document explicitly states that "[n]othing in this statement is intended to restrict the positions of any treaty party on the principles that govern treaty interpretation or implementation as a matter of law, nor on the legal nature and scope of underlying treaty rights".[47] Nevertheless, the Statement of Principles could be viewed as a policy document that supports an expansive interpretation of modern treaties over a restrictive one. In this way, it speaks to the ongoing friction in modern treaty interpretation between interpretations that take a text- and activity-based approach and those that emphasize the spirit and intent of the agreement.[48] To date, however, the federal implementation principles have not been cited by the courts, and it is difficult to gauge what impact they may be having on the interpretation of modern treaties in either operational or legal contexts.

A number of more general high-level law and policy changes have come since the 2015 federal election. Notable developments include the federal government's "full support" of UNDRIP without qualification,[49] the federal "Review of Laws and Policies Related to Indigenous Peoples",[50] announcement of a new "recognition and implementation of rights framework",[51] the "Principles respecting the Government of Canada's relationship with Indigenous peoples"[52] (typically referred to as the "10 principles"), the Department of Justice's adoption of a new "Directive on Civil Litigation Involving Indigenous Peoples",[53] and ongoing work across the federal government to implement the Truth and Reconciliation Commissions Calls to Action. While these developments are not specifically targeted at modern treaty implementation, they illustrate the relatively rapid pace of law and policy change in recent years and may have implementation implications. These changes can be viewed in at least two non-exclusive ways. On one hand, some might view these as setting the stage for the federal government to follow through on the "renewed nation-to-nation relationships" it has emphasized in recent years, including in Minister mandate letters.[54] However, some might take a more critical view of these changes and announcements that fall short of concrete, co-developed legal and policy commitments that address the interests and concerns of Indigenous communities.

Whatever perspective one adopts with respect to these recent developments, there are some indications that they are having an impact on modern treaty implementation. For example, in the 2018 budget process, Canada changed the funding model for treaty negotiations away from loans to Indigenous parties, forgave the accumulated debts of groups currently in negotiations, and pledged to repay the loan debts of groups who have concluded agreements.[55] Canada has also updated its collaborative self-government fiscal policy to "provide a principled approach to fiscal relations with all Indigenous Governments in a manner that is consistent with the commitments made in self-government agreements and modern treaties".[56] Additionally, and as noted above, the federal government is pursuing modernization discussions with some modern treaty parties to potentially address (in some cases, through treaty amendments) parties' concerns with existing modern treaties, including dispute resolution provisions.[57] The findings of the present research project, including those in this report, may assist modern treaty parties in modernization discussions.

3. Dispute resolution mechanisms in modern treaties

3.1. Overview of existing dispute resolution mechanisms

There is significant variance in the dispute resolution mechanisms found in modern treaties across Canada. It is possible, however, to identify two main approaches: a relatively narrow arbitration committee/board structure to resolve disputes (pre-1999), and a broader "staged approach" (post-1999). All of the 25 agreements currently being implemented contain one of these two models, or, as discussed in more detail below, a mix of them. Generally, most agreements finalized before 1999 use the arbitration committee/board approach model, and most finalized after 1999 or amended since 1999 use the staged approach; however, there are significant differences across agreements and limited understanding as to why such variance exists.[58] This part of the report summarizes the two main types of dispute resolution mechanisms present in modern treaties to date, and presents a short table summarizing examples from different chapters of different agreements. Particular attention is given to the Gwich'in, Sahtu, Tłı̨chǫ,

Nisga'a, Nunavut, Yukon and Inuvialuit agreements.[59] We provide detailed descriptions of each agreement in Appendix A.

3.1.1 Arbitration board approach to resolve disputes (pre-1999)

Although there are textual differences across agreements, for the most part agreements using the arbitration board model follow a common format of establishing an arbitration board and then setting out details regarding board/panel composition, board member term length, roles and duties of the board, jurisdictional parameters (i.e. what issues the board may hear), funding responsibilities (typically shared by parties), selection and number of arbitrators for specific disputes, and procedural dimensions (e.g. how to initiate the arbitration process).

Under this model, the arbitration board is essentially an oversight body that administers the dispute resolution process. The parties select an arbitrator from the larger board (or panel or roster), or the parties individually or jointly select a group of three arbitrators according to the terms of the treaty, to resolve specific disputes as they arise. Under this model there is typically no formal requirement for parties to first attempt to resolve the dispute through dialogue, negotiation or mediation, though such measures are not precluded in treaty provisions. Examples of the board approach can be seen in the Gwich'in agreement and the original Sahtu agreement (prior to recent amendments), and in the original Nunavut Agreement dispute resolution chapter, which are described below and included in the below summary table.

3.1.2. Staged approach (post-1999)

Most post-1999 agreements use the staged approach in the dispute resolution chapters; though, as discussed below, the 1992 Yukon Umbrella Final Agreement takes a hybrid approach and is therefore an exception to the pre-1999 time mark. The staged approach emphasizes resolving disputes relatively informally before escalating the dispute to more formal channels. When issues arise, parties are to go through each stage before progressing to the next. The staged approach to resolving disputes typically progresses as follows:

- Stage One – Informal discussion and negotiation: Officials of each party meet to express and attempt to resolve concerns and disputes. This is sometimes formally acknowledged in treaty provisions as a role for the Implementation Committee.
- Stage Two – Assisted negotiations/mediation: Issues not resolved at the informal discussion level proceed to a facilitated negotiation or mediation process involving a neutral third party who helps resolve issues in a non-binding manner. Most modern treaties with this process set out the steps and timeframes for this stage, including how parties submit notice of entering into assisted negotiation/mediation, how the neutral third party is chosen, how long the assisted negotiation/mediation will take place, and what to do in the event the dispute is resolved, or remains unresolved
- Stage Three – Arbitration: This stage is invoked when the dispute has not been resolved at a lower level. Agreements vary as to whether all parties must agree to invoke the arbitration process. The arbitration process typically issues a binding decision on a set timeline.

Examples of the staged approach exist in the Nisga'a and Tłı̨chǫ final agreements, as well as the new dispute resolution chapter for the Nunavut Agreement. These are described in Appendix A, which provides a summary of key structures, approaches and institutions in several modern treaties. The Table below presents information summarizing key basis structural differences between the treaties with an emphasis on stages and veto power.

Summary table: Examples of different dispute resolution approaches

Treaty	**DR Model**	**Unilateral power to refer dispute?**	**Non-arbitration stages required?**	**Non-arbitration stages available?**
Gwich'in and Sahtu (pre-amendment)	Arbitration Board	No – agreement/consent required from all parties	No	Yes, informally
Sahtu (amended)	Staged	Mixed – yes for mediation; no for arbitration	Yes	Yes
Inuvialuit	Arbitration Board	Yes – any party may refer (and industry may also)	No	Yes, informally
Yukon UFA	Hybrid	Mixed – some disputes require agreement/consent	No	Yes
Nisga'a	Staged	Yes – any party may refer	Yes	Yes
Tłı̨chǫ	Staged	Mixed – yes for mediation; no for arbitration	Yes	Yes
Nunavut (pre-amendment)	Arbitration Board	No – agreement/consent required from all parties	No	Yes, informally
Nunavut (amended)	Staged	Yes – any party may refer	Yes (but some can be referred to Arb without lower steps)	Yes

3.2. Observations

Our review of several modern treaty dispute resolution mechanisms (see Appendix A for detailed discussion of each) leads us to several preliminary observations. First, there are significant differences across modern treaty dispute resolution chapters. This can be seen in the basic architecture (i.e. staged vs. arbitration board approach), but also in terms of parties' veto power with respect to accessing arbitration, parties' flexibility in choosing dispute resolution forums, appointment processes, judicial review, timelines and time constraints, and institutional dimensions. The rationales for such differences is not clear.[60]

Second, there has been a discernable shift over time from the arbitration board model to the staged approach. Where the board approach was common in the earlier treaties such as the Inuvialuit or Gwich'in agreements, the staged approach is the primary structure in more recent agreements.[61] Notably, however, the Yukon UFA included stages in an agreement that was finalized around the same time as the Gwich'in and the original Sahtu agreements, and the Nisga'a Agreement included details and mechanisms, such as a role for an elders advisory council,[62] that have not appeared in subsequent treaties. Accompanying this evolution in general structure is what may be the beginnings of a move away from providing any single party with the power to refuse to refer a matter to dispute resolution. This evolution is observable in the amended Chapter 38 of the Nunavut Agreement, which allows parties to refer matters to both mediation and arbitration without other parties' consent. However, in the amended Chapter 6 of the Sahtu Agreement only mediation is available without the other parties' consent.[63] Similar to our above observation, the basis for this evolution is not completely clear, though a statement of preference by the federal government for the staged approach can be seen in Canada's "Guide for the Management of Dispute Resolution Mechanisms in Modern Treaties".[64]

Third, there is minimal consistency across treaties with respect to how less formal options and language regarding non-adversarial, collaborative approaches are included (or not) and articulated (or not) within dispute resolution chapters. The new Nunavut chapter, for example, recites several "general principles" that emphasize good faith efforts and avoiding litigation,[65] whereas the Gwich'in and Inuvialuit agreements contain virtually no such language.

Fourth, none of the treaties discussed above include an explicit basis for dispute resolution mechanisms rooted in legal traditions and cultural practices and values of Indigenous parties. The exception is the inclusion of an elders advisory council in the Nisga'a Agreement as a potential dispute resolution body under stage 2 of that process.[66] Indigenous parties are also directly involved in the selection of mediators, arbitrators or arbitration panel/board members. The former individuals are jointly appointed, while panels and boards require Indigenous appointees for quorum. Such participation and representation may be seen as opportunities for integrating Indigenous perspectives, including Indigenous law and dispute resolution practices. Similarly, it may be possible to incorporate approaches to dispute resolution grounded in Indigenous law under existing mechanisms on agreement by all parties.[67] However, our interviewees did not comment on these potential avenues for inclusion under the agreements. They commented on the potential for inclusion of Indigenous law and practices to be helpful, as well as on the overriding concern being effectiveness of the dispute resolution processes regardless of the incorporation of Indigenous law, while others observed that the emphasis on ongoing negotiation and discussion was in keeping with Indigenous dispute resolution traditions. Regardless, with the exception of the Nisga'a Agreement noted above, dispute resolution processes as grounded in Indigenous law remain largely unarticulated in this context and we observed no explicit basis for inclusion or consideration of such approaches.

Fifth, the role of the implementation committee (or implementation panel or implementation working group, as they may be called) differs under the treaties. Implementation is a significant undertaking during which disputes about interpretation and the parties' efforts (or actions and inactions) arise. As a result, it might be anticipated that implementation committees themselves are a forum for dispute resolution. However, the treaties do not consistently anticipate this role for these committees. The Nisga'a Agreement, for example, includes no reference to such a body in relation to dispute resolution, whereas the Gwich'in

and Yukon agreements, and the amended Sahtu and Nunavut Agreements, all explicitly (though differently) envision a role for these bodies in resolving implementation disputes early in the dispute resolution process.[68]

Finally, and related to the above point, there are significant differences across treaties with respect to the institutions associated with dispute resolution. Some agreements require establishment of administrative bodies or offices; for example, the Yukon Dispute Resolution Board in Yukon and the Dispute Resolution Administrator under the Tłı̨chǫ Agreement. Other agreements, including the amended Nunavut chapter, contain no such requirements.

4. Disputes under modern treaties to date

As part of our research, we attempted to develop an inventory of disputes that have taken place between modern treaty parties. We did this through researching materials in the public domain (e.g. media reports, land claim implementation reports), including references to dispute resolution provisions in court decisions, and through our interviews. A significant challenge in compiling this inventory involved determining what constituted a "dispute". To address that aspect, we developed two lists. One list (Appendix B) includes all disputes in which a party or parties formally engaged treaty dispute resolution processes, i.e. a party referred the matter to dispute resolution or parties agreed to do so (if such agreement required). We refer to these below as "formal disputes". The other list (Appendix C) includes disagreements or disputes between treaty parties that were not formally referred to treaty dispute resolution processes but nevertheless constituted a disagreement with respect to implementation of the agreement. Included on this list are matters of disagreement about which the parties may not all consider to have risen to the level of the label of 'a dispute'. Having not arrived at a definition of 'disputes' for the purposes of this report, particularly in relation to the list in Appendix C, we also cannot claim that these lists are entirely comprehensive and complete.[69] Further, our interviewees did not include representatives from every treaty party nor did our interviewees necessarily have access to treaty party records that date back to when the treaties were initially completed. Nevertheless, we believe these lists represent the most complete record of modern treaty disputes compiled to date.[70] With time and further input from treaty parties, these lists may become more complete. The following sections of this report describe different disputes generally and point to several examples.

4.1. Disputes where parties used treaty dispute resolution mechanisms

We identified fifteen formal disputes in which Indigenous treaty parties engaged the dispute resolution processes under their treaty, two of which were launched in the last year (with resolution still pending). We found no disputes that had been initiated by any non-Indigenous government party. The subject matter at issue varied widely, including natural resources projects (e.g. mining), royalties, contracting and procurement, funding and fiscal arrangements, implementation and jurisdictional issues, and training and employment. For example, a dispute between Inuvialuit and Canada regarding mining royalties was resolved through arbitration in 2004-2005. Those same parties resolved disputes regarding contracting and

employment through arbitration in the mid-1990s. The Nisga'a, Carcross Tagish First Nation, and Teslin Tlingit First Nation all referred disputes with Canada regarding fiscal transfer agreements or funding issues to treaty dispute resolution processes with varying outcomes: the Nisga'a and Canada resolved the dispute through negotiations under stage one;[71] Carcross and Canada resolved a dispute of this type through mediation in 2014;[72] and the Teslin Tlingit – Canada dispute, after years of negotiation, proceeded to litigation in 2018.[73] More recently, NTI and Canada resolved a government contracting dispute under the amended dispute resolution processes in summer 2019; but the parties are currently engaged in another unresolved dispute regarding government employment.

As is apparent in the above descriptions and list in Appendix B, the Indigenous parties engaging the dispute resolution processes were several Yukon First Nations, Nisga'a, Inuvialuit, and NTI. Notably, neither the Gwich'in nor the Sahtu have engaged the dispute resolution processes under their respective treaties. As discussed further below, interviewees indicated this non-engagement cannot generally be explained by a single factor. Rather, interviewees reported problems accessing the dispute resolution problems more generally, whether due to problems in the appointments process that resulted in the boards frequently not having quorum, or the formal nature of the arbitration board approach in those treaties, or other concerns.[74]

Overall, the total number of disputes where parties engaged treaty dispute resolution mechanisms appears low, particularly when almost half of the agreements in implementation now were completed in the 1990s or before. The data we gathered does not allow for firm conclusions about why this is the case. This is in part because the scope of our research did not include the internal correspondence or records of any treaty party through which historical reasons for how particular grievances or disputes play out might be established. Nevertheless, it stands out on the record that most of the Indigenous treaty parties who accessed the formal dispute resolution processes did not need agreement between the parties to engage these processes. That is, there was no unilateral power by any single party to block referral of the matter to dispute resolution. This is most visible in the case of NTI, where there have been two instances of formal dispute resolution processes initiated after the dispute resolution chapter was amended, but no use of formal dispute resolution before the amendments – particularly in relation to the disputes that were eventually litigated -- because Canada would not agree to it. Similarly, the Inuvialuit Final Agreement includes no veto power, and the Inuvialuit is one of the parties who have accessed formal dispute resolution provisions multiple times. It is also notable that Indigenous parties who accessed the formal processes once often then used it on at least one further occasion. Once again, we must emphasize that our account is not complete and that there are likely additional disputes and additional explanations for infrequent use of dispute resolution mechanisms.[75]

4.2 Disputes where treaty dispute resolution mechanisms were not used

We identified twenty-six subject matter disputes where treaty parties disagreed on matters but did not engage the dispute resolution processes under the treaty. Again, the subject matter at issue varied widely, including natural resources projects (e.g. mining), royalties, training and employment, fisheries management and fisheries authorization, land administration, Crown-Indigenous consultation, and implementation matters (e.g. implementation legislation). For example, the Inuvialuit and Canada resolved several disputes

regarding land administration before engaging formal arbitration under the IFA. Also prominent in this list were disputes over fiscal transfer agreements, or simply the financing of treaty governments.

In some of these cases, dispute resolution mechanisms were not used because the treaty required agreement by the parties to refer the matter and one of the parties did not agree to it. The clearest example of this is NTI's seventeen attempts to refer disputes regarding Inuit employment and government contracting to arbitration. Canada denied each request, eventually leading to high profile litigation that ended with a settlement agreement, which included a commitment to amend the dispute resolution chapter of the NCLA. Similarly, the Trondek Hwech'in attempted to engage dispute resolution in relation to a dispute with the Yukon Government regarding royalties, but the Yukon Government denied the request and had the power to do so under Article 26.6.[76] The federal government also has a policy guiding its discretion to agree to arbitration which indicates that "Canada will not consent to arbitrate the determination of funding levels, as agreements state that these are to be determined through negotiation."[77] This policy does not keep all matters with fiscal implications out of DR, but as the list in Appendix C indicates, this policy explains why some of these disputes dealing with fiscal transfer agreements went to court rather than under treaty dispute resolution provisions that require parties' consent.

In other cases, institutional staffing challenges presented extra hurdles that may have contributed to parties resolving (or not resolving) their disputes through other means and forums. For example, Fortune Minerals had approached the Governments of the Northwest Territories and Canada over road access issues that it was not able to resolve with the Tłı̨chǫ Government. Although Fortune Minerals could access dispute resolution under the Tłı̨chǫ Agreement, the required Dispute Resolution Administrator was not in place. In that case, the GNWT applied to the Supreme Court of the Northwest Territories to perform this function, as permitted under Article 6.6.2 of the Tłı̨chǫ Agreement, but the matter ultimately resolved without resort to the Agreement's dispute resolution mechanisms.[78] As noted above in relation to the Gwich'in and pre-amendment Sahtu contexts, challenges in appointments processes have resulted in the arbitration boards frequently not having quorum, meaning the arbitration process cannot be accessed, even if parties were inclined to agree to do so.

In other cases, parties proceeded to the courts without engaging treaty dispute resolution mechanisms. This was the situation, for example when the Tłı̨chǫ brought a legal challenge (that the Sahtu later joined) to the proposed amendments to the *Mackenzie Valley Resource Management Act* that would have eliminated regional land and water boards and replaced them with a "superboard".[79] This was also the situation in the legal challenge brought by several Yukon First Nations against the Yukon Government's unilateral imposition of a final land use plan for the Peel Watershed late in what had been a collaborative process under the Umbrella Final Agreement.[80]

5. What we heard

As part of our research, we also conducted semi-structured interviews with treaty party officials from Indigenous, federal and territorial governments, as well as other experts who work in treaty implementation. Our approach is to not directly attribute statements to any of these individuals. Rather, in this section we set out in general terms key observations and views provided by interviewees. It must be noted that the views

described below do not reflect the views of *all* interviewees collectively (and certainly not all modern treaty parties). In some cases, interviewees offered differing views. Such common and diverging perspectives are noted to the extent possible.

5.1. Barriers to using dispute resolution mechanisms

As noted in the sections above, there is significant variance across experiences with accessing modern treaty dispute resolution mechanisms. In some contexts, such as the Gwich'in, Sahtu and Tłı̨chǫ, the mechanisms have never been used. In other cases, such as NTI, Nisga'a, and Inuvialuit, the mechanisms have been used multiple times. Interviewees noted several barriers to and concerns about using the mechanisms on a general or structural level. First, and as noted earlier, problems or delays in the board appointment process - a responsibility of the Government of Canada – have left the boards without quorum at times, rendering them unable to function. Second, and related to the preceding point, standing arbitration boards may be unduly cumbersome given that these bodies require ongoing maintenance and appointments but are, in practice, seldom used. Third, in some contexts, as noted above and as was particularly acute in the case of NTI, one party possessed and exercised its unilateral power to block a dispute from being referred to dispute resolution. Fourth, some treaty parties and individuals involved in treaty implementation may regard engaging formal dispute resolution mechanisms as a failure on the part of officials or bodies initially tasked with addressing the subject matter of the dispute. Fifth, some or all treaty parties involved may view the formal dispute resolution process as a time consuming, costly, and resource intensive process in an already resource-constrained context. Sixth, one or more of the treaty parties may fear losing control of the matter once it is referred to formal dispute resolution processes, especially arbitration, and this may be most acute where one or more of the parties had a previous negative experience with the process. And finally, Indigenous parties in particular may view the dispute resolution processes as out of step with their culture, values, and laws, and the processes may not be well understood as a mechanism for addressing treaty disputes. Of course, interviewees described various contexts where a mix of these barriers and concerns were present.

5.2. Specific dispute resolution mechanism features

Different features in different treaties and in the mechanisms within those treaties can have a significant impact on whether the mechanisms are used and on how use of the mechanisms unfold. Interviewees pointed to a number of features in this regard. For example, having specific time frames set out in the mechanisms, as seen in the revised Nunavut chapter and other staged approach contexts, can lead to a dispute receiving attention from senior government officials more quickly. This particular feature can also ensure that disputes move through stages in a timely fashion. Another specific feature identified by interviewees is the ability of a party to commence litigation at any point during the dispute. The ability to do so without first exhausting all stages of the dispute resolution can affect how the parties approach the dispute resolution stages themselves. As well, there is the obvious and important specific feature described above as a barrier to use of the mechanisms - the ability of one party to withhold their agreement to refer a

matter to dispute resolution where agreement is required by the treaty.

5.3. Dispute subject matter

In terms of the substance of matters disputed, while the interests at stake varied widely (as noted above in Part 4), interviewees pointed to two areas where disputes persist most: economic measures (including government procurement), and funding and fiscal agreements. Regarding the former, interviewees described an ongoing gap between expectations of the parties and the specific obligations as written in the treaty. In some instances this may flow from differences in treaty parties' interpretations of the provisions (including debates around 'spirit and intent'), in other instances it may flow from Indigenous treaty parties wanting government to go beyond the obligations in the treaty, and in other contexts it may flow from treaty provisions being relatively vague but couched in language that may have raised expectations. Interviewees described different ways in which differences on this subject matter have been resolved, including use of the formal mechanism, but also cooperation at policy and operational levels. However, such disputes continue in the present context and many such disputes linger without being resolved.

Interviewees described disputes regarding funding and fiscal arrangements, meanwhile, as also flowing from a gap in expectations regarding the amount of funding Indigenous treaty parties need for implementing the treaty. One key challenge described by interviewees in this context is the rigid federal policy that disputes purely pertaining to funding cannot be referred to arbitration.[81]

5.4. Practical dimensions and experiences

Interviewees described numerous situations and practices where disputes were resolved outside the formal dispute resolution process, either in parallel with the process or prior to engaging dispute resolution mechanisms. In such contexts, interviewees acknowledged the role of implementation committees in resolving disputes, indicating that these bodies were often one of the first places where parties discuss disputes. However, interviewees also indicated that these bodies were not always an effective or appropriate body for resolving disputes, in some cases because parties lack confidence in the committee's ability to resolve the dispute or because a treaty party preferred for a matter to be dealt with at a higher (often political) level.

Interviewees indicated that political pressure was often a significant part of resolving disputes. In some instances this would take place in parallel with formal dispute resolution processes underway, or in some instances this would be in situations where formal dispute mechanism were not engaged, particularly if such an option was not available due to institutional barriers (e.g. no quorum of an arbitration board). Several interviewees pointed to the broader intergovernmental relationship and noted that parties may prefer to negotiate a solution at the leadership realm to preserve the relationship rather than engaging the dispute resolution mechanisms. However, such a route is open-ended, and interviewees indicated that this can leave issues on the political agenda for years without resolution.

5.5. Policy context

Interviewees noted that the federal government's approach to modern treaty implementation has changed in recent years. Generally, interviewees indicated that the federal government has shifted away from a confrontational approach, and that this was visible in several policy initiatives such as the Cabinet Directive and the Principles on Modern Treaty Implementations.[82] Perspectives differed, however, with respect to the extent to which these changes have made a meaningful difference in treaty implementation and the well being of Indigenous communities. Several interviewees shared a specific concern with the modern treaty implementation office (MTIO) being situated within INAC and not inside a central agency, such as the Privy Council Office. It was suggested that this hampers the ability of the MTIO to direct other departments to the degree necessary for implementation of modern treaties, including resolution of disputes. Regarding dispute resolution specifically, several interviewees noted that the recent approach of the federal government includes an openness to amending existing dispute resolution provisions, and that discussions on this are underway in some regions.

5.6. Indigenous dispute resolution customs, practices and values

With respect to Indigenous law and practice around dispute resolution, interviewees indicated that existing agreements do not provide for such approaches in any discernable way (with the exception of the inclusion of an elders advisory council in the Nisga'a Agreement). Generally, most interviewees did not have clear views on why this was the case, but expressed interest in the prospect of including a basis for such approaches in the future, including in self-government agreements and intra-Indigenous dispute contexts. Nevertheless, some interviewees noted that the emphasis on ongoing dialogue and exercising caution or patience before escalating disputes, which in turn results in less reliance on arbitration and formalization of disputes, is informed by Indigenous culture and dispute resolution practices.[83]

6. Conclusions, reflections and further research

6.1. Conclusions

Turning to conclusions, it is important to recall that implementation of modern treaties to date shows the treaties to be "living agreements" rather than complete (and final) codes. While the treaties are lengthy, sophisticated power sharing agreements that represent attempts to address long-standing Crown-Indigenous disputes over fundamentally important matters such as rights, title and jurisdiction, disputes are bound to arise during implementation, particularly given the complex and fraught history of Crown-Indigenous relations in Canada. This was foreseen by the leaders, negotiators and drafters who included dispute resolution processes in each treaty.

Yet, there is significant variance in the processes and options available to treaty parties, and this, among other factors, has led to varied experiences. Overall, we observed that in most modern treaty contexts, dispute resolution processes are not relied upon or are not accessible enough to support treaty implementation and positive treaty relationships. Instead, disagreements and disputes can linger, and be a

source of frustration and grievance about modern treaties and treaty implementation more generally. This trajectory provides a reason for treaty parties to revisit treaty dispute resolution provisions, processes and practices.

Specifically, we have noted the following:

- Dispute resolution mechanisms in the treaties are highly varied, but there have been two main designs to date: the arbitration board model, and the staged approach. There has been a discernable shift toward the latter, as seen in the amended Nunavut provisions.
- Disputes span a range of issues that are very context-specific. It is difficult to identify or generalize about patterns or areas of recurring subject matter, though funding and fiscal arrangements are particularly common.
- Fiscal disputes are particularly difficult to address within formal dispute resolution structures, particularly given the federal government position that it will not agree to arbitration on funding levels. Further, the resourcing of dispute resolution institutions and processes can create lead to more disputes and barriers to treaty implementation.
- Specific provisions contained in the agreements make a significant difference as to whether and how often parties' engage the dispute resolution processes set out in the treaties. For example, requiring consent from all parties to access dispute resolution will inhibit use of the mechanisms and may adversely affect trust in the relationship. Other detailed features of the process are also consequential, such as timelines and the ability to exit dispute resolution and commence litigation.
- In all contexts, dispute resolution under the treaty mechanisms have been initiated by the Indigenous treaty party. Government has not initiated use of dispute resolution mechanisms.
- Barriers and reasons for not using dispute resolution mechanisms were mixed, including lack of consent of all parties in context where consent is required, lack of staffing of the dispute resolutions institutions established under the treaties, costs to engage the processes (in an already resource-constrained context), perceptions of resorting to formal processes as political failures, cultural perspectives on the prescribed dispute resolution processes as foreign, fear of losing control of the matter (e.g. to an arbitrator), and, in some contexts, a preference for political leaders to handle such matters.
- None of the treaties discussed in this report include an explicit basis for dispute resolution mechanisms rooted in legal traditions and cultural practices and values of Indigenous parties. One exception can be seen in the Nisga'a Agreement's inclusion of an elders advisory council as a potential dispute resolution body under stage two of that process;[84] however, we have no information about how this elders advisory council functions. More broadly, we do not have a basis for assessing how Indigenous dispute resolution might contribute to the functioning and success of dispute resolution mechanisms under modern treaties.[85]
- The fast-evolving law and policy context in Canada today presents an opportunity for treaty parties to revisit existing dispute resolution mechanisms with a view to improving the mechanisms in service of the treaty objectives and the broader treaty relationship.

Reflecting on this research project, much of what we examined and found revolves around trust. In evidence before the Senate Standing Committee regarding Inuit experiences in particular, Joanne Johnson observed:

> [T]rust has become a serious issue; trust is something that you either build or destroy with every interaction. Without a clear dispute resolution process, with consequences, there can be no hope for resolving the current disputes or engendering trust."

Trust is a key ingredient for successful treaty implementation, and once lost it is difficult to restore. There is no doubt that unresolved disagreements about the meaning and purpose of treaty commitments are a serious obstacle to successful and forward-looking treaty implementation. Unresolved disputes around the implementation of the treaty commitments inhibits full realization of the "quantum leap" ahead of Indigenous experience with historical treaties.

From this perspective, and understanding treaties as living agreements in which the text and spirit of the agreements signaled an expectation of an evolving relationship, disputes can be understood as a normal part of implementation and an important part of this evolution. There will always be multiple routes for resolving disputes and involvement of political officials will commonly be involved. Nevertheless, dispute resolution under the treaties that is specific to the parties' relationships, laws, and histories – including ongoing efforts to transition from state dominance to power sharing relationships – continue to hold promise. We hope that this report assists treaty parties by providing a basis for engaging in dispute resolution in a manner that builds trust, strengthens treaty relationships, and contributes to constructive modern treaty implementation.

6.2. Further research

This research project represents a first step. As noted throughout, our findings should be read with the understanding that our research was not comprehensive. In particular, our pool of interviewees was relatively small, and these individuals were from a relatively small number of the total treaty parties. Additionally, while we compiled the fullest list of disputes possible, we were unable to identify each and every dispute that has arisen in each modern treaty contexts. As such, this report and our findings are to some extent impressionistic. Nevertheless, this represents the beginning of an empirical account of dispute resolution under modern treaties.

Further research is certainly warranted, including, for example, community-level research focused on Indigenous law, governance and dispute resolution. Additional research could also focus on developing a more complete list of disputes, or it could focus on several particular disputes to understand nuances of specific treaties and treaty relationships. Such future projects, including those under the SSHRC-LCAC partnership grant, may build upon this initial research. In the meantime, a key next step for us is to publish peer-reviewed academic commentary in coming months.

Appendix A – Description of existing dispute resolution mechanisms

Gwichin Agreement and Sahtu Agreement (pre-amendment)

Dispute resolution chapters in the Gwich'in and Sahtu Agreements are virtually identical.[86] Both chapters are examples of the arbitration board model. Jurisdiction of the arbitration panel is set out in article 6.1.5 of the GCLCA:[87]

> The panel described in 6.2 shall have jurisdiction to arbitrate in respect of:
>
> (a) any matter which this agreement stipulates is to be determined by arbitration; and
>
> (b) any matter concerning the interpretation or application of this agreement where the parties agree to be bound by an arbitration decision in accordance with this chapter.

Under this regime there are two routes to arbitration: either as prescribed by the specific governing provision elsewhere in the Agreement, or by agreement between the parties. Under the former, there is variation between specific provisions. For example, article 20.3.1, dealing with government access to Gwich'in lands, creates an automatic requirement to proceed to arbitration if government and the Gwich'in Tribal Council cannot reach a negotiated agreement,[88] whereas article 20.1.7, dealing with certain circumstances of public or commercial access to Gwich'in lands, provides authority to the Gwich'in Tribal Council *or* government to refer the matter to arbitration.[89]

The other route is under subsection 6.1.5(b), where jurisdiction of the arbitration panel hinges on whether "the parties agree" to refer the matter to the panel and be bound by the panel's decision. As discussed elsewhere in this report (e.g. with respect to the Nunavut regime prior to amendment), this latter route effectively provides each party with a veto over any other parties' desire to engage the treaty's dispute resolution mechanism.

Unlike other modern treaties, such as the Nisga'a Final Agreement, the dispute resolution chapters in the GCLCA and SDMLCA do not explicitly require parties to exhaust other dispute resolution methods before proceeding to arbitration. However, Chapter 6 clearly anticipates (but does not stipulate) that negotiation will take place prior to advancing to arbitration, stating that, "[t]he provisions of this chapter apply to any dispute which is not resolved by discussion and negotiation".[90] Additionally, a number of provisions suggest parties should first attempt to achieve a negotiated solution. For example, provisions that explicitly reference referral to the arbitration panel indicate that such referral is to take place if an agreement cannot be reached through negotiation.[91] Further acknowledgement that disputes may be resolved through means other than the arbitration panel can be found in 6.1.7, which indicates that nothing in the chapter prevents parties from "*agreeing* to refer it to an alternate dispute resolution mechanism such as mediation or arbitration".[92]

The Agreement also acknowledges a role for the Implementation Committee in resolving disputes.[93] Article 28.2.3 states that, "[t]he Implementation Committee shall operate on a consensus basis and shall: … (d) attempt to resolve implementation disputes arising between the parties. Unresolved implementation disputes shall be resolved pursuant to arbitration under chapter 6".[94]

In terms of composition, the Agreements require that an arbitration panel be established[95] and that it be comprised of eight members, including a chairperson and vice-chairperson,[96] and individuals appointed by Canada, the GNWT and the Gwich'in Tribal Council respectively.[97] Institutionally, unlike other modern

treaty regimes, the GCLCA and SDMLCA do not establish any kind of supporting institution or official position. As discussed later in this report, one risk that exists in relation to the dispute resolution structure in these agreements is that the arbitration boards are not sufficiently populated by the parties, resulting in the panels being unable to function (i.e. the parties do not make appointments in a timely manner, or disagreements around appointments hinder appointments).

In a narrow set of specific circumstances, the GCLCA and SDMLCA also provide dispute resolution authority to bodies other than the arbitration panel. For example, the Surface Rights Board would determine compensation in situations where approved access to Gwich'in lands results in damage or interference and the Gwich'in Tribal Council and the other party are unable to agree on compensation.[98] Similarly, the Land and Water Board would determine compensation in contexts where the Gwich'in Tribal Council and the other parties are unable to agree on compensation to be paid to Gwich'in in relation to water rights.[99] And the Supreme Court of the Northwest Territories would hear any individual's appeal regarding enrolment under the GCLCA.[100] The GCLCA and SDMLCA also provide for the arbitration regime under the National Energy Board Act to apply in contexts of expropriations under that Act.[101] In terms of judicial review, decisions by an arbitration panel are reviewable by the Supreme Court of NWT[102] but only on grounds that the arbitrator(s) erred in law or exceeded jurisdiction.[103]

Inuvialuit Final Agreement

Dispute resolution in Chapter 18 of the Inuvialuit Final Agreement is an example of the arbitration board model. This chapter features perhaps the broadest scope of any of the modern treaty dispute resolution mechanisms, primarily by virtue of article 18(16):

> 18. (16) Except as otherwise provided by this Agreement, Canada, the Inuvialuit or Industry may initiate arbitration by giving notice to the other party to the dispute and a copy to the Chairman of the Arbitration Board for circulation to all members of the Board. Where a matter for arbitration is within the jurisdiction of the Government of the Northwest Territories or Yukon Territory, Canada agrees to initiate arbitration on request by the Territorial Government.[104]

Under this provision, both the Inuvialuit and Canada have unilateral power to refer a matter to arbitration. This stands in contrast to other agreements, such as the GCLCA, where in many cases the parties must agree, which effectively provides a veto to each party. Arbitration may also be initiated by Industry, a feature that is not common to other modern treaties. Further, so long as the matter for arbitration is within the jurisdiction of the GNWT or Yukon Government, Canada must initiate arbitration if so requested by one of the territorial governments. Finally, s.18(17) widens the scope further by allowing any party to intervene if its interests are affected.[105]

The arbitration board's jurisdiction is very broad. Section 18(33) states: "The Arbitration Board shall have jurisdiction to arbitrate any difference between the Inuvialuit and Industry or Canada as to the meaning, interpretation, application or implementation of this Agreement".[106] As such, there are virtually no constraints on what disputes between the Inuvialuit, Canada and Industry the board may hear.[107] Additional jurisdiction is also granted to the board over specific issues that may involve third parties or beneficiaries

such as enrolment,[108] certain land matters,[109] expropriation,[110] participation agreements,[111] and wildlife compensation awards, recommendations and decisions.[112] Referral to the arbitration board is also explicit in some IFA provisions. For example, article 7(12) provides that in the event that Canada and the Inuvialuit fail to negotiate a work program in relation to exploration or production of "respective resources", either party may refer the matter to the arbitration board.[113]

In terms of composition, the IFA requires that the board have 11 members, including a chairperson and vice-chairperson.[114] Five members are to be appointed by Canada, two of which are the Chairman and Vice-Chairman, who must be "be acceptable to the Inuvialuit and Industry", and two more of which must be designated by the territorial governments, respectively.[115] The Inuvialuit and Industry[116] must each appoint three other members of the board.[117] In an arbitration where the interested parties are only the Inuvialuit, Industry and Canada, the panel would consist of just seven members.[118] Award decisions of the board are reviewable by the Federal Court of Appeal.[119] Similar to the GCLCA and SDMLCA but unlike other agreements, the IFA does not establish any kind of supporting institution or official position.

Yukon Umbrella Final Agreement

Dispute resolution under the 1992 UFA[120] is structured as a staged approach; however, it includes many features of the arbitration panel model for disputes that reach that stage. The UFA requires that disputes first go to mediation. Articles 26.3.5 ("specific disputes") and 26.4.3 ("other disputes") stipulate that only if a dispute is not resolved by mediation may it then be referred to arbitration.

The UFA is structured around "specific disputes" and "other disputes". For specific disputes, there are two main ways for the dispute resolution process to be engaged. First, *any* party may refer the matter to mediation if it is a matter that the UFA or a Settlement Agreement[121] explicitly refer to the dispute resolution process.[122] Second, matters not explicitly referred under the UFA or an Agreement, whether related to a Settlement Agreement or not, may be referred to the dispute resolution process if all parties agree to do so.[123]

For "other disputes", similar to specific disputes, *any* party may refer the matter to mediation if it is a matter that the UFA or a Settlement Agreement explicitly refers to the dispute resolution process. Additional disputes may also be referred to mediation if all parties agree to do so.[124] Further, a party may refer a dispute to mediation if that matter is directed to dispute resolution by a board established under a Settlement Agreement.[125] Finally, there is broad scope provided by 26.4.1.5 whereby "any matter arising out of the interpretation, administration, or implementation" of a Settlement Agreement may be referred to mediation "with the consent of all the other parties to that Settlement Agreement".[126]

The mediation process is set out in 26.6.0, including timelines, appointment of a mediator, recommendations of the mediator, costs, and confidentiality. If a specific dispute is not resolved through mediation, *any* party may refer the dispute to arbitration.[127] Otherwise, any "other dispute" requires agreement between the parties to refer the matter to arbitration.[128] The arbitration process is set out in 26.70.0, including timelines, appointment of an arbitrator, authorities of the arbitrator (e.g. administering oaths, subpoenaing witnesses, etc.), costs, and binding nature of decisions.

Institutionally, Chapter 26 requires the establishment of a Dispute Resolution Board comprised of three individuals. One member is appointed by Yukon First Nations, one by Canada and the Yukon, and the third is appointed jointly. This Board's roles and responsibilities are set out in 26.5.4. The primary function of the Board is to support and administer the dispute resolution process, including maintaining a roster of arbitrators and mediators, appointing arbitrators and mediators, and establishing mediation and arbitration rules and procedures.[129]

The UFA also acknowledges a role for an "Implementation Planning Working Group" comprised of one representative appointed by Canada, one representative appointed by the Yukon, and two representatives of a Yukon First nation.[130] Under 28.4.5, the UFA anticipates that this working group will work to reach agreement on any particular issue, but if the working group is unable to reach agreement then it must be referred to the parties.[131] This resembles the role described above in relation to Implementation Committees under the GCLCA and SDMLCA.

Decisions of an arbitrator are reviewable by the Supreme Court of the Yukon[132] but only on grounds that "the arbitrator failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise jurisdiction".[133]

Nisga'a Final Agreement

Dispute resolution under the Nisga'a Final Agreement (NFA) is an example of a staged approach, wherein the parties must follow a stage prior to escalating to the next stage unless the parties agree otherwise. Chapter 19 of the NFA and a series of related appendixes[134] comprise the most lengthy and detailed dispute resolution provisions of all modern treaties.

Opening provisions of Chapter 19 set out shared objectives to prevent, minimize and resolve disagreements in a relatively informal and cooperative manner that does not require engagement of the formal dispute resolution stages. For those disputes that are not resolved in such an informal manner and are within the broad description of conflicts and disputes in s.7 (e.g. disputes regarding interpretation, application, implementation or breach of the Agreement),[135] parties must address their disputes by going through three specific stages set out in s.12:

a. Stage One: formal, unassisted efforts to reach agreement between or among the Parties, in collaborative negotiations under Appendix M-1;

b. Stage Two: structured efforts to reach agreement between or among the Parties with the assistance of a neutral, who has no authority to resolve the dispute, in a facilitated process under Appendix M-2, M-3, M-4, or M-5 as applicable; and

c. Stage Three: final adjudication in arbitral proceedings under Appendix M-6, or in judicial proceedings.

Details of each step are set out in ensuing provisions. For example, sections 20-27 set out details regarding the stage two "facilitated processes", including timelines, notice, termination, a more detailed referencing of

the relevant appendixes, and a description of mandatory "negotiation conditions" such as timely disclosure and good faith. Similarly, stage three arbitration details are set out in section 28-34, including reference to the relevant appendix. There are two routes to arbitration set out in sections 28 and 29. For disagreements arising out of an NFA provision that stipulates that the matter will be "finally determined by arbitration" the disagreement automatically proceeds to arbitration after the other two stages are exhausted. For all other disputes, arbitration is still available, but only with written agreement of all parties.[136] Beyond arbitration, as part of the NFA's relatively rigid and prescribed staged approach, parties must exhaust all stages before commencing judicial proceedings.[137]

A feature that makes the NFA stand out against other modern treaties in the inclusion of a relatively large number of process options, which are detailed in appendixes M-1 – M-6. These are as follows: collaborative negotiations in M-1, mediation in M-2, technical advisory panel in M-3, neutral evaluation in M-4, elders advisory council in M-5, and arbitration in M-6.[138] These comprise a significant suite of process options not present in other modern treaties. However, agreement between all parties is required to use any facilitated process other than mediation.[139] This means, for example, that referring a dispute to the elders advisory council is subject to a veto by the government.

Unlike the UFA or Tłı̨chǫ contexts, the NFA does not establish any standing institutional body or support structure. Rather, each appendix dictates the process, composition and rules pertaining to each dispute resolution mechanism. For example, Appendix M-5 deals will the elders advisory council, setting out details regarding appointments, procedure, confidentiality, decision-making and termination. Appendix M-6 sets out similar for the arbitration process, though it includes a great deal of detail.[140]

Under the NFA Appendix M-6, arbitration decisions are reviewable by the Supreme Court of British Columbia.[141]

Tłı̨chǫ Agreement

Dispute resolution under Chapter 6 of the Tłı̨chǫ agreement is a clear example of the staged approach. In general, the Agreement requires that parties first attempt to resolve disputes through discussions, then mediation, then arbitration. Each stage must be exhausted before the dispute may escalate to the next stage, and a party may only take a dispute to court if those stages all fail to resolve the dispute. For example, mediation is only available if parties have "attempted to resolve that dispute by discussion".[142] Notably, each party has the ability to refer a dispute to mediation if discussions have not resolved a dispute. This means that no party possesses a veto over another party's attempt to refer a dispute to mediation.[143] However, these similar powers are more circumscribed for arbitration, which requires agreement by the parties.[144] Meanwhile, as a dispute proceeds through the stages the parties may resolve their dispute by an agreement in writing.[145]

The scope of disputes that may be referred to mediation is very broad, similar to that of the IFA described above. Article 6.1.1 provides that the dispute resolution mechanisms are available in relation to any "dispute between the government and the Tłı̨chǫ government concerning the interpretation or application of the Agreement", and to any matter that the Agreement refers to the dispute resolution process, and to any

matter which an agreement between the parties stipulates may be resolved through the Chapter 6 mechanisms.[146] However, the scope of disputes that may be referred to arbitration is narrowed. While the potential scope is broad in that the dispute may pertain to "interpretation or application of the Agreement", this is only available if "the parties to the dispute agree in writing to be bound" by the arbitration decision, or if the dispute is explicitly referred to arbitration under the Agreement or as stipulated by another between the parties.[147]

Institutionally, the dispute resolution mechanisms under the Tłı̨chǫ Agreement are supported by a "dispute resolution administrator" who is jointly appointed by the Tłı̨chǫ Government, Canada and the GNWT.[148] It is this administrator's role to oversee mediation and arbitration processes, including establishing and maintaining a roster of mediators and arbitrators, establishing rules of procedure, appointing mediators and arbitrators, and maintaining records.[149] In a small set of circumstances (land access under chapter 19), a dispute must be referred to the Surface Rights Board instead of the administrator.[150] Similarly, the Wekeezhii Land and Water Board has jurisdiction over a small set of disputes,[151] and disputes regarding compensation for lands expropriated under the *National Energy Board Act* would be heard by an arbitration committee under that statute.[152]

Questions of law may be referred to Supreme Court of NWT by the administrator,[153] and a decision of an arbitrator is considered conclusive and binding but may be challenged on grounds that arbitrator(s) erred in law or exceeded jurisdiction.[154]

Nunavut Land Claim Agreement

As described in Part 2 above, settlement of the NTI litigation in 2015 included amending the dispute resolution provisions in the Nunavut Agreement.[155] Under the revised Chapter 38, dispute resolution now follows the staged approach. Prior to this change, the Nunavut agreement was a clear example of the arbitration board approach,[156] specifically requiring agreement from the parties to commence arbitration.[157] It was this veto power that Canada used in the 17 instances where it responded to NTI's requests with a refusal to proceed to arbitration.[158]

The revised Chapter 38 in the Nunavut Agreement features four stages: informal processes, negotiations at the implementation panel, mediation, and arbitration.[159] The revised process requires that parties first attempt to resolve disputes through "informal processes", then through the Implementation Panel,[160] then mediation,[161] then arbitration. Except for a small set of circumstances described below in relation to arbitration, each stage must be exhausted before the dispute may escalate to the next stage. For example, mediation is only available "60 days after the date of the Implementation Panel meeting during which the dispute was first discussed".[162] For all stages, *any* party may refer the dispute to the next stage so long as procedural dimensions such as notice and time periods are satisfied.

With respect to arbitration under 38.5, *any* party may refer several specific types of matters to arbitration without having to exhaust the previous stages (e.g. mediation) – these include disagreements regarding incompatibility of harvesting activities with an authorized land use (5.7.19), access across Inuit Owned Lands for commercial purposes (21.7.15), compensation for expropriation (21.9.8), and proposals

for long-term alienation of archeological specimens.[163] All other disputes may only proceed to arbitration if mediation does not first resolve the dispute.[164]

The scope of disputes that may proceed through these stages is relatively broad, including disputes between two or more of Canada, the Government of Nunavut and the Designated Inuit Organization(s) involved regarding the "interpretation, application or implementation of the Agreement" or disputes specifically referred to dispute resolution by other provisions in the Agreement.[165] Surrounding the entire revised dispute resolution regime, there are soft commitments in article 38.2 to "settle disputes informally through cooperation" and to "engage litigation only as a last resort".[166]

Questions of law may be referred to the Nunavut Court of Justice,[167] and any party may appeal the arbitration award to the Nunavut Court of Justice.[168] Other than the Implementation Panel, no devoted institutions or administrative bodies are created under the revised Chapter 38. In this way, the new Nunavut regime differs from the Tłı̨chǫ regime and Yukon regime described above.

Appendix B - Disputes where parties used treaty dispute resolution mechanisms[169]

1. Nisga'a Lisims Government against Fisheries and Oceans Canada re Access to Nisga'a Lands. The Department of Fisheries and Oceans (DFO) authorized an outfitter to enter Nisga'a land, set up a fishing station, remove trees, and construct a road. Nisga'a challenged the DFO's authority to authorize this access and responsibility for damage caused to Nisga'a Lands and resources as a result of access being granted. Dispute resolution was initiated in September 2019 and is ongoing.[170]
2. Nunavut Tunngavik Inc. against Canada re Article 24 Government Contracts, August 2019. Resolved through arbitration under article 38. [171]
3. Nunavut Tunngavik Inc. against Canada re Article 23 Government Employment, February 2019. Began with notice of arbitration by NTI under article 38.3.4 and is currently developing.[172]
4. Trondek Hwech'in First Nation against Government of Yukon re Mining Access, 2016. Began with establishing a Dispute Resolution Panel under article 26.5 but the process was put on hold for informal negotiations and later proceeded to the courts.[173]
5. Carcross Tagish First Nation against Canada re Financial Transfer Agreement, 2012-2014. Resolved through mediation under article 26.6.[174]
6. Nisga'a Lisims Government against Canada re Mining Environmental Assessment, 2013. Began with Nisga'a simultaneously commencing judicial review and stage one formal negotiations under article 19.12(a) and proceeded to stage two mediation under article 19.12(b), where it was resolved.[175]
7. Trondek Hwech'in First Nation against Canada re Education Agreement, 2012. Appears to have been resolved through negotiations.[176]
8. Carcross Tagish First Nation against Canada re Child Welfare Resourcing, 2008-2010. Began with mediation under article 26.6 and was resolved through government policy changes at a later date.[177]
9. Nisga'a Lisims Government against Canada re Forestry Environmental Certificate, 2008-2009. Resolved through stage one: negotiations under article 19.12(a).[178]
10. Inuvialuit against Northwest Territories re Failure to Negotiate Memorandum of Understanding, 2005-2007. Resolved through arbitration under article 18.[179]
11. Inuvialuit against Canada re Ikhil Project Royalties, 2004-2005. Resolved through arbitration under article 18.[180]
12. Inuvialuit against Canada re DEW Line/Trap Line Contracts and Horton River Clean-Up, 1994. Resolved through arbitration under article 18. [181]
13. Inuvialuit against Canada re Komakuk DEW Line Clean-Up and National Park Status, 1994. Resolved through arbitration under article 18.[182]
14. Nisga'a Lisims Government against Canada re Financial Agreement. Resolved through stage one: formal negotiations under article 19.12(a). (In 2013-2015 timeframe but precise timing unclear.)

15. Vuntut Gwitchin First Nation, Little Salmon/Carmacks First Nation, Champagne and Aishihik First Nation, Selkirk First nation, and Teslin Tlinget Council against Canada re Employment Skills Training Programs. Began with mediation which was adjourned for negotiations to take place. (Precise timing unclear.)

Appendix C - Disputes where treaty dispute resolution mechanisms were not used[183]

1. Nisga'a Lisims Government against Canada and British Columbia re Treaty Implementation, October 2019. Nisga'a alleges that the federal and provincial governments have ignored Nisga'a rights and given priority to unproven and undefined rights asserted by other Indigenous groups.[184]

2. Little Salmon/Carmacks First Nation against Canada re Reserve Lands. Little Salmon/Carmacks alleged, inter alia, illegal surrender of reserve lands and filed under the Specific Claim process, 2019. The Specific Claim was rejected because the UFA resolved all claims against the Crown. Instead of pursuing mediation, Little Salmon/Carmacks is attempting to resolve the dispute via the Implementation Committee. The dispute is currently being addressed through an implementation working group.

3. Makivik Corporation against Canada re Altering Quota Limitations. The Minister of Environment and Climate Change Canada's decision varying the Nunavik Marine Region Wildlife Board's and the Eeyou Marine Region Wildlife Board's final decision regarding the Total Allowable Take and non-quota limitations for the harvesting of Southern Hudson Bay polar bears within the Nunavik Marine Region, 2016-2019.[185] This matter proceeded to litigation (application for judicial review) without use of dispute resolution mechanisms.

4. Gwich'in Tribal Council against Government of Yukon re Peel River Land Use Plan, 2014-2018. The Gwich'in were intervenors in the litigation challenging the Yukon Government acting unilaterally in developing and passing the final plan.[186]

5. Gwich'in Tribal Council against Government of Yukon re Yukon Transboundary Project, 2018. The government has not funded implementation of the Transboundary Agreement in Appendix C of the Gwich'in Land Claim Agreement for over twenty-five years.[187]

6. Fortune Minerals against the Tłı̨chǫ Government against Government of Northwest Territories re Mining Access, 2018-2019. The Government of Northwest Territories, on behalf of Fortune Minerals, sought court assistance in administering the dispute resolution chapter due to the absence of a Dispute Resolution Administrator, as permitted under 6.2.2 of the Tłı̨chǫ Agreement. The parties were later able to reach an agreement.[188]

7. Teslin Tlingit Council against Canada re Financial Transfer Agreement, 2004-2019. Began with fifteen years of negotiations and joint implementation review processes (but without use of formal UFA dispute resolution mechanisms) and proceeded to the courts in 2018.[189]

8. Nunavut Tunngavik Inc. against Canada re Inuit Employment and Government Procurement, 2006-2015. Nunavut Tunngavik Inc. attempted to refer seventeen disputes to arbitration and the Government of Canada denied every request. These disputes resulted in the 2006 litigation whereby Nunavut Tunngavik Inc. received a $255 million settlement and created a new dispute resolution regime under article 38.[190]

9. Tłı̨chǫ Government against Canada re Northwest Territories Superboard Legislation, 2015. The Tłı̨chǫ, Sahtu, and Gwich'in objected to the elimination of their respective land and water boards throughout consultation for the *Devolution Act*. Upon the *Act* passing, The Tłı̨chǫ brought a court action and received an interim injunction against implementing the aforementioned provisions.[191]

10. Sahtu Dene Council against Canada re Northwest Territories Superboard Legislation, 2015. The Sahtu followed the Tłı̨chǫ in filling a lawsuit against the federal government requesting declarations that certain portions of the *Devolution Act* are of no force or effect.[192]

11. Labrador Inuit against Canada re Fisheries, 2015. The Nunatsiavut Government and the Department of Fisheries and Oceans disagree on Inuit participation and access to the northern shrimp fishing industry. The dispute has not yet been referred to the Dispute Resolution Board under the Labrador Inuit Land Claim Agreement, but it may be in the future.[193]

12. Nunavut Tunngavik Inc. against Canada re Inuit Fisheries, 2014. The parties attempted to codevelop fisheries legislation and regulations for seventeen years. The new regulations for the Nunavut Settlement Area are anticipated for 2019.[194]

13. Trondek Hwech'in First Nation against Canada re Financial Transfer Agreements, 2010. Negotiations failed to implement a new financial transfer agreement.[195]

14. Nunavut Tunngavik Inc. against Canada re Nunavut Implementation Contract (NIC), 2003-2006. The failure to successfully negotiate and renew the NIC contributed to the 2006 litigation.[196]

15. Trondek Hwech'in First Nation against Canada re Determination of Resource Royalties. Trondek Hwech'in attempted to engage dispute resolution but the territorial government declined, 2017. Royalties are not explicitly mandated in the Agreement as one that either party could refer to DR mediation under 26.6.0.[197]

16. Tłı̨chǫ Government, Gwich'in Tribal Council, and Sahtu Dene Council against Government of Northwest Territories re Economic Development Programs. The parties are dissatisfied with the programs implemented by the Government of Northwest Territories. (Ongoing; precise timing not available.)

17. Maa-nulth First Nation against Government of Canada re Shrimp Fisheries. Canada, the Department of Fisheries, and Maa-nulth First Nations came to a satisfactory solution prior to engaging formal dispute resolution (precise timing unknown).[198]

18. Little Salmon/Carmacks First Nation against Yukon Government re lack of consultation prior to land grant.[199] This matter proceeded to litigation (application for judicial review) without use of dispute resolution mechanisms.

19. Makivik against Quebec re consultation obligations in relation to a minister's decision about caribou hunting and conservation measures under the provision being interpreted (2010-2014).[200] This matter proceeded to litigation without use of dispute resolution mechanisms.

20. James Bay Cree against Quebec re application of federal environmental assessment regime in the James Bay area, 2004-2010. This matter proceeded to litigation (application for judicial review) without use of dispute resolution mechanisms.

21. Kasho Got'ine Land Corp. (KGLC) against Petro-Canada re Access, 2008. Petro-Canada attempted to engage the arbitration process after negotiations failed to produce long term Access and Benefits Agreements with KGLC.[201] The matter was resolved through negotiations.[202]

22. Sahtu Secretariat Incorporated (SSI) against Government of Canada re Definition of "Royalty" in the SDMLCA. SSI claimed that payments were owed to them by Canada in relation to Imperial Oil's operations in the Norman Wells Proven Area. This matter proceeded to litigation at the Federal Court, where the court upheld SSI's position on the meaning of 'royalty' and 'payments owed' before a settlement was reached, including settlement of the payments owed and an amendment of the SDMLCA in accordance with the Government of Canada's position.[203]

23. Gwich'in Tribal Council against Government of Canada, Yukon Government, and the Government of the Northwest Territories regarding six different matters: Yukon Devolution Transfer Agreement, Yukon Development Assessment Process, Dispute Resolution (power to unilaterally trigger arbitration), economic measures, government obligation to fund Designated Gwich'in Organizations, and a wildlife studies fund. The Gwich'in recommend arbitration on these issues in 2003 but then indicated a desire to address the matter through direct negotiation with government. It is unclear the extent to which and of the matters were resolved.

24. Inuvialuit against Canada re Airport Lands. Dispute settled before engaging formal arbitration (precise timing unavailable).[204]

25. Inuvialuit against Canada re Kudlak Lake. Dispute settled before engaging formal arbitration (precise timing unavailable).[205]

26. Inuvialuit against Canada re Enrolment. Dispute settled before engaging formal arbitration (precise timing unavailable).[206]

Appendix D: Research project background

This research project is focused on dispute resolution specifically; however, it is taking place under the "Modern Treaty Implementation Research Project" (MTIRP; https://moderntreaties.tlicho.ca), a five-year Social Sciences and Humanities Research Council (SSHRC) Partnership Grant secured by the Land Claims Agreements Coalition (LCAC). Carleton University is the academic host organization for the project, and the Tłı̨chǫ Government is the LCAC host of the project's National Hub. This initiative is expected to support research and associated outputs - such as this report – that generate a basis for better understanding the challenges and opportunities associated with modern treaty implementation.[207] Within this larger research project there are five themes: Indigenous Relationships to Land, Intergovernmental Relations and Multilevel Governance, Treaty Financing and Fiscal Relationships, Implementation Evaluation and Socio-Economic Impacts, and Indigenous and Settler Legal Systems. The dispute resolution research project is taking place under the themes of Indigenous and Settler Legal Systems and "Intergovernmental Relations and Multilevel Governance.

In February 2019, the Grant Steering Committee approved this dispute resolution research project, which included funding in the amount of $23,565.32 provided to the University of Calgary primarily for the purposes of hiring a research assistant and funding a small amount of travel to present preliminary findings to the Gwich'in Tribal Council and the Nisga'a Lisims Government. The Gwich'in Tribal Council and Nisga'a Lisims Government also formally endorsed the project and committed in-kind support (e.g. via input from relevant staff and leadership, including feedback on this report) as required under the SSHRC partnership grant. The project has been led by David V. Wright, Assistant Professor, University of Calgary Faculty of Law, with significant contributions from Janna Promislow, Associate Professor, University of Victoria Faculty of Law. Both professors have significant experience and expertise in modern treaty contexts; both have lived and worked in Canada's North earlier in their respective careers. Michelle Tremblay, JD candidate at the University of Calgary Faculty of Law, provided invaluable support and research assistance throughout. This project also received approval from the University of Calgary Conjoint Faculties Research Ethics Board and a Northwest Territories Scientific Research License.

A copy of this final version of this report will be provided to Land Claims Agreements Coalition members,[208] and will form a basis for one or more peer reviewed academic articles to be written by Professors Wright and Promislow. Findings from this research project may also serve as starting points for further community-level research on dispute resolution between treaty parties.

Endnotes:

[1]See e.g., *Nisga'a Final Agreement between the Nisga'a Nation and Her Majesty the Queen*, 27 April 1999, at Chapter 19, online: *Government of Canada* <https://laws-lois.justice.gc.ca/eng/acts/n-23.3/FullText.html> [NFA].
[2]See e.g., Nigel Bankes, "The Dispute Resolution Provisions of Three Northern Land Claims Agreements" in Catherine Bell & David Kahane, eds, *Intercultural Dispute Resolution in Aboriginal Contexts* (Vancouver: University of British Columbia Press, 2004) at 320 [Bankes 2004].
[3] Canada, Office of the Auditor General of Canada, *Chapter 8 – Indian and Northern Affairs Canada – Transferring Federal Responsibilities to the North* (Ottawa: Office of the Auditor General of Canada, 2003) at 8.37 – 8.45, online (pdf): *Office of the Auditor General of Canada* <http://www.oag-bvg.gc.ca/internet/docs/20031108ce.pdf>.
[4]See Janna Promislow & Alain Verrier, "Judicial Interventions in Modern Treaty Implementation: Dispute Resolution and Living Treaties" (2019) 6:2 Northern Public Affairs 52 [Promislow & Verrier]; See also Government of Canada, Government of Nunavut, & Nunavut Tunngavik Inc, *Moving Forward in Nunavut: An Agreement Relating to Settlement of Litigation and Certain Implementation Matters* (2015), online (pdf): *Nunavut Tunngavik Inc* <http://www.tunngavik.com/files/2015/05/FINAL-SIGNED-SETTLEMENT-AGREEMENT.pdf>.
[5] See Kirk Cameron & Alastair Campbell, "Towards a Modern Treaties Implementation Review Commission", *Northern Public Affairs* (22 September 2019), online: <https://www.northernpublicaffairs.ca/index/towards-a-modern-treaties-implementation-review-commission/> [Cameron & Campbell]; See also Jessica Orkin & Cassandra Porter, "Organizational maladies and bureaucratic prescriptions: The federal Cabinet Directive on Modern Treaty Implementation" (24 November 2015) Paper presented to the Pacific Business & Law Institute's Aboriginal Law Conference, online (pdf): *GoldBlatt Partners* <https://goldblattpartners.com/wp-content/uploads/00837995.pdf> [Orkin & Porter]. See generally, Christopher Alcantara, "Implementing comprehensive land claims agreements in Canada: Towards an analytical framework" (2017) 60:3 Canadian Public Administration 327.
[6] See Julie Macfarlane, "Commentary: When Cultures Collide", in Catherine Bell & David Kahane, eds, *Intercultural Dispute Resolution in Aboriginal Contexts* (Vancouver: University of British Columbia Press, 2004) at 96, and Michael Coyle, "Negotiating Indigenous Peoples' Exit from Colonialism: The Case for an Integrative Approach" (2014) 27:1 Canadian Journal of Law & Jurisprudence 283 [Coyle 2014]. See generally Jeanne M Brett, "Culture and Negotiation" in Roy Lewicki et al, eds, *Negotiations: Readings, Exercises and Cases,* 7th ed (New York: McGraw-Hill Education, 2015) at 353.
[7] See Coyle 2014, *ibid.* See also David Kahane, "What is Culture? Generalizing about Aboriginal and Newcomer Perspectives" in Catherine Bell and David Kahane, eds, *Intercultural Dispute Resolution in Aboriginal Contexts* (Vancouver: University of British Columbia Press, 2004) 28 at 29-33 [Kahane]. See also Andrea McCallum, *Dispute Resolution Mechanisms in the Resolution of Comprehensive Aboriginal Claims: Power Imbalance Between Aboriginal Claimants and Governments* (LLM Thesis, Osgoode Hall Law School, 1993) [unpublished].
[8] For e.g., *Gwich'in Comprehensive Land Claim Agreement between Her Majesty the Queen in right of Canada and the Gwich'in, as represented by the Gwich'in Tribal Council,* 22 April 1992, at Chapter 6, online (pdf): <https://gwichintribal.ca/sites/default/files/gtc-comprehensive-land-claim.pdf>[GCLCA].
[9] For e.g., *Land Claims and Self-Government Agreement among the Tłı̨chǫ and the Government of the Northwest Territories and the Government of Canada,* 2005, at Chapter 6, online (pdf): <https://www.tlicho.ca/sites/default/files/documents/government/Tlı̨cho%20Agreement%20-%20English.pdf>[Tlı̨chǫ Agreement].
[10] See e.g., *Déline Self-Government Agreement among the Déline First Nation Band, the Déline Land Corporation, the Government of Canada and the Government of the Northwest Territories*, 18 February 2015, at Chapter 27, online (pdf): <https://www.deline.ca/wp-content/uploads/2016/10/Deline-Final-Self-Government-Agreement.pdf>.
[11] "About the Modern Treaties Implementation Research Project" (2017), online: *Modern Treaty Implementation Research Project* <https://moderntreaties.tlicho.ca/about/about-modern-treaties-implementation-research-project> [MTIRP 2017].
[12] *Calder v British Columbia (AG),* [1973] SCR 313, [1973] 4 WWR. For detailed commentary on *Calder* see Hamar Foster, Heather Raven & Jeremy Webber, eds, *Let Right Be Done: Aboriginal Title, the* Calder *Case, and the Future of Indigenous Rights* (Vancouver: UBC Press, 2007). See also *Indigenous Land Rights: Towards Respect and Implementation – Report of the Standing Committee on Indigenous and Northern Affairs* (Ottawa: Standing Committee on Indigenous and Northern Affairs, 2018) at 42, online (pdf): <https://www.ourcommons.ca/Content/Committee/421/INAN/Reports/RP9684841/inanrp12/inanrp12-e.pdf>.
[13] *Kanatewat v James Bay Development Corporation*, [1973] QJ No 8, *Kanatewat v James Bay Development Corporation*, [1974] QJ No 14, rev'g (1973), [1975] CA 166, leave to appeal to SCC refused, [1975] 1 SCR 48.
[14] *The James Bay and Northern Quebec Agreement*, 11 November 1975, online (pdf): *Naskapi Community Site* <http://www.naskapi.ca/documents/documents/JBNQA.pdf>[JBNQA]. Federal policy on comprehensive land claims negotiations was also catalyzed by *Re Paulette and Registrar of Land Titles No. 2* (1973), 42 D.L.R. (3d) 8 (NWTSC) and as well as political response to the Trudeau government's assimilationist policy proposal in 1969, known as the "White Paper". For

discussion of this history, see Terry Fenge, "Negotiation and Implementation of Modern Treaties between Aboriginal Peoples and the Crown in Right of Canada" in Terry Fenge and Jim Aldridge, eds, *Keeping Promises. The Royal Proclamation of 1763, Aboriginal Rights, and Treaties in Canada* (Montreal & Kingston: McGill-Queen's University Press, 2015) 105 at 108; and, Christa Scholtz, *Negotiating Claims* (New York & London: Routledge, 2006).

[15] Canada, Crown-Indigenous Relations and Northern Affairs Canada, *Implementation of modern treaties and self-government agreements: Provisional annual report: July 2015 – March 2018* (Ottawa: Crown-Indigenous Relations and Northern Affairs Canada, 8 November 2019), online: *Government of Canada* <https://www.rcaanc-cirnac.gc.ca/eng/1573225148041/1573225175098>; Canada, Indigenous and Northern Affairs Canada, *Comprehensive Claims* (Ottawa: Indigenous and Northern Affairs Canada, 13 July 2015), online: *Government of Canada* <http://www.aadnc-aandc.gc.ca/eng/1100100030577/1100100030578>; Also see "Modern Treaty Territories Map" (2019), online: *Land Claims Agreement Coalition* <https://landclaimscoalition.ca/interactive-map/> (For a contemporary map of all modern treaties); "What is a Modern Treaty: Modern Treaty Timeline" (2019), online: *Land Claims Agreement Coalition* <http://landclaimscoalition.ca/modern-treaty/> (For a succinct visual chronology of modern treaties).

[16] Canada, Indigenous and Northern Affairs Canada, *Modern Treaties – Comprehensive Land Claims and Self-Government Agreements* (Ottawa: Indigenous and Northern Affairs Canada, 14 May 2019), online (pdf): *Government of Canada* <http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ-AI/STAGING/texte-text/mprm_pdf_modrn-treaty_1383144351646_eng.pdf>.

[17] See e.g., *Beckman v Little Salmon/Carmacks First Nation*, 2010 SCC 53 at para 2, [2010] 3 SCR 103 [*Beckman*]; *Quebec (Attorney General) v Moses*, 2010 SCC 17 at para 15, [2010] 1 SCR 557; *First Nation of Nacho Nyak Dun v Yukon*, 2017 SCC 58, [2017] 2 SCR 576 [*Nacho Nyak Dun*]; This is also explicitly set out in subsection 35(3) of the *Constitution Act, 1982*, which states, "[f]or greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired".

[18] See e.g., *Umbrella Final Agreement between the Government of Canada, the Council for Yukon Indians, and the Government of the Yukon,* 1993, online (pdf): *Government of Canada* <http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/al_ldc_ccl_fagr_ykn_umb_1318604279080_eng.pdf> [UFA]. (For an illustrative example, which is essentially a template agreement on which 11 Yukon First Nations have based their specific agreements).

[19] *Beckman*, *supra* note 17 at para 12.

[20] *Nacho Nyak Dun*, *supra* note 17 at para 10.

[21] The Yukon Territory's argument to this effect was rejected in *Beckman*, *supra* note 17 at paras 38 & 52.

[22] The decision by Indigenous treaty parties to enter into negotiations towards a modern treaty and ratify the finalize agreement should not be equated with those parties accepting and agreeing with the framework for negotiations, the scope of government mandates to negotiate, etc. For discussion, see James Tully, "Consent, Hegemony, and Dissent in Treaty Negotiations" in Jeremy Webber & Colin Macleod, eds, *Between Consenting Peoples: Political Community and the Meaning of Consent* (Vancouver, BC: University of British Columbia Press, 2010), and Stephanie Irbacher-Fox, *Finding Dahshaa: Self-Government, Social Suffering, and Aboriginal Policy in Canada* (Vancouver: UBC Press, 2010).

[23] For example, Nunavut Tunngavik Inc reports 17 attempts to resolve their disputes with Canada through the Nunavut Arbitration Board: Nunavut Tunngavik Inc., "A Summary of the 2015 Settlement Agreement" (May 2015), online (pdf): *Nunavut Tunngavik Inc.* <https://www.tunngavik.com/files/2015/05/2015-Settlement-Agreement.pdf>.

[24] *Beckman*, *supra* note 17; *Corp. Makivik v Québec (Procureur general)*, 2014 QCCA 145; *Tlicho Government v Canada (Attorney General)*, 2015 NWTSC 9.

[25] *Nunavut Tunngavik Inc v Canada*, 2014 NUCA 2; *Teslin Tlingit Council v Canada,* 2019 YKSC 3 [*Teslin Tlingit*]. For discussion, see Promislow & Verrier, *supra* note 4.

[26] See e.g., *Beckman*, *supra* note 17 at para 10; "The treaty is as much about building relationships as it is about the settlement of ancient grievances. The future is more important than the past". In *Nacho Nyak Dun*, *supra* note 17, the court recognized that judicial restraint to allow parties to find negotiated solutions was balanced against the need for judicial intervention and "adequate scrutiny of Crown conduct to ensure constitutional compliance" befitting the constitutional status of modern treaties (at para 33,34).

[27] *Nacho Nyak Dun*, *supra* note 17 at para 37. For discussion of judicial interpretive principles, See Dwight Newman, "Contractual and Covenantal Conceptions of Modern Treaty Interpretations" (2011) 54 SCLR 475; and Julie Jai, "The Interpretation of Modern Treaties and the Honour of the Crown: Why Modern Treaties Deserve Judicial Deference" (2010) 26 NJCL 25.

[28] See Coyle 2014, *supra* note 6. See e.g. Conciliator's Final Report, "The Nunavut Project: Nunavut Land Claims Agreement Implementation Contract Negotiations for the Second Planning Period 2003-2013" by Thomas R Berger (1 March 2006), online (pdf): *Nunavut Tunngavik* <https://www.tunngavik.com/documents/publications/2006-03-01%20Thomas%20Berger%20Final%20Report%20ENG.pdf>. See also Roger Fisher, William Ury & Bruce Patton, *Getting to Yes: Negotiating Agreement Without Giving In* (New York: Penguin, 2011) [Fisher et al 2011].

[29] See, for e.g., Fisher et al 2011, *ibid.*

[30] Coyle 2014, *supra* note 6.

[31] See John Kleefeld et al, ed, *Dispute resolution: readings and case studies*, 4th ed (Toronto: Emond Montgomery Publications Limited, 2016). See Alberta Law Reform Institute, "Dispute Resolution: A Directory of Methods, Projects and Resources" (July 1990), at 7-9, online (pdf): *Legislative Assembly of Alberta* <http://www.assembly.ab.ca/lao/library/egovdocs/1990/alilr/73932.pdf>.

[32] *Ibid.*
[33] Coyle 2014, *supra* note 6 at 288. See also Fisher et al 2011, *supra* note 27.
[34] Kahane, *supra* note 7 at 33-34.
[35] *Ibid* at 45-48.
[36] Coyle 2014, *supra* note 6 at 295. See also 296-303.
[37] Coyle 2014, *supra* note 6 at 286
[38] Coyle 2014, *supra* note 6 at 301.
[39] Canada, Crown-Indigenous Relations and Northern Affairs Canada, *Cabinet Directive on the Federal Approach to Modern Treaty Implementation* (Ottawa: Crown-Indigenous Relations and Northern Affairs Canada, 13 July 2015), online: *Government of Canada* <https://www.rcaanc-cirnac.gc.ca/eng/1436450503766/1544714947616> [Cabinet Directive].
[40] Canada, Crown-Indigenous Relations and Northern Affairs Canada, *Statement of Principles on the Federal Approach to Modern Treaty Implementation* (Ottawa: Crown-Indigenous Relations and Northern Affairs Canada, 13 July 2015), online: *Government of Canada* <https://www.rcaanc-cirnac.gc.ca/eng/1436288286602/1539696550968> [Statement of Principles].
[41] Cabinet Directive, *supra* note 39.
[42] *Ibid.*
[43] *Ibid.* See also "Implementation Issues" (2019), online: *Land Claims Agreements Coalition* <https://landclaimscoalition.ca/implementation-issues/>.
[44] Orkin & Porter, *supra* note 5. See also Land Claims Agreement Coalition, "A Modern Treaty Implementation Review Commission Proposal to the Government of Canada" (10 November 2017), online (pdf): *Land Claims Agreement Coalition* <http://landclaimscoalition.ca/wp-content/uploads/2018/02/MTIRC-Doc-and-Letter-to-Trudeau-1.pdf>; Cameron & Campbell, *supra* note 5.
[45] Cameron & Campbell, *supra* note 5; Orkin & Porter, *supra* note 5.
[46] Statement of Principles, *supra* note 40.
[47] *Ibid.*
[48] *Conciliator's Final Report: The Nunavut Project: Nunavut Land Claims Agreement Implementation Contract Negotiations for the Second Planning Period 2003-2013*, Thomas R Berger (Ottawa: Indian Affairs and Northern Development, 1 March 2006), online (pdf): *Nunavut Tunngavik Inc.* <https://www.tunngavik.com/documents/publications/2006-03-01%20Thomas%20Berger%20Final%20Report%20ENG.pdf>.
[49] Carolyn Bennett, Minister of Indigenous and Northern Affairs Canada, "Announcement of Canada's Support for the United Nations Declaration of Indigenous Peoples" (Speech delivered at the 15th Session of the United Nations Permanent Forum on Indigenous Issues, New York, 10 May 2016) [unpublished], online: *Northern Public Affairs Magazine* <http://www.northernpublicaffairs.ca/index/fully-adopting-undrip-minister-bennetts-speech/>.
[50] Canada, Privy Council Office, *Working Group of Ministers on the Reviews of Laws and Policies Related to Indigenous Peoples* (Ottawa: Privy Council Office, 21 February 2018), online: *Government of Canada* <https://www.canada.ca/en/privy-council/services/review-laws-policies-indigenous.html>.
[51] Justin Trudeau, Prime Minister of Canada, News Release, "Government of Canada to create Recognition and Implementation of Rights Framework" (February 2018), online: *Prime Minister of Canada* <https://pm.gc.ca/eng/news/2018/02/14/government-canada-create-recognition-and-implementation-rights-framework>.
[52] Canada, Department of Justice, *Principles respecting the Government of Canada's relationship with Indigenous peoples* (14 February 2018), online: *Government of Canada* < https://www.justice.gc.ca/eng/csj-sjc/principles-principes.html>.
[53] Canada, Department of Justice, *Directive on Civil Litigation Involving Indigenous Peoples* (Ottawa: Department of Justice, 11 January 2020), online: *Department of Justice* <https://www.justice.gc.ca/eng/csj-sjc/ijr-dja/dclip-dlcpa/litigation-litiges.html>.
[54] Justin Trudeau, Prime Minister of Canada, "Minister of Crown-Indigenous Relations and Northern Affairs Mandate Letter"(4 October 2017), online: *Prime Minister of Canada* <https://pm.gc.ca/en/mandate-letters/minister-crown-indigenous-relations-and-northern-affairs-mandate-letter>.
[55] Government of Canada, *Budget 2019: Chapter 3: Advancing Reconciliation* (Ottawa: Government of Canada, 19 March 2019) at 4 & 27; online: <https://www.budget.gc.ca/2019/docs/plan/chap-03-en.html#forgiving-and-reimbursing-loans-for-comprehensive-claim-negotiations>. See also, Chantelle Bellrichard, "Budget 2019: $1.4B in loans to be forgiven or reimbursed to Indigenous groups for treaty negotiations", *CBC News* (19 March 2019), online: <https://www.cbc.ca/news/indigenous/budget-2019-treaty-loans-forgiven-1.5063128>; Canada, House of Commons, *Indigenous Land Rights: Towards Respect and Implementation – Report of the Standing Committee on Indigenous and Northern Affairs* (Ottawa: House of Commons, February 2018) at recommendation 5 & 89, online (pdf): <http://publications.gc.ca/collections/collection_2018/parl/xc35-1/XC35-1-1-421-12-eng.pdf>. See also "The Alliance of BC Modern Treaty Nations welcomes treaty loan forgiveness and reimbursement and enhanced fiscal funding accounted in Federal Budget 2019", *Newswire* (20 March 2019), online: <https://www.newswire.ca/news-releases/the-alliance-of-bc-modern-treaty-nations-welcomes-treaty-loan-forgiveness-and-reimbursement-and-enhanced-fiscal-funding-announced-in-federal-budget-2019-887460769.html>.

[56] Canada, Crown-Indigenous Relations and Northern Affairs Canada, *Canada's collaborative self-government fiscal policy* (Ottawa: Crown-Indigenous Relations and Northern Affairs Canada, 27 August 2019), online: *Government of Canada* <https://www.rcaanc-cirnac.gc.ca/eng/1566482924303/1566482963919>.
[57] See generally, Canada, Crown-Indigenous Relations and Northern Affairs Canada, *Crown-Indigenous Relations and Northern Affairs: 2018-19 Departmental Plan* (Ottawa: Crown-Indigenous Relations and Northern Affairs Canada, 16 April 2018), online: *Government of Canada* <https://www.rcaanc-cirnac.gc.ca/eng/1523210699288/1555598120106#sec3_1>.
[58] Bankes 2004, *supra* note 2 at 298.
[59] These agreements were selected for the purposes of this analysis for two reasons: 1) collectively, these agreements represent the full spectrum of models and mechanisms; 2) the three Indigenous modern treaty parties formally involved in this research project are included in this group (Gwich'in, Nisga'a, and Nunavut).
[60] See Bankes 2004, *supra* note 2 (Making this same point).
[61] See e.g., *Maa-nulth First Nations Final Agreement,* 01 April 2011, at Chapter 25, online (pdf): *Government of Canada* <https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-BC/STAGING/texte-text/mna_fa_mnafa_1335899212893_eng.pdf>.
[62] NFA, *supra* note 1.
[63] See Canada, Crown-Indigenous Relations and Northern Affairs Canada, *Amendments to the Sahtu Dene and Metis Comprehensive Land Claim Agreement* (Ottawa: Canada, Crown-Indigenous Relations and Northern Affairs Canada, 3 December 2019) at 6.5.7, online: *Government of Canada* <https://www.rcaanc-cirnac.gc.ca/eng/1100100031166/1543258725937?wbdisable=true> [SDMLCA Amendments]. But also see 6.5.8 – indicating that any matter which the agreement stipulated to be determined by arbitration does not require written consent of the disputants.
[64] Canada, Crown-Indigenous Relations and Northern Affairs Canada, *Guide for the Management of Dispute Resolution Mechanisms in Modern Treaties* (Ottawa: Crown-Indigenous Relations and Northern Affairs Canada), online (pdf): *Government of Canada* <https://www.rcaanc-cirnac.gc.ca/DAM/DAM-CIRNAC-RCAANC/DAM-TAG/STAGING/texte-text/fari_1343831241721_eng.pdf>.
[65] *Land Claims Agreement between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in Right of Canada*, 25 May 1993, at Chapter 38, online (pdf): *Government of Nunavut* <https://www.gov.nu.ca/sites/default/files/Nunavut_Land_Claims_Agreement.pdf> [NLCA]. A similar statement is included in the SDMLCA Amendments, *supra* note 63 at articles 6.1.3 & 6.1.8.
[66] NFA, *supra* note 1 at Chapter 19, article 24(d) & Appendix M-5.
[67] See Larry N Chartrand, "Principles of Dene/Metis Dispute Resolution: Implications for the Sahtu Dene and Comprehensive Land Claim Arbitration Panel" (11-13 September 1996) Prepared for Arbitration Panel Meeting, Norman Wells [unpublished] [Chartrand] (explaining how Dene/Metis traditions could be integrated into the existing arbitration mechanisms). For mention of a traditional Inuit dispute resolution practice, see Pauktuutit Inuit Women of Canada, "The Inuit Way: A Guide to Inuit Culture" (2006) at 13, online (pdf): *Sentinel North Research Chair on Relations with Inuit Societies* <https://www.relations-inuit.chaire.ulaval.ca/sites/relations-inuit.chaire.ulaval.ca/files/InuitWay_e.pdf>.
[68] GCLCA, *supra* note 8.
[69] We expect further research will reveal more disputes that have and have not been referred to dispute resolution processes under the treaties. We also have not included disputes from Eeyou Istchee (James Bay) and Nunavik contexts, the history of which is quite distinct. The JBNQA, *supra* note 14, did not include implementation or dispute resolution infrastructure, and disputes continued to be brought to the courts until more recently, when the *Agreement Concerning a New Relationship Between Le Gouvernement du Quebec and the Crees of Quebec,* 2002, was signed with Quebec ,online (pdf): *Cree Nation Government* https://www.cngov.ca/wp-content/uploads/2018/03/02_-agreement_concerning_a_new_relationship_between_le_gouvernement_du_q.pdf> [*Paix des Braves*] and the *Agreement Concerning a New Relationship Between the Government of Canada and the Cree of Eeyou Istchee*, 2008, online (pdf): *Cree Nation Government* <https://www.cngov.ca/wp-content/uploads/2018/03/03_-_agreement_concerning_a_new_relationship_between_the_government_of_c.pdf> [*Federal New Relationship Agreement*] was signed with Canada. See Chapter 9 in the *Paix des Braves* for details on litigation that preceded that agreement and that agreement as a settlement of those proceedings.
[70]The federal government has recently developed a "Modern Treaty Issue and Dispute Resolution Tracker" and may possess a more comprehensive list of "issues and disputes" that have taken place in recent years. The federal government has reported that during the July 2015 – March 2018 period it identified "15 issues and three disputes, affecting 22 modern treaty partners; one issue has been resolved". For a general description of the government's "Issue and Dispute Resolution Management Tracker", see Canada, Crown-Indigenous Relations and Northern Affairs Canada*, Implementation of modern treaties and self-government agreements: Provisional annual report: July 2015 – March 2018* (Ottawa: Crown-Indigenous Relations and Northern Affairs Canada, 8 November 2019), online: *Government of Canada* <https://www.rcaanc-cirnac.gc.ca/eng/1573225148041/1573225175098>.
[71] Canada, Crown-Indigenous Relations and Northern Affairs Canada*, Nisga'a Final Agreement: Implementation Report / 2013-2014* (Ottawa: Crown-Indigenous Relations and Northern Affairs Canada) at Fiscal Financing Agreement, online: *Government of Canada* <https://www.rcaanc-cirnac.gc.ca/eng/1505931233468/1542999092636> (During the 2013-2014 reporting period, the parties commenced discussion to negotiate a new FFA) [NFA Implementation Report 2013-2014]

[72] "Canada and Carcross/Tagish First Nation Complete Negotiations for a Renewed Financial Transfer Agreement", *NewsWire* (15 December 2014), online: *ProQuest* <https://search-proquest-com.ezproxy.lib.ucalgary.ca/canadiannews/docview/1636211121/abstract/7721AE3A946045BEPQ/1?accountid=9838>. "Former Yukon Chief Negotiator Calls on Feds to Return to Carcross/Tagish First Nation Table", *NewsWire* (18 July 2012), online: <https://www.newswire.ca/news-releases/former-yukon-chief-negotiator-calls-on-feds-to-return-to-carcrosstagish-first-nation-table-510489831.html>.

[73] *Teslin Tlingit*, *supra* note 25. Assembly of First Nation, News Release, "AFN Congratulates the Teslin Tlingit Council in Recent Yukon Supreme Court Ruling Confirming Canada's Legal Obligations to Modern Treaties" (20 January 2019), online (pdf): *Ratcliff & Company LLP* <http://www.ratcliff.com/sites/default/files/news_articles/AFN%20Congratulates%20the%20Teslin%20Tlingit%20Council%20in%20Recent%20Yukon%20Supreme%20Court%20Ruling%20Confirming%20Canada%27s%20Legal%20Obligations%20to%20Modern%20Tre~1.pdf> [AFN 2019] . [The Yukon Supreme Court held that Canada has an obligation to negotiate a Financial Transfer Agreement with Teslin Tlingit Council]. See also Jackie Hong, "Teslin Tlingit Council lawsuit over federal funding wraps up", *Yukon News* (14 December 2018), online: <https://www.yukon-news.com/news/teslin-tlingit-council-lawsuit-over-federal-funding-wraps-up/>.

[74] See Part 5. "What we heard", above, for more on this topic.

[75] For example, in general terms we are aware of a number of disputes in the context of the James Bay and Northern Quebec Agreement, *supra* note 14.

[76] *Trondek Hwech'in Final Agreement among Her Majesty the Queen in Right of Canada, the Trondek Hwech'in and the Government of the Yukon*, 1998, online: *Government of Canada* <https://www.rcaanc-cirnac.gc.ca/eng/1297209099174/1542826344768#chp26>.

[77] Canada, Crown-Indigenous Relations and Northern Affairs, *Guide for the Management of Dispute Resolution Mechanisms in Modern Treaties* (Ottawa: Crown-Indigenous and Northern Affairs, 1 August 2012) at 20, online (pdf): *Government of Canada* <https://www.rcaanc-cirnac.gc.ca/DAM/DAM-CIRNAC-RCAANC/DAM-TAG/STAGING/texte-text/fari_1343831241721_eng.pdf>. This policy is now incorporated in the amendment to the Sahtu Agreement, which expressly excludes "funding levels" from matters that can be referred to arbitration: See SDMLCA Amendments, *supra* note 63 at article 6.5.9(b). See also Canada, Crown-Indigenous Relations and Northern Affairs Canada, *Amendments to the Nunavut Land Claims Agreement* (Ottawa: Crown-Indigenous Relations and Northern Affairs Canada, 1 June 2018) at 38.5.3, online: *Government of Canada* https://www.rcaanc-cirnac.gc.ca/eng/1100100030970/1542913558314> [NLCA Amendments].

[78] Richard Gleeson, "N.W.T. government asks courts to resolve deadlock on NICO road", *CBC* (13 June 2018), online: <https://www.cbc.ca/news/canada/north/nico-road-nwt-government-1.4703614> [Gleeson 2018]; Tłı̨chǫ Government, News Release, "Tłı̨chǫ Response on GNWT Judicial Filing on Fortune Minerals" (14 June 2018), online: <https://tlicho.ca/news/tlicho-response-nwt-fortune-minerals-judicial-filing>; Richard Gleeson, "N.W.T. premier says Tlicho should have known about Fortune Minerals court application" *CBC* (27 June 2018), online: <https://www.cbc.ca/news/canada/north/tlicho-court-application-premier-reaction-1.4723825> [Gleeson CBC].

[79] See *Tłı̨chǫ Government v Canada (Attorney General)*, 2015 NWTSC 9. See also David V Wright, "Bill C-88 Elimination of the MVRMA "Superboard"" Small Step or Start of Big Leaps in Modern Treaty Implementation?" (2019) 6:2 Northern Public Affairs 61, online: <https://www.northernpublicaffairs.ca/index/volume-6-special-issue-2-special-issue-on-modern-treaty-implementation-research/bill-c-88-elimination-of-the-mvrma-superboard-small-step-or-start-of-big-leaps-in-modern-treaty-implementation/>.

[80] See *Nacho Nyak Dun*, *supra* note 17.

[81] Canada, Crown-Indigenous Relations and Northern Affairs, *Guide for the Management of Dispute Resolution Mechanisms in Modern Treaties* (Ottawa: Crown-Indigenous and Northern Affairs, 1 August 2012) at 20, online: *Government of Canada* https://www.rcaanc-cirnac.gc.ca/DAM/DAM-CIRNAC-RCAANC/DAM-TAG/STAGING/texte-text/fari_1343831241721_eng.pdf ("The Government of Canada would not agree to put these fundamental issues to binding arbitration as it would result in an unacceptable loss of policy discretion and would be inconsistent with how Canada approaches inter-governmental transfer payments generally"). See also Canada, Senate of Canada, Standing Senate Committee on Aboriginal Peoples, "Honouring the Spirit of Modern Treaties: Closing the Loopholes", Interim Report (May 2008) at 17-19, online (pdf): *Senate of Canada* <https://sencanada.ca/Content/SEN/Committee/392/abor/rep/rep05may08-e.pdf>. This policy has now been incorporated into the text of the amended Sahtu Agreement; see SDMLCA Amendment, *supra* note 63.

[82] Cabinet Directive, *supra* note 39. Statement of Principles, *supra* note 40. See also Aboriginal Affairs and Northern Development, News Release, "The Government of Canada takes action to establish an effective whole-government approach to modern treaty implementation" (13 July 2015), online: *Government of Canada* <https://www.canada.ca/en/news/archive/2015/07/government-canada-takes-action-establish-effective-whole-government-approach-modern-treaty-implementation.html>.

[83] See also Chartrand, *supra* note 67.

[84] See NFA, *supra* note 1 at Appendix M-5. See also Catherine Bell, "Indigenous Dispute Resolution Systems within Non-Indigenous Frameworks: Intercultural Dispute Resolution Initiatives in Canada" in Catherine Bell & David Kahane, eds, *Intercultural Dispute Resolution in Aboriginal Contexts* (Vancouver: UBC Press 2004) at 259 (describing that the Nisga'a elders advisory

council process is designed to be flexible, informal, and largely determined by the Council, and that the Council was included in the dispute resolution chapter to ensure that elders' expertise and traditional processes pertaining to language and culture were considered).

[85] But see Don Couturier, "Walking Together, Indigenous ADR in Land and Resource Disputes" (2018) Cdn Bar Assoc at 8, online (pdf): *Canadian Bar Association* <https://www.cba.org/CBAMediaLibrary/cba_na/PDFs/Sections/ADR-Essay-Contest-Walking-Together.pdf> (for a discussion of the value of such and a call for reform).

[86] GCLCA, *supra* note 8 at Chapter 6 and also *Sahtu Dene and Metis Compressive Land Claim Agreement between Her Majesty the Queen in the right of Canada and the Dene of Colville Lake, Déline, Fort Good Hope and For Norman and Forman Wells in the Sahtu Region of the Mackenzie Valley as represented by the Sahtu Tribal Council*, 1993, at Chapter 6, online (pdf): <https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/sahmet_1100100031148_eng.pdf> [SDMLCA].

[87] All references are to the GCLCA, *supra* note 8. The SDMLCA, *ibid*, contains the substantively same provisions.

[88] GCLCA, *supra* note 8 at s 20.3.2, which states, "Failing agreement on the terms, the matter shall be referred to arbitration pursuant to chapter 6" (emphasis added).

[89] GCLCA, *supra* note 8 at s 20.1.7(a)(ii).

[90] GCLCA, *supra* note 8 at s 6.1.1.

[91] See e.g. GCLCA, *supra* note 8 at ss 20.3.2, 20.3.1 & 20.3.3.

[92] GCLCA, *supra* note 8 at s 6.1.7.

[93] The Implementation Committee is a body comprised of senior officials from each treaty party who jointly guide, monitor and report on implementation of the Agreement. See GCLCA, *supra* note 8 at articles 28.2.2 & 28.2.3.

[94] GCLCA, *supra* note 8 at s 28.2.3(d).

[95] GCLCA, *supra* note 8 at s 6.2.1(a).

[96] GCLCA, *supra* note 8 at s 6.2.2.

[97] GCLCA, *supra* note 8 at s 6.2.3.

[98] GCLCA, *supra* note 8 at s 20.3.6(b). The Surface Rights Board would also resolve disputes in relation to amendments to existing third party rights. See GCLCA, *supra* note 8 at s 20.4.11(c).

[99] GCLCA, *supra* note 8 at s 19.1.5. The LWB has a similar role in relation to Gwich'in providing sand and gravel supplies under s 18.2.3.

[100] GCLCA, *supra* note 8 at ss 4.6.1 & 4.6.2.

[101] GCLCA, *supra* note 8 at s 23.1.15. Note that these land claim provisions will presumably be amended in the near future to align with the new *Canadian Energy Regulator Act*, SC 2019, c 28, s 10.

[102] GCLCA, *supra* note 8 at s 6.1.3.

[103] GCLCA, *supra* note 8 at s 6.3.7.

[104] *Inuvialuit Final Agreement between the Committee for Original Peoples' Entitlement, representing the Inuvialuit of the Inuvialuit Settlement Region and the Government of Canada*, 2005, at 18(16), online (pdf): <https://www.irc.inuvialuit.com/sites/default/files/Inuvialuit%20Final%20Agreement%202005.pdf> [IFA].

[105] IFA, *ibid* at s 18(17).

[106] IFA, *supra* note 104 at s 18(33.

[107] Though there are explicit constraints laid out in s 18(34) clarifying that the IFA arbitration process does not apply to the rights of another modern treaty group unless they consent.

[108] IFA, *supra* note 104 at s 18(36)(a).

[109] IFA, *supra* note 104 at s 18(36)(b).

[110] IFA, *supra* note 104 at s 18(36)(f).

[111] IFA, *supra* note 104 at s 18(36)(g).

[112] IFA, *supra* note 104 at s 18(36)(h).

[113]IFA, *supra* note 104 at s 7(12). See also IFA at s 7(57).

[114] IFA, *supra* note 104 at s 18(3). Under s 18(5) the Chairman and Vice-Chairman are appointed by Canada, but they must "be acceptable to the Inuvialuit and Industry".

[115] IFA, *supra* note 104 at s 18(5).

[116] For the purposes of the appointment power, Industry is defined to mean the five largest commercial industrial entities in the ISR based on assets in the region. See IFA, *supra* note 104 at 18(7).

[117] IFA, *supra* note 104 at s 18(6).

[118] IFA, *supra* note 104 at s 18(14).

[119] IFA, *supra* note 104 at s 19(32).

[120] UFA, *supra* note 18.

[121] In the modern treaty context in the Yukon, the Umbrella Final Agreement (UFA) provides a framework upon which each Yukon First Nation may conclude a final claim settlement agreement. The specific settlement agreements contain all of the text of

the UFA with the addition of specific provisions which apply to the individual First Nation. See Council For Yukon First Nations, "Yukon Final Umbrella Agreement"; online: < https://cyfn.ca/agreements/umbrella-final-agreement/>.
[122] UFA, *supra* note 18 at ss 26.3.1.1 & 26.3.1.2.
[123] UFA, *supra* note 18 at s 26.3.1.3.
[124] UFA, *supra* note 18 at s 26.4.1.3.
[125] UFA, *supra* note 18 at s 26.4.1.4.
[126] UFA, *supra* note 18 at s 26.4.1.5.
[127] For specific disputes this is under UFA, *supra* note 18 at s 26.3.5.
[128] UFA, *supra* note 18 at s 26.4.3.
[129] UFA, *supra* note 18 at s 26.5.4.
[130] UFA, *supra* note 18 at s 28.4.3.
[131] UFA, *supra* note 18 at s 28.4.5.
[132] UFA, *supra* note 18 at s 26.8.2.
[133] UFA, *supra* note 18 at s 26.8.1.
[134] NFA, *supra* note 1.
[135] NFA, *supra* note 1 at s 7.
[136] NFA, *supra* note 1 at s 29.
[137] NFA, *supra* note 1 at s 39. Though parties may request the Supreme Court of British Columbia to make a ruling in respect of a question of law, as permitted in Appendix M-6.
[138] For a plain language description of each of these, see "Understanding the Nisga'a Treaty" (1998), online (pdf): *Nisga'a Lisims Government* <http://www.nisgaanation.ca/sites/default/files/Understanding%20the%20Nisga%27a%20Treaty%201998.pdf>.
[139] NFA, *supra* note 1 at s 24.
[140] NFA, *supra* note 1 at Appendix M-6 & ss 1-123.
[141] NFA, *supra* note 1 at s 125-137.
[142] Tłı̨chǫ Agreement, *supra* note 9.
[143] See Tłı̨chǫ Agreement, *supra* note 9 at ss 6.1.1, 6.4.1 & 6.5.1.
[144] Tłı̨chǫ Agreement, *supra* note 9 at s 6.5.2.
[145] Tłı̨chǫ Agreement, *supra* note 9 at s 6.1.3.
[146] Tłı̨chǫ Agreement, *supra* note 9 at ss 6.1.1(a-c).
[147] Tłı̨chǫ Agreement, *supra* note 9 at s 6.5.2.
[148] Tłı̨chǫ Agreement, *supra* note 9 at s 6.2.1.
[149] Tłı̨chǫ Agreement, *supra* note 9 at s 6.3.1.
[150] Tłı̨chǫ Agreement, *supra* note 9 at s 6.6.1.
[151] Tłı̨chǫ Agreement, *supra* note 9 at s 6.7.
[152] Tłı̨chǫ Agreement, *supra* note 9 at s 6.8. But note this would now be under the *Canadian Energy Regulator Act*, SC 2019, c 28, s 10.
[153] Tłı̨chǫ Agreement, *supra* note 9 at s 6.5.6.
[154] Tłı̨chǫ Agreement, *supra* note 9 at s 6.5.7.
[155] Promislow & Verrier, *supra* note 4. See also Government of Canada, Government of Nunavut, & Nunavut Tunngavik Inc, *Moving Forward in Nunavut: An Agreement Relating to Settlement of Litigation and Certain Implementation Matters* (2015), online (pdf): *Nunavut Tunngavik Inc.* <http://www.tunngavik.com/files/2015/05/FINAL-SIGNED-SETTLEMENT-AGREEMENT.pdf>.
[156] NLCA, *supra* note 65.
[157] NLCA, *supra* note 65 at s 38.
[158] See Promislow & Verrier, *supra* note 4.
[159] NLCA Amendments, *supra* note 77.
[160] NLCA, *supra* note 65 at s 38.3.
[161] NLCA, *supra* note 65 at s 38.4.
[162] NLCA, *supra* note 65 at s 38.4.1.
[163] NLCA, *supra* note 65 at s 38.6.4(a).
[164] NLCA, *supra* note 65 at s 38.6.4(b).
[165] NLCA, *supra* note 65 at s 38.1.1.
[166] NLCA, *supra* note 65 at s 38.2.1.
[167] NLCA, *supra* note 65 at s 38.5.7.
[168] NLCA, *supra* note 65 at s 38.5.15.

[169] As noted in the main body of this report, we cannot make an unqualified claim that this list is entirely comprehensive and complete. We expect further research will reveal more. Also, disputes in relation to the *James Bay and Northern Quebec Agreement* were not included in this research; see *supra* note 14 for more information.
[170] Nisga'a Lisims Government, News Release, "Nisga'a Nation Commences Dispute Resolution Proceedings against Canada to Protect Nisga'a Treaty Rights" (11 September 2019), online: <https://www.nisgaanation.ca/news/press-release-nisgaa-nation-commences-dispute-resolution-proceedings>. Lee Wilson, "Nisga'a and Gitanyow dispute fishing rights on northern B.C. river" *APTN National News* (13 August 2019), online: <https://aptnnews.ca/2019/08/13/nisgaa-and-gitanyow-dispute-fishing-rights-on-northern-b-c-river/>.
[171] See Canada, Treasury Board of Canada Secretariat, *Directive on Government Contracts, Including Real Property Leases, in the Nunavut Settlement Area* (Ottawa: Treasury Board of Canada Secretariat, 20 June 2019), online: *Government of Canada* <https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=32610>. "Federal bureaucrats get new marching orders to help Inuit firms win contracts" *Nunatsiaq News* (21 August 2019), online: <https://nunatsiaq.com/stories/article/federal-bureaucrats-get-new-marching-orders-to-help-inuit-firms-win-contracts/>. "Inuit pleased at co-developed Federal Government directive aimed at implementing the government contracting promises (article 24) of the Nunavut Agreement", Press Release (15 August 2019), online: *Nunavut Tunngavik* <https://www.tunngavik.com/news/inuit-pleased-at-co-developed-federal-government-directive-aimed-at-implementing-the-government-contracting-promises-article-24-of-the-nunavut-agreement/>.
[172] "Niriuttaarijat – Nunavut Tunngavik Incorporated 2018-2021 Priorities", Media Release (27 September 2019) at 1, online: *Nunavut Tunngavik* <https://www.tunngavik.com/2019/09/27/niriuttaarijat-nunavut-tunngavik-incorporated-2018-2021-priorities/>.
[173] Ashley Joannou, "Tr'ondek Hwech'in chief vows to fight placer claims on settlement land", *Yukon News* (9 September 2016), online: <https://www.yukon-news.com/news/trondek-hwechin-chief-vows-to-fight-placer-claims-on-settlement-land/>. "Tr'ondek Hwech'in First Nation sues Yukon gov't over duty to consult", *CBC News* (6 July 2016), online: <https://www.cbc.ca/news/canada/north/trond%C3%ABk-hw%C3%ABchin-first-nation-sues-yukon-government-1.3666119>.
[174] "Canada and Carcross/Tagish First Nation Complete Negotiations for a Renewed Financial Transfer Agreement", *Canada NewsWire* (15 December 2014), online: *ProQuest* <https://search-proquest-com.ezproxy.lib.ucalgary.ca/canadiannews/docview/1636211121/abstract/7721AE3A946045BEPQ/1?accountid=9838>. "Former Yukon Chief Negotiator Calls on Feds to Return to Carcross/Tagish First Nation Table", Media Release (18 July 2012), online: *NewsWire* <https://www.newswire.ca/news-releases/former-yukon-chief-negotiator-calls-on-feds-to-return-to-carcrosstagish-first-nation-table-510489831.html>.
[175] "Nisga'a sue over Kitsault mine certificate", *Global News* (2 August 2013), online: <https://globalnews.ca/news/757584/nisgaa-sue-over-kitsault-mine-certificate/>. NFA Implementation Report 2013-2014, *supra* note 71.
[176] "Government signs major education agreement with Tr'ondek Hwech'in", *Whitehorse Star* (25 July 2013), online: *ProQuest Canadian News Stream* <https://search-proquest-com.ezproxy.lib.ucalgary.ca/canadiannews/docview/1412763718/abstract/92DD35507D2D4F8APQ/1?accountid=9838>.
[177] For a discussion of the dispute preceding the mediation see: INAC Meeting, February 10th, 2011 on funding issue: <https://openparliament.ca/committees/aboriginal-affairs/40-3/47/chief-mark-wedge-1/>. Genesee Keevil, "First Nations lobby for child protection funding", *Yukon News* (3 April 2009), online: <https://www.yukon-news.com/news/first-nations-lobby-for-child-protection-funding/>.
[178] Canada, Aboriginal Affairs and Northern Development, *Nisga'a Final Agreement Implementation Report, 2008-2009* (Ottawa: Aboriginal Affairs and Northern Development, 2009) at 14-15, online (pdf): *Government of Canada* <http://publications.gc.ca/collections/collection_2011/ainc-inac/R1-17-2009-eng.pdf>.
[179] Bob Simpson: Director of Intergovernmental Relations, Inuvialuit Regional Corp., "The Inuvialuit Arbitration Process" <http://www.landclaimscoalition.ca/assets/Bob-Simpson-Dispute-Resolution.pdf> [Simpson].
[180] Bankes 2004, *supra* note 2. Canada, Crown-Indigenous Relations and Northern Affairs Canada, *Inuvialuit Comprehensive Land Claim Agreement – Annual Report of the Implementation Committee April 1, 2004 – March 31, 2005* (Ottawa: Crown-Indigenous Relations and Northern Affairs Canada) online: *Government of Canada* <https://www.rcaanc-cirnac.gc.ca/eng/1374866904715/1543249886337?wbdisable=true>.
[181] Canada, Indian Affairs and Northern Development, *Inuvialuit Final Agreement Implementation Coordinating Committee Annual Report 1998 – 1999* (Ottawa: Indian Affairs and Northern Development, 2000), at 3-5, online (pdf): *Government of Canada* <http://publications.gc.ca/collections/collection_2013/aadnc-aandc/R71-46-1999-eng.pdf>. Simpson, *supra* note 179 at 5.
[182] Simpson, *ibid.*
[183] As noted in the main body of this report, we cannot make an unqualified claim that this list is entirely comprehensive and complete. We expect further research will reveal more. Moreover, there is no shared definition of "dispute" among the parties such that treaty parties may identify some matters as disputes while other treaty parties do not.

[184] Nisga'a Lisims Government, News Release, "Nisga'a Nation Commences Dispute Resolution Proceedings against Canada and British Columbia" (11 October 2019), online: <https://www.nisgaanation.ca/news/nisg%CC%B1aa-nation-commences-dispute-resolution-proceedings>.
[185] *Makivik Corporation v. Canada (Environment and Climate Change)*, 2019 FCJ No 1230, 2019 FC 1297.
[186] "After 15 years, final Yukon agreement signed to protect Peel watershed" *CBC News* (22 August 2019), online: <https://www.cbc.ca/news/canada/north/government-first-nations-agreement-peel-plan-1.5255446>.
"Supreme Court rules in favour of Yukon First Nations Peel watershed dispute" *CBC News* (1 December 2017), online: <https://www.cbc.ca/news/canada/north/peel-watershed-supreme-court-canada-decision-1.4426845>.
[187] Gwich'in Tribal Council, "Submission to the Government of Canada's Arctic Policy Framework" (21 March 2018), online: *Government of Northwest Territories* <https://www.eia.gov.nt.ca/sites/eia/files/content/2018-03-21_gwichin_tribal_council_arctic_policy_framework_submission.pdf>.
[188] Tłı̨chǫ Government, News Release, "Tłı̨chǫ Response on GNWT Judicial Filing on Fortune Minerals" (14 June 2018), online: <https://tlicho.ca/news/tlicho-response-nwt-fortune-minerals-judicial-filing>. Tłı̨chǫ Government, News Release, "Tłı̨chǫ Government and Fortune Minerals Update (29 November 2019), online: <https://www.tlicho.ca/news/tlicho-government-and-fortune-minerals-update-nov-29-2019>. Gleeson 2018, *supra* note 78 [Stating that the two staff positions have been vacant for three years]. Gleeson CBC, *supra* note 78.
[189] *Teslin Tlingit*, *supra* note 25. AFN 2019, *supra* note 73. [The Yukon Supreme Court held that Canada has an obligation to negotiate a Financial Transfer Agreement with Teslin Tlingit Council].
[190] Nunavut Tunngavik, "A Summary of the 2015 Settlement Agreement" (May 2015), online (pdf): <https://www.tunngavik.com/files/2015/05/2015-Settlement-Agreement.pdf>. "Ottawa to pay Nunavut Inuit $255M in settlement", *CBC News* (4 May 2015), online: <https://www.cbc.ca/news/canada/north/ottawa-to-pay-nunavut-inuit-255m-in-settlement-1.3057973>.
[191] *Tlicho Government v Canada*, 2015 NWTSC 09. David V Wright, "Bill C-88 Will Finally Eliminate the MVRMA "Superboard" … But Where's the Rest?" (8 January 2019), online (blog): *Ablawg* <https://ablawg.ca/2019/01/08/bill-c-88-will-finally-eliminate-the-mvrma-superboard-but-wheres-the-rest/>. "Tlicho sue Ottawa over N.W.T. superboard legislation", *CBC News* (9 May 2014), online: <https://www.cbc.ca/news/canada/north/tlicho-sue-ottawa-over-n-w-t-superboard-legislation-1.2637747>. Meagan Wohlberg, "Tlicho take feds to court over superboard issue", *Northern Journal* (10 February 2014), online: <https://norj.ca/2014/02/tlicho-take-feds-to-court-over-superboard-issue/>.
[192] David V Wright, "Bill C-88 Will Finally Eliminate the MVRMA "Superboard" … But Where's the Rest?" (8 January 2019), online (blog): *Ablawg* <https://ablawg.ca/2019/01/08/bill-c-88-will-finally-eliminate-the-mvrma-superboard-but-wheres-the-rest/>. "Sahtu Secretariat to sue Ottawa over N.W.T. superboard", *CBC News* (7 August 2014), online: <https://www.cbc.ca/news/canada/north/sahtu-secretariat-to-sue-ottawa-over-n-w-t-superboard-1.2730022>. "Sahtu Secretariat files lawsuit against feds over N.W.T. superboard", *CBC News* (27 February 2015), online: *Eye on the Arctic* <https://www.rcinet.ca/eye-on-the-arctic/2015/02/27/sahtu-secretariat-files-lawsuit-against-feds-over-n-w-t-superboard/>
[193] Canada, Auditor General, *Report 3 – Implementing the Labrador Inuit Land Claim Agreement* (Ottawa: Auditor General, 2015) at 3.52-3.58, online: *Office of the Auditor General of Canada* <http://www1.oag-bvg.gc.ca/internet/English/parl_oag_201602_03_e_41060.html>.
[194] Sima Sahar Zerehi, "Nunavut Tunngavik: Feds need to back off Inuit fisheries", *CBC News* (25 September 2015), online: <https://www.cbc.ca/news/canada/north/nunavut-tunngavik-feds-need-to-back-off-inuit-fisheries-1.3243494>. For recent developments see: Nunavut Tunngavik Inc, News Release, "NTI, NWMB, GN, GOC Agree to Develop Fisheries Regulations for the Nunavut Settlement Area" (9 July 2018), online: <https://www.tunngavik.com/news/nti-nwmb-gn-goc-agree-to-develop-fisheries-regulations-for-the-nunavut-settlement-area/>.
[195] Chuck Tobin, "First Nations, government discuss money matters", *Whitehorse Star* (29 July 2010), online: *ProQuest Canadian News stream* <https://search-proquest-com.ezproxy.lib.ucalgary.ca/canadiannews/docview/734570857/abstract/EBB6401466604558PQ/1?accountid=9838>.
[196] *Inuit of Nunavut as represented by Nunavut Tunngavik Incorporated v the Queen in Right of Canada as Represented by the Attorney General of Canada*, Notice to the Defendants (2006), online (pdf): *Nunavut Tunngavik Inc* <https://www.tunngavik.com/documents/publications/2006-12-00%20Statement%20of%20Claim.pdf>.
[197] This dispute was later resolved through a change in government. See: Philippe Morin, "Yukon government, CYFN reach agreement on resource royalty rates", *CBC News* (8 May 2018), online: <https://www.cbc.ca/news/canada/north/yukon-royalty-rates-cyfn-1.4654163>.
[198] "Treaty Implementation Update #3 - Benefits of Treaty Opportunities in Treaty: What is "Me Too"?" (2019), online (pdf): *Huu-ay-aht First Nation* <https://huuayaht.org/wp-content/uploads/2019/08/Implementation-Update-3-FINAL-VERSION.pdf>. See also First Nation Panel on Fisheries, "Our place at the table: First Nations in the B.C. Fishery" (2016) at Appendix D, online (pdf): *First Nations Summit* <http://fns.bc.ca/wp-content/uploads/2016/10/FNFishPanelReport0604.pdf>.
[199] *Beckman*, *supra* note 17.
[200] *Corporation Makivik v Québec (Procureure générale),* 2014 QCCA 1455 (CanLII), [2014] JQ No 7944.

[201] Carly A Dokis, *Where the Rivers Meet: Pipelines, Participatory Resource Management and Aboriginal-State Relations in the Northwest Territories* (Vancouver, BC: University of British Columbia Press, 1 July 2015) at 112-113.
[202] For discussion of this dispute, see *ibid* at 113 and Suncor Energy Inc., "Land Use Permit and Water Licence Application: Appendix 1-A Stakeholder Engagement Information" (2014) at s 1.1, online (pdf): *Mackenzie Valley Land and Water Board Public Registry* <http://registry.mvlwb.ca/Documents/S14A-006/S14A-006%20-%20Appendix%201A%20-%20Stakeholder%20Engagement.pdf>.
[203] See *Sahtu Secretariat Inc v Canada,* [1997] FCJ No 897, [1997] ACF No 897; *Sahtu Secretariat Inc v Canada*, [1999] FCJ No 121, 1999 CanLII 19190 (FC); and, *Sahtu Secretariat Inc v Canada*, [2002] FCJ No 1238, 2002 FCA 315.
[204] Simpson, *supra* note 179 at 6, *Canada v Inuvialuit Regional Corporation, Inuvialuit Land Administration and Inuvialuit Land Corporation.*
[205] Simpson, *supra* note 179 at 6, *Inuvialuit Regional Corporation v Government of the Northwest Territories.*
[206] Simpson, *supra* note 179 at 6, *POJE v Inuvialuit Regional Corporation.*
[207] MTIRP 2017, *supra* note 11.
[208] See: "Land Claims Agreement Coalition", online: <http://landclaimscoalition.ca>. Note that an appendix at the end of this document contains excerpts from the LCAC description of the Modern Treaty Implementation Research Project: "At a Glance: Modern Treaty Implementation Research Project", online: <https://moderntreaties.tlicho.ca/>.