Ghotlenene k'odtineh dene

North of 60
Dene Néné
Land Claim Negotiators

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GHOTELNENE K'ODTINEH DENE DETAILED BREIFING

STANDING COMMITTEE ON INDIGENOUS AND NORTHERN AFFAIRS (INAN)
SPECIFIC CLAIMS AND COMPREHENSIVE LAND CLAIMS AGREEMENTS
October 15, 2017

Introduction

Sayisi Dene First Nation and Northlands Dene First Nation (Ghotelnene K'odtineh Dene)[1], thank the Committee members for the opportunity, by way of this brief, to provide additional information to that provided to the Committee on September 27, 2017 in Winnipeg during Meeting No. 70.

Background

The traditional land of Sayisi Dene First Nation and Northlands Dene First Nation stretches from northern Manitoba into what is now Nunavut and the NWT. Both signed treaties –Northlands as part of the Barren Lands Band are part of Treaty 10 signed in 1907 and the Sayisi Dene as adherents to Treaty 5 in 1910. In the 1970s, the First Nations established communities on Reserves at Tadoule Lake (Sayisi Dene First Nation) and Lac Brochet (Northlands First Nation).

Through-out the 1980s and 1990s, both First Nations sought to select treaty land north of 60, but were consistently denied this by Canada because they had signed Treaties and Canada's position was that they were no longer entitled to land north of 60. In the late 1980s, the Inuit represented by Tunngavik (TFN) commenced negotiations for a comprehensive Treaty in the Northwest Territories. Despite several attempts to have their rights to their traditional lands in the Northwest Territories recognized during the negotiations between the Inuit and Canada, they were shut out. In March 1993, just prior to the signing of the Nunavut Land Claim Agreement (NLCA, May 1993), Ghotelnene K'odtineh Dene commenced litigation (Samuel/Thorassie v. Canada et al) seeking a declaration of their rights north of 60, including the right to select Reserve lands, a declaration obliging Government and the Inuit to renegotiate the NLCA to take into consideration Ghotelnene K'odtineh Dene rights with full participation of Ghotelnene K'odtineh Dene and an injunction restraining any land transfers, resource transfers or harvesting regulation within their Traditional Territory north of 60 until the NLCA was renegotiated. Their claim for an injunction was denied but they remained in litigation until 1999.

In the spring of 1999, after spending nearly 7 years in litigation, the Ghotelnene K'odtineh Ddne took their drums to Parliament Hill, demanding that Minister Stewart

[1] The Sayisi Dene and Northlands Denesuline First Nation have chosen a name of their own to describe themselves, rather than relying on a Euro-Canadian geographic description -*Ghotelnene K'odtineh Dene* – pronounced Hotel Ne-nay K'ho Tee Neh Den-ay. It means "barren lands people".

meet with them and agree to establish a table to negotiate their rights north of 60. Since then, these two First Nations along with three Athabasca Denesuline First Nation (AD) have been negotiating with the Government of Canada to complete two land claim agreements (modern Treaties) covering settlement areas in NWT and Nunavut (Map attached). These agreements have been negotiated in conjunction with changes to the Nunavut Land Claims Agreement (NLCA) to ensure consistency. This has been achieved with the support of both Conservative and Liberal administrations. It has never been a partisan political issue, nor should it be.

The issues have been complex because these claims involve three jurisdictions - Canada, NWT and Nunavut and historic agreements reached between the Ghotelnene K'odtineh Dene, the Athabasca Dene and the Inuit which allow for a modern expression of Treaty rights in an area that has been shared by these Indigenous peoples for centuries. Through hard work and reasonable compromise, the Ghotelnene K'odtineh Dene have reached close-to-final agreements with the Federal Crown.

Issue - Territorial Governments Delaying Finalization of Treaty

The two territorial governments have had full opportunity to be involved in all discussions and have been fairly consulted and accommodated with respect to their interests and concerns. Nevertheless they have delayed the finalization of the Ghotelnene K'odtineh Dene Treaty.

Throughout these 18 years of negotiations, the Territorial governments have continuously raised concerns about the substance of the Treaty that has led to their leaving the negotiating table or adopting positions leading to a stalemate. Canada has appointed three outside facilitators over the last 11 years to overcome territorial government resistance.

In June, 2007, John Noble was appointed by Minister Strahl as his Special Representative to hold discussions with the respective Territorial governments to assist in resolving the impasse with the Territorial Governments. Unfortunately, Mr. Noble was not able to solve the Territorial issues within the timeframe allocated by the Minister. However we were advised by the Federal Negotiator at the time, that the report he submitted was helpful and assisted Federal officials in obtaining "authorities" to continue to negotiate.

In late fall of 2010, Canada appointed Rick Bargery, a former senior official with the GNWT, as its new Chief Federal Negotiator (CFN). He explained that *his job was to address Territorial government concerns* (emphasis added) and conclude the agreements. Mr. Bargery made repeated attempts from the time of his appointment to his departure (March, 2014) to resolve the Territorial government issues, without success.

In April 2017, the Ghotelnene K'odtineh Dene, the Athabasca Denesuline, Canada and the GNWT agreed to Minister Bennett's October 2016 proposal to use Mr. Tom Isaac as a mediator in an 11th hour attempt to bridge gaps with the GNWT. The mediation failed. In Mr. Isaac's May 2017 report to all parties he advised Canada, Ghotelnene K'odtineh Dene and Athabasca Denesuline should continue down the road to execution and implementation without the GNWT in a timely manner. Six months have passed since the report was issued and Canada continues to ignore the

mediator's advice. The mediator's report is a tool to support the decision to proceed bilaterally. It is an objective assessment that the Minister should see as sufficient evidence that every possible avenue to bring the GNWT onside has been exhausted. It must be the last of repeated attempts by Canada, the Denesuline and of outside advisors appointed by Canada to resolve GNWT issues. It is contrary to Canada's constitutional obligations and reconciliation to repeatedly delay completing the Treaty until such time as someone figures out how to appease the GNWT.

Currently, the GNWT is not supporting conclusion of the Treaty because they believe Ghotelnene K'odtineh Dene should accept a Treaty that provides them with second tier section 35 rights. The Government of Nunavut, who after a five year absence, began providing comments in late 2016, believe their consent is required as part of concluding the Treaty and that ratification cannot occur until it has been adequately compensated for Treaty implementation costs. By allowing the territorial governments to delay conclusion of the Treaty, Canada is allowing the narrow local concerns of the territorial governments to prevail over the paramount objective of reconciliation.

Canada's Legal Authority to Move Forward

Canada has the legal authority to ratify the Treaty without Territorial government concurrence. In fact, the rationale behind the Crown – Indigenous relationship as set out in the *Royal Proclamation, 1763* and the *Constitution Act, 1867* was to ensure that local interests did not interfere with the Crown fulfilling its obligations to Indigenous people. The *Royal Proclamation 1763* placed the sole responsibility for Indians and Indian lands in the Crown in right of the United Kingdom. The *Royal Proclamation* recognized the rights of Indians to unceded lands in their possession and established that those rights to the lands could be ceded only to the Crown. Section 91(24) of the *Constitution Act, 1867* passed this jurisdiction to the new Crown in right of Canada. The territorial governments are not the Crown. The Treaty does not change their jurisdiction and as such there is no legal basis for them to be parties or consent to the Treaty. After 18 years of negotiations, it is time for Canada to exercise their authority and conclude the Treaty bilaterally.

Canada's Legal, Political and Moral Obligation to Move Forward

Failing to conclude the Treaty bilaterally, given the offer and the case law, would be inconsistent with the honour of the Crown. Canada's offer to Ghotelnene K'odtineh Dene was *bilateral* and Ghotelnene K'odtineh Dene accepted the offer as the basis for negotiation. At no point in the offer is the consent or even cooperation of the Territorial governments required. The offer provided for territorial government participation in those matters within their jurisdiction. Not only have they fully participated in matters within their jurisdiction, but also in issues beyond their jurisdiction.

Having made the offer, Canada is honour-bound to complete the Treaty on the basis offered. This principle is repeated in numerous cases from all levels of court, and in particular, the Supreme Court of Canada. The case law[2] requires the Crown, once it

[2] See for example: *Nunavik Inuit v. Canada (Minister of Canadian Heritage),* [1998] F.C.J. No. 1114 (FCC); *Tsilhqot'in Nation v. British Columbia* [2014] S.C.J. No. 44;
Taku River Tlingit First Nation v. Canada (Attorney General) [2016] Y.J. No. 31 (YKSC);

has entered into negotiations with an Aboriginal group to resolve outstanding claims, to negotiate honourably and in good faith. Outside considerations not related to the conduct of the Indigenous negotiating parties do not override Canada's obligation to negotiate honorably. Further, the honour of the Crown requires Canada to fulfill its constitutional promise to the Ghotelnene K'odtineh Dene in a diligent way.

In addition to Canada's legal obligations, there are equally important political and moral reasons to conclude the Treaty bilaterally.

This government has sent clear political messages that following policies and practices which do not accord with the constitutionally protected nation-to-nation relationship is not acceptable. Consistent with the promise of a renewed relationship, the Prime Minister directed his Minister of Indigenous Affairs in her Mandate Letter that "your overarching goal will be to renew the relationship between Canada and Indigenous Peoples. This renewal must be a nation-to-nation relationship, based on recognition, rights, respect, co-operation, and partnership."[3]

Furthering the promises of a renewed relationship, on July 17, 2017, the Government of Canada proclaimed its *Principles respecting the Government of Canada's relationship with Indigenous peoples*. These Principles are further evidence of the reset of the relationship between Canada and its Indigenous Peoples. What is particularly significant about these principles is the focus on the Crown – Indigenous relationship in the negotiation of Treaties, the importance of treaties in effecting reconciliation, and the right of all Indigenous peoples to enter into treaties with the Crown.

The Minister's October 2017 revised mandate letter raises the importance of this Government's nation-to-nation relationship to an even higher level. This revised mandate letter re-confirms the political rationale to conclude these Treaties bilaterally without further delay.

For Ghotelnene K'odtineh Dene, the reset of the relationship and implementing the constitutional foundation of the nation-to-nation relationship for treaty-making means that territorial governments;

- do not have a veto over their Treaty; and
- are not parties to their Treaty, but can sign on under Canada's signature at any time.

Nowhere has the Prime Minister said that the new relationship is subject to the consent of territorial governments, or that recognition of Indigenous and Treaty rights is dependent upon the approval of territorial governments, or that Crown support is dependent on support from territorial governments. Any further delay signals that this government has no intention of honouring its duty and the promises of its leaders.

Canada's moral obligation to move forward cannot be overlooked. There is a profound human cost attributable to Canada's allowing these negotiations to drag on

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Beckman v. Little Salmon/Carmacks First Nation [2010] S.C.J. No. 53 (SCC)

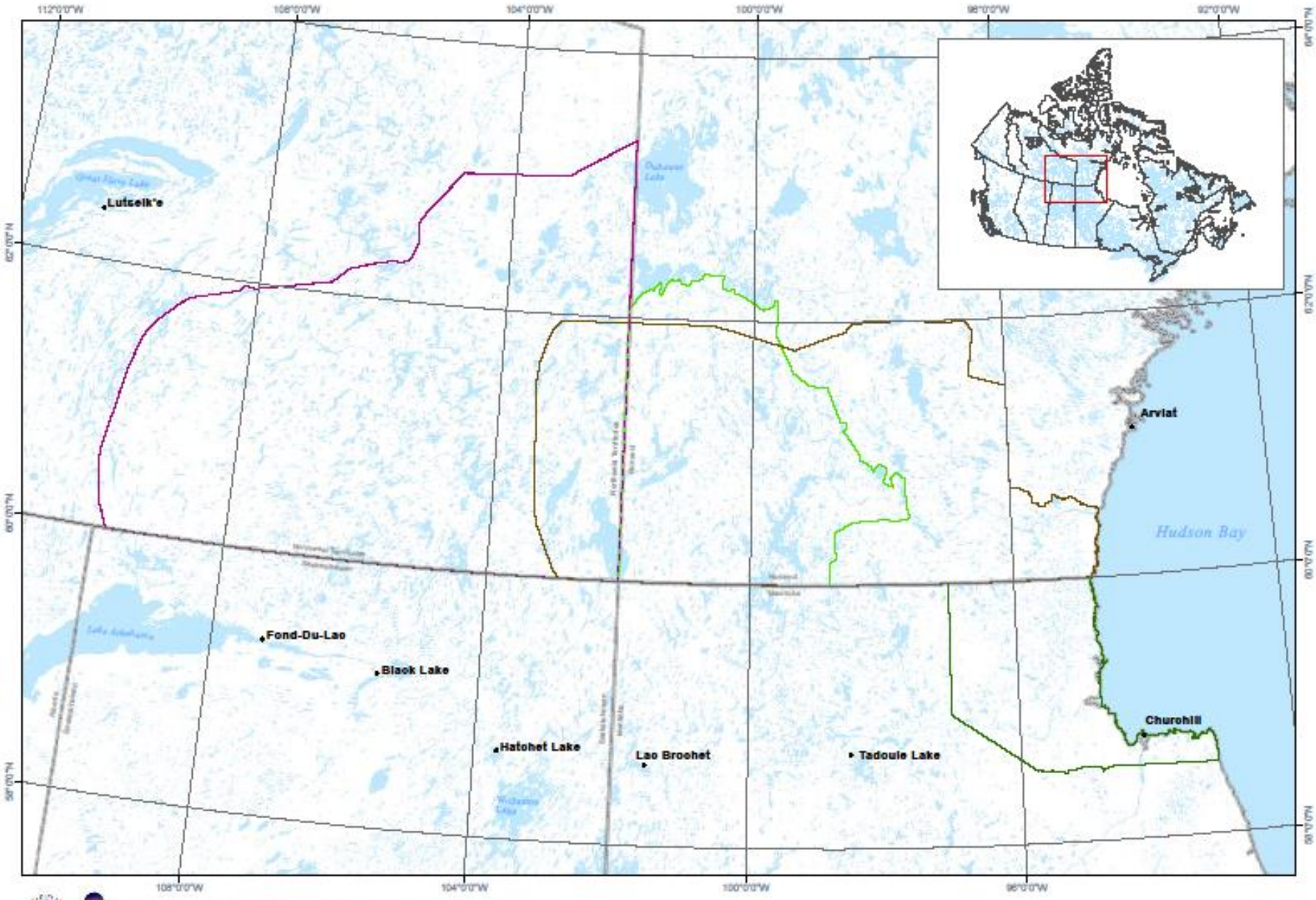
[3] Mandate Letter from Prime Minister Trudeau to Dr. Bennett, Minister of Indigenous and Northern Affairs

for nearly 18 years. An entire generation has watched and waited for a fair recognition of Ghotelnene K'odtineh Dene rights north of 60. Those who were middle aged when the claim was filed are now elders, pre-schoolers are young adults and most of the elders who encouraged their people to stand up for recognition of their rights in the early 1990s have died. Both of the original Ghotelnene K'odtineh Dene Chief Negotiators have passed on. Peter Thorassie, former Chief negotiator for Sayisi Dene First Nation left us last week and Jerome Denechezhe was taken in 2015. Along with the loss of life there is a loss of hope and a loss of confidence in negotiators, community leaders and the integrity of the Government of Canada. Patience is running out and cynicism is gaining momentum.

Disregarding these obligations to move forward is a form of contemporary colonialism making reconciliation just another empty promise. Reconciliation only works when there is equity between the parties. It works if the interests of the territorial governments are not perceived as more important than the interests of the Indigenous group. Reconciliation must be synonymous with change where all governments understand that a business as usual approach does not lead to reconciliation.

What we are Asking of the Committee

We are asking this Committee to advise Parliament that any further delay in concluding our Treaty is wrong on legal, political and moral grounds. Concluding the Treaty is the right thing to do. We are also asking you as parliamentarians to take the same message back to your party caucuses.



North of 60 - Proposed Settlement Areas

Scale: 1:4,000,000
Universal Transverse Mercator Projection
North American Datum 1983

Settlement Area proposed by GKD (agreed to by indigenous groups party to the 2005 Overlap Accord)

Settlement Area proposed by Inuit (agreed to by indigenous groups party to the 2005 Overlap Accord)

Settlement Area/Harvesting proposed by Athabasca Dene (agreed to by indigenous groups party to the 2007 Overlap MOA)

Settlement Area proposed by Athabasca Dene

0 25 50 100
Miles
Kilometers
0 30 60 120

January 2016

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GHOTELNENE K'ODTINEH DENE SUPPPLEMENTARY BRIEFING

STANDING COMMITTEE ON INDIGENOUS AND NORTHERN AFFAIRS (INAN)
SPECIFIC CLAIMS AND COMPREHENSIVE LAND CLAIMS AGREEMENTS
October 27, 2017

GKD has had an opportunity to review the Government of Nunavut's (GN) written brief of dated October 24, 2017 and their oral presentation to the Committee on October 24th and feel compelled to respond to representations contained within the document.

1. GN Assertions:

p. 1: "….land claims agreements in the territorial north are almost always tri-partite in nature with the federal government, territorial government and Indigenous group as the participants."

p 5: "Every modern land claim agreement in Canada's northern territories has involved three parties: the Indigenous group, Canada and the government of the territory within which the agreement is to operate. This has also been the case in Nunavut."

p. 7: "The NLCA, NILCA and EMRLCA were all concluded in the territory of Nunavut with the consent of the Government of Nunavut. However, the Government of Nunavut was not a separate signatory to these agreements and signed as part of the federal Crown. This was an anomaly in Canada and in the territories. All land clam agreements in the Yukon were signed by three separate parties – the federal government, Yukon and the First Nation. Similarly, in the Northwest Territories, the territorial government is a separate party in the Tlicho Agreement."

GKD Response:

Putting aside the inconsistent assertions in these paragraphs, land claims agreements are only tripartite (3 separate parties) when there is a *self-government component*. This is so because there is a necessary interference with the jurisdiction of the territorial governments when an Indigenous group exercises governmental powers. When they are not self-government agreements, only Canada and the Indigenous groups are parties and the territorial governments sign under Canada's signature. The act of signing under Canada's signature does not make the territorial government a party to the agreement.

It is interesting to note that on page 5 GN asserts that "*every* modern land claim agreement in Canada's northern territories has involved three parties…", but then on page 7, GN admits that *it was not* a separate signatory to the "NLCA, NILCA and EMRLCA". (emphasis added). So, of 3 modern day land claim agreements involving

rights in Nunavut, GN was not a party to any.

GN asserts that these were anomalies. That is not correct. Nunavut was not a signatory to the NLCA as Nunavut did not exist at the time of signing of that Agreement. GNWT was not a party either, despite the fact that the NLCA impacted territorial jurisdiction. As noted by the court in *Canada (Attorney General) v. Nunavut Tunngavik Inc.* [2008] Nu.J. No. 13 (NuCJ) ("*NTI*"), this was because of the intention to create the new territory of Nunavut. GNWT signed under Canada's signature but this did not create party status.

In *"NTI",* the court noted that *agreements in the north with a self-government component were 3 party agreements, but those without self-government were 2 party*:

> 93 The land claims that were settled in the Northwest Territories with the Inuvialuit in 1984, the Gwich'in in 1992 and the Sahtu Dene and Metis in 1994, were strictly two party agreements between Canada and the organizations representing the aboriginal people residing in the land claim area. However, the Umbrella Final Agreement (UFA) signed on May 29, 1993 between Canada, the Government of the Yukon and the Council of Yukon Indians, was a three party framework agreement that set out the terms for final land claim settlements and self-government agreements with each of the Yukon's 14 First Nations. Final agreements with four First Nations were signed later in 1993.
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> 94 Similarly, the 2003 Tlicho Comprehensive Land Claims and Self-Government Agreement in the NWT added a self-government component to the land claim.
>
> 95 <u>The addition of self-government to these land claim agreements necessitated the inclusion of the respective territorial government as a formal party because the agreements required some delegation of the constitutional powers of the territory to the aboriginal organization.</u> (emphasis added)
>
> 96 In contrast, TFN [Tungavik Federation of Nunavut] and Canada did not require any delegation of powers by the GNWT because Canada and TFN intended to create a new territory and public government. Canada could exercise its constitutional authority over territorial lands in s. 4 of the Constitution Act, 1871 (U.K.), 34-35 Vict., c. 28, reprinted in R.S.C. 1985, App. II, by amending the Northwest Territories Act and passing the Nunavut Act to create the new territory without any legal or constitutional participation by the GNWT.

Further, neither NILCA nor EMRLCA have self-government components and therefore, did not require GN to be a party. This is the situation with the GKD Treaty: there is no self-government component.

2. GN Assertions:

p. 8: "The proposed treaties will diminish Nunavut legislative authority over the lands that will be subject to Denesuline harvesting and resource rights, will increase the burden on Nunavut to administer the complex regulatory regime for these lands, and result in sizeable costs that the Government of Nunavut would not otherwise have incurred."

p. 9: "As constitutional documents, these agreements will necessarily restrict the Nunavut Legislative Assembly's legislative jurisdiction."

Statements by Mr. McKay in response to question by Committee Member Saganash during oral presentation on October 24th:

Mr. Saganash: ….the brief that you sent before coming today and on Page 9 of the brief, you talk about the Denesuline negotiation agreements as constitutional documents, as constitutional documents these agreements will necessarily restrict the Nunavut Legislative Assemblies, Legislative jurisdiction. Um, can you point to any provisions in those negotiations and agreements that would restrict your legislative jurisdictions?

Mr. McKay: Sure. Thank you. The agreements will be modeled somewhat on the agreements that already exist in the North. So as we mentioned in the brief, there are several obligations, [the fault] of the territorial government, specifically in the area of wildlife, also in the area of natural resource development and by their very nature of the agreement, as a constitutional document, it will restrict what, what legislative jurisdiction the territorial government will have on those lands when the agreement is settled. So, I … just to give you a specific example for instance, there will be access provisions for Denesuline and Inuit, or Denesuline-owned land within Nunavut. So that will restrict what kind of development the territorial government can, can approve or can regulate on those lands. It will restrict what access government officials will have on those lands. So there are some specific restrictions that will be placed on the territorial governments.

GKD Response:

There is no change in GN's legislative authority as alleged or at all. GN's assertions are misleading and Mr. McKay's response was both misleading and not responsive to the question. Nothing in the Dene Treaties will alter the jurisdiction of the Nunavut Legislative Assembly. In the case of the Denesuline Treaties, GN continues to have the right to enact laws in the areas that it is authorized to pursuant to the *Nunavut Act*. GN legislative jurisdiction is not affected. In fact, the Treaty makes it clear that all laws of general application apply to the Denesuline. GN's position confuses jurisdiction with the manner in which legislative authority is exercised. The territorial assembly has never had unfettered authority to exercise its jurisdiction.

Nunavut's legislative jurisdiction is established by federal delegation pursuant to section 23 of the Nunavut Act. The heads of jurisdiction ("classes of subjects") open to the assembly will remain unchanged. Moreover, Section 25 of the *Nunavut Act* authorizes the assembly to legislate for the purpose of implementing the NLCA and any other designated land claim agreement, such as the GKD/AD treaties. The content of legislation enacted by the assembly must, as always, conform to constitutional limitations including modern treaties. However, it is misleading and erroneous to suggest that the *jurisdiction* of the assembly will be altered.

For example, proposed section 6.5.4 of the Ghotelenene K'odtineh Treaty requires GN to provide certain reports that may be in its possession relating to the feasibility of a venture in a territorial park. This provision affects the manner in which GN exercises authority regarding territorial parks but does not alter Nunavut's jurisdiction over parks.

It should also be remembered that under s. 4 of the *Constitution Act, 1871*, Canada retains the constitutional authority to amend the *Nunavut Act*:

> **4.** The Parliament of Canada may from time to time make provision for the administration, peace, order and good government of any territory not for the time being included in any Province.

With respect to GN's assertion that the Dene Treaties will result in sizeable costs, any additional costs which will be incurred as a result of the GKD Treaty is to be addressed in bi-lateral negotiations between Canada and GN as per the Memorandum of Understanding signed by the Governments in May 2016.

3. GN Assertion

p. 8: "Notably, the proposed treaty settlement lands will be in the mineral-rich Kivalliq region of southern Nunavut. This is not only of economic significance to the territory, but also a strategically important part of Nunavut as it is the only viable location for an overland transportation, fibre optics and hydroelectric infrastructure corridor connecting Nunavut to the rest of Canada. The creation of such a corridor would not only enhance future resource extraction and other economic development projects, it would also greatly assist Nunavut's ability to meet its food security challenges and permit communities that now rely on diesel power to become part of a modern hydroelectric grid."

GKD Response:

The Treaty specifically provides for a road and hydro-transmission corridor within which GN could, if it chooses, construct the infrastructure referred to, without having to expropriate or compensate the Denesuline. This does not prevent GN from building outside the corridor, subject to the rules of Expropriation set out in the

Treaty. The rules are essentially the same as applies to Inuit Owned Lands.

4. GN Assertion:

p. 8: "Despite the major impacts of the proposed treaties for the Government of Nunavut, in their presentations the Denesuline questioned the constitutional or legal basis for the participation the governments of the Northwest Territories and Nunavut in these negotiations and urged the government of Canada to act unilaterally and to conclude the treaties without the participation of either territory."

GKD Response:

The constitutional reality is that except where there is a self-government component, treaties are made between the Crown in right of Canada and Indigenous peoples. This has its origins in the *Royal Proclamation, 1763* and reinforced in s. 91(24) of the *Constitution Act, 1867*. There is an abundance of case law that recognizes that special relationship.

Moreover, *territorial governments are not the Crown*, despite their aspirations for that status. The Federal Court of Canada made this point in *Fédération Franco-ténoise v. Canada* [2001] 3 F.C. 641:

> 38 From this constitutional, legislative and jurisprudential overview, the following conclusions can be drawn:
>
> (a) Constitutionally
>
> 39 Constitutionally, the Territories do not have the same status as provinces. They remain a creature of the federal government, subject in principle to the good will of the Government of Canada. Her Majesty the Queen, in the Territories, is Her Majesty the Queen in right of Canada. Although some legislative and political arrangements may have the appearance of agreements between the Government of Canada and the Government of the Territories, these arrangements cannot convert the Territories into a province: indeed, the Territories cannot gain provincial status without an amendment to that effect to the Canadian Constitution, in accordance with the method provided by the Constitution.
>
> (b) Legislatively
>
> 40 Legislatively, the Parliament of Canada has invested the Territories with the attributes of a genuine responsible government and given this government the plenary executive, legislative and judicial powers that the country's Constitution allowed Parliament to delegate, stopping just short of the plenary powers associated with a sovereign responsible

government, those powers being limited by the Constitution to the Government of Canada and the provincial governments.

41 However, Parliament has reserved to the Governor in Council the ultimate control over the exercise by the Government of the Territories of its legislative power. And Parliament went to some pains to note in its legislation that federal laws applied to the institutions of the Territories failing provision to the contrary.

42 Although any comparison between territories and municipalities is unfair to the Territories since their status is closer to that of a province than it is to a municipality, it can be said that the Territories are no more the agents of their respective creators than are the municipalities when they administer the territory they have been empowered to manage.

(c) Politically

43 Politically, the Government of Canada deals with the Territories as if it were dealing with provinces, inasmuch, it seems to me, as this is allowed by the Constitution. The political reality can clarify the juridical issue; however, it cannot falsify it: whatever the political appearances may be, there is not, in law, a "territorial" Crown, or a "territorial" province, or Her Majesty the Queen "in right of the Territories". [Emphasis added]

GN participated in negotiations from 2001 to 2012 when it left the table. A party with treaty-making power does not walk away from a table, remain absent for 5 years and then show up at the last minute seeking deference as a body with constitutional power to make a treaty. Moreover, the offer to the GKD by Canada with respect to the negotiation of the treaty did not include GN except to the extent that GN would participate in those matters affecting their jurisdiction. GN has been receiving copies of the rolling draft of the Treaty on a regular basis and not once since it left the table did it offer comments on the content of the Treaty. The GN waited until late 2016, when it returned to the table to offer their comments on the content of the Treaty.

The Ghotlenene K'odtineh Dene welcome territorial participation within the bounds of the Canada – Denesuline agreed Treaties, provided they do not have a veto, which is effectively what they are demanding by asserting they have a right to be a party to the Treaty. Participation of the GN is not precluded and Ghotelnene K'odtineh Dene expect continued discussions with the territorial governments to define their role in the process of reconciliation in accordance with the affirmed Crown-Indigenous relationship.

5. GN Assertion:

p. 10: "Territorial governments have all the obligations that provinces and the federal government have towards Indigenous people both at common-law and within comprehensive land claim agreements."

GKD Response:

This is simply untrue in law and fact. The GN is obligated to exercise its jurisdiction in a manner that respects the section 35 rights of Indigenous peoples just as are the provinces and federal government. But the GN does not have all the obligations that provincial and federal governments have because they are not the Crown and because section 91(24) of the Constitution creates unique federal obligations with respect to Indigenous peoples.

6. GN Assertions:

p. 10: "Tri-partite agreements recognize the constitutional status and obligations territories, including Nunavut, have within the federation."

"In the future, any agreements concluded with these groups should be by tri-partite agreements. This is consistent with the recognized constitutional status of the territorial governments, their distinct legislative responsibilities and their status as the legitimate representative of territorial residents."

GKD Response:

Territorial governments do not have a constitutional status that entitles it to be a party to a land claims agreement. (See GKD response to GN assertion #4.) GN was not a party to the NILCA nor the EMRCLA; this was consistent with its constitutional status. The "distinct legislative responsibilities and their status as the legitimate representative of territorial residents" do not change the constitutional reality in Canada: see the *Royal Proclamation, 1763* and the *Constitution Act, 1867*.

CONCLUSIONS

- The GKD Treaty is a fair and reasonable agreement with the Crown that took nearly 18 years to negotiate and it should be respected and supported by the territorial governments.

- Our constitutional framework is such that the Treaty relationship is between Canada and the Indigenous groups. Territorial governments are parties only when there is a self-government component because self-government affects territorial jurisdiction.

- The GKD Treaty should be concluded without the territorial governments as Parties, but giving them the option to sign on under Canada's signature at any time.

- Canada has taken a leadership role and exercised their constitutional authority to move forward on matters such as health care funding, marijuana legalization, a carbon tax and pipelines, despite very public and vocal provincial and territorial resistance. Canada's commitment to reconciliation requires similar leadership in concluding the Denesuline treaties. Implementing bilateral Treaties demonstrates that leadership.