



**PASS**

Tr'ondëk Hwëch'in General Assembly

## Resolution 2016-08-28-01

### TH HERITAGE ACT

**WHEREAS:** Chapter 13 of the Tr'ondëk Hwëch'in Final Agreement provides that the Parties share the objectives of managing Heritage Resources in Yukon in a manner that respects and is consistent with the values of Yukon Indian People; and

**WHEREAS:** The values of Yukon Indian People have not been properly articulated for the purposes of managing Heritage Resources in Yukon; and

**WHEREAS:** Yukon First Nation Heritage and Implementation officials worked closely with Yukon First Nation Elders over the past three years to develop a draft generic Yukon First Nation Heritage Act; and

**WHEREAS:** The *Tr'ondëk Hwëch'in Heritage Act*:

- affirms the inherent right of the Tr'ondëk Hwëch'in to define Tr'ondëk Hwëch'in heritage and culture;
- ensures the preservation of Tr'ondëk Hwëch'in culture in a manner that is consistent with the Tr'ondëk Hwëch'in Final Agreement;
- articulates Tr'ondëk Hwëch'in values and principles related to Heritage;
- strengthens the Tr'ondëk Hwëch'in position in dealing with other Governments regarding Heritage issues; and
- provides a mechanism for resolving disputes over ownership and management of Heritage Resources.

**THEREFORE BE IT RESOLVED THAT:**

The Tr'ondëk Hwëch'in General Assembly hereby passes the attached Tr'ondëk Hwëch'in Heritage Legislation.

**MOVED BY:** Lisa Anderson

**SECONDED BY:** Roy Johnson

**IN FAVOUR:** 31

**OPPOSED:** 0

**PASSED BY:** consensus

**DATED:** August 28, 2016

**TH Chief Roberta Joseph**

## TR'ONDËK HWËCH'IN HERITAGE ACT

An Act to provide direction for the management of Yukon First Nations heritage and culture, in order to:

- i. recognize and affirm the inherent right of the Tr'ondëk Hwëch'in over its heritage and culture;
- ii. recognize and affirm the Tr'ondëk Hwëch'in Self-government Agreement Section 13 powers over Tr'ondëk Hwëch'in heritage and culture;
- iii. recognize the uniqueness of Yukon First Nations concepts of heritage; and
- iv. fulfil the Tr'ondëk Hwëch'in Final Agreement Chapter 13 provisions to respect and foster the culture, history and values of Yukon First Nations People.

### Yukon First Nations Culture and Heritage

Each Yukon First Nation has its own unique cultural practices and languages. Yukon First Nations also share a common heritage with many common laws, principles and values. This document articulates our shared understandings and core heritage values — in order to distinguish what our Elders call “our way” from the “western” or “English way.”

### What Our Elders Say About Our Heritage

living heritage – the Tr'ondëk Hwëchin way

*“Our culture is our inheritance. When we live our culture we are keeping it alive, we are sustaining it. You don't know traditional knowledge, you have to live it. You have to be a First Nations person to understand – the way we grow up, the way we hunt, the way we live on the land. The land is our university and our church. We went to school out on the land. That's our university.”*

storytelling

*“In our way, we tell stories to get something out. The story comes from a true incident or experience and it tells us how someone had learned from that event. Because it is based on a true incident it is a valid lesson. Rather than trying to teach someone something, you tell a story about something you experienced. This shows the listener that they are not the only one who has experienced that kind of situation. It is a way of teaching so that the listener doesn't become offended or defensive. We live our culture, that's how we were taught.”*

living “in a good way”

*“Heritage is our way of life. The stories about creation and how we learn from the animals and the land teach us about how to take care of ourselves and to survive on the land and to do it “in a good way.” And I guess that ‘in a good way’ means respect. That is our biggest law. Respect is the one that encompasses everything. When you go against doing things “in a good way,” that is with respect, that's when Da'ole [traditional law] comes in. When we do things in a bad way, it is disrespect – meaning that you have gone against all the natural laws. You bring all the negative to yourself. It is the same concept as – the idea that what you put out there comes back to you.”*

*"We are part of the land, part of the water"*

*"Heritage is our knowledge of and connection to the land. We are part of the land. When we are out there on that land, we are part of it, but we are not the be-all and end-all. Every rock, plant tree and animal are part of the land and the water is part of it. Everything has a spirit. Our connection to the land is a spiritual connection."*

place and identity

*"The land is part of our culture. People connect themselves to place. Place is very critical for us. In the past, we had no maps but there were lots of sacred areas – and landmarks that always provided for us. The land is who we are."*

responsibility and survival

*"The land ensures our survival. You have to look after the land, you have to look after the animals. The land is our heritage: because we use it, because it is everything, everything comes from the land. Keep your land clean, keep your animals, they are your friends. You look after them, they look after you. You look after your water, land, trees, you look after the land, you respect it. That's our spirituality."*

relatedness and "what is called 'ownership' in the English way"

*"My grandma always said when we were out on the land 'you remember, this is the animals' home, and the home of every living thing.' In our way, they are all an integral part of the land. Everything is an integral piece, we humans are just one part. The land is our lifeblood. The land is not our land. We belong to this land: we are born on it, we are raised up on it and we are going to die on it. This land owns us, we don't own the land."*

## **Yukon First Nations Way of Life, Traditional Laws and Core Values Pertaining to Heritage**

### **Way of Life Summary**

Our heritage is a way of life in which knowledge and understanding of history, culture, and survival is passed on from generation to generation by parents and Elders.

The oral, cultural, experience-on-the-land basis of our heritage makes it flexible, adaptive and evolving. It is a dynamic, living heritage and culture based on traditions which are shaped by our history in a harsh environment. Balancing tradition and adaptability has ensured our survival. In our way, change and adaptation are aspects of our laws, practices and values, that have guided and protected us for millennia.

Our sense of relationship and relatedness is distinct from the Western concept of autonomous individuality. Our way of life includes relationships with people, other animals, plants, the spirit world, and the land – rivers, lakes, mountains, wetlands, etc. All parts of the land are interdependent.

The land is central our identity; it is the source of life, we understand ourselves as part of the land, related to the entire natural environment and to everything in it. In our way, we see the interconnectedness of all aspects of life. Everything is imbued with spirit.

Our kinship ties are based on people who honour the same relationships, and are not dependent on blood relations, language, or geography. Our concept of relatedness underlies our stewardship responsibilities to one another, to our heritage, and to the land.

Our law requires us to respect and honour our heritage, practices and protocols, including respect for the land and acceptance of our stewardship responsibilities towards it.

Our heritage is our way of life as part of the land. In our way we do not divide heritage into separate categories. What we consider directly related to our history and culture is not affected by western classification.

### **Principles and Values Pertaining to our Heritage**

Our holistic perspective produces concepts of reciprocity, moderation, balance, harmony that beget a code of conduct based on the principle of reciprocity (a concept of moderation and self-control, of taking and giving back) and the supreme value of respect (an attitude of humility and gratitude). These principles guide the interplay of values like humility, adaptability, openness, responsibility, honour, truthfulness, self-reliance that are reflected in expected behaviors that people demonstrate between each other and the land.

Historically, land was to be shared by everyone regardless of family, language, or nation. When conflict arose it was resolved in accordance with traditional practices. Resolution of conflict was based on reciprocity and balance between people. Members of the group with knowledge and experience would discuss the issue and come to an agreement that would resolve the situation. The goal was to maintain balance between the individuals, families, or groups. It was imperative that solutions did not create undue hardship for either group nor create excessive benefit for the other. In this way moderation, humility, balance, and respect were reinforced.

Moderation and balance govern paradoxical values like interdependence and self-reliance. In our way “tradition” includes “openness to new things.”

Harmony and balance pertain to maintaining the greater good, in our holistic perspective. In our code of conduct, collaboration, working together collectively in the interest of the greater community are essential; consensus decision-making is expected; resources and work are shared. All things are cared for.

Adaptability and openness to new things, resourcefulness, ingenuity and self-reliance are essential characteristics and values for survival in our harsh environment.

Accountability, taking responsibility for actions and stewardship obligations, honouring relationships, being truthful and doing what we say we are going to do are valued behaviours and habits that guarantee the sustainability of the land and our peoples.

The supreme value of respect pervades our traditional laws, customs and practices. Treating every person and every living thing respectfully is deeply ingrained in our way of life and traditional practices. Respect is core in all aspects of life and should be reflected in thoughts, words and actions. Respect for Elders is particularly important.

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### Citation

1. This Act may be cited as the Tr'ondëk Hwëch'in Heritage Act.

### Purpose

2. This Act:
  - (a) affirms the Yukon First Nations inherent right to define our heritage, culture, history and values;
  - (b) ensures the preservation and promotion of the Tr'ondëk Hwëch'in's heritage in and on the Traditional Territory of the Tr'ondëk Hwëch'in, in a manner that is consistent with Chapter 13 (and the inherent right);
  - (c) ensures that Heritage Resources in Tr'ondëk Hwëch'in Traditional Territory are managed in a manner that is consistent with Yukon First Nations values and the Tr'ondëk Hwëch'in Final Agreement;
  - (d) articulates Yukon First Nations values and principles related to heritage and provides definitions required for this implementation of this Act;
  - (e) provides a mechanism for resolving conflicts between the Tr'ondëk Hwëch'in and other Yukon First Nations, and between the Tr'ondëk Hwëch'in and other governments, regarding the stewardship and management of Heritage Resources; and
  - (f) such other matters ancillary to the foregoing.

### Interpretation

3. In this Act the following definitions apply,
  - (a) **Act** means the Tr'ondëk Hwëch'in Heritage Act approved by the Tr'ondëk Hwëch'in General Assembly, as amended from time to time;
  - (b) **Archaeological** means relating to the field of archaeology, the scientific study of cultures through the examination of their material remains such as buildings, graves, tools, and other artefacts.

- (c) **Council** means the Chief and Council identified in the *Tr'ondëk Hwëch'in Constitution*.
- (d) **Cultural Landscape** refers to the unity of culture, history, the spirit world, the land and its inhabitants.
- (e) **Ethnographic**
  - i. means relating to the branch of anthropology called ethnography, concerned with ethnicity or ethnic groups, used to describe an object or other tangible or intangible aspects of a particular ethnic/cultural group; and
  - ii. can include archaeological and paleontological objects.
- (f) **Heritage Resources** has the same meaning as in the Final Agreement which includes, Moveable Heritage Resources, **Heritage Sites** and Documentary Heritage Resources.
- (g) **Heritage Site** has the same meaning as in the Final Agreement, and includes intangibles associated with the Yukon First Nations concept of “cultural landscape.”
- (h) **Historic Resources** means relating to field of history. Yukon First Nations history is a dimension of a dynamic living heritage that is transmitted through stories, place names, families and a way of life. In the holistic Yukon First Nations worldview the term “Historic” is included within the term “heritage.” This act therefore does not distinguish between Historic Resources and Heritage Resources. Historic Resources include tangible and intangible evidence of Yukon First Nations heritage.
- (i) **Paleontological** means relating to the field of palaeontology, the scientific study of past life using fossil and paleontological evidence.
- (j) **Yukon First Nations**
  - i. has the same meaning as in the Tr'ondëk Hwëch'in Final Agreement and includes “Yukon Indian People.”
  - ii. refers to the collective and shared ethnicity of “Yukon Indian People,” and may also refer collectively to the group of First Nations located in Yukon.
- (k) **Yukon First Nations Heritage** refers to
  - i. the way of life and worldview inherited from previous generations, and
  - ii. both tangible and intangible elements of Yukon First Nations heritage.

#### Application

4. Tr'ondëk Hwëch'in heritage shall be managed in accordance with this Act and in accordance with the Tr'ondëk Hwëch'in Final Agreement and the inherent right of the Tr'ondëk Hwëch'in respecting heritage and culture.
5. Tr'ondëk Hwëch'in Heritage Resources shall be managed in a manner that is consistent with Yukon First Nations values and the Tr'ondëk Hwëch'in Final Agreement.

6. The “What our Elders say” and “Yukon First Nations Worldview, Traditional Laws and Core Values Pertaining to heritage” sections shall guide the interpretation and understanding of Yukon First Nations heritage, and this Act.
7. This Act applies to the Traditional Territories of the Tr'ondëk Hwëch'in.

### **Authority**

8. **Definition:**
  - (a) **Yukon Heritage Resources Board** means the board referred to in the Tr'ondëk Hwëch'in Final Agreement;
  - (b) **Authorized Body** means the body authorized by the Tr'ondëk Hwëch'in to determine direct relatedness and to settle disputes.
9. Defining the culture and values of Tr'ondëk Hwëch'in is within the exclusive jurisdiction and authority of the Tr'ondëk Hwëch'in.
10. The determination of whether or not a Heritage Resource discovered or found within the Traditional Territory of the Tr'ondëk Hwëch'in can be readily identified as directly related to Yukon First Nations history and culture is the exclusive jurisdiction of the Tr'ondëk Hwëch'in, and shall be made in accordance with this Act.
11. The Authorized Body shall be established by the Tr'ondëk Hwëch'in Council for the purposes of:
  - (a) determining direct relatedness and providing recommendations to the Yukon Heritage Resources Board and
  - (b) addressing and resolving any conflicts or disputes over stewardship responsibilities towards heritage interests between different Yukon First Nations, and advising the Yukon Heritage Resources Board.
12. The Authorized Body shall attempt to make decisions by consensus, and may consult with any individuals, members of the community or bodies (including other Authorized Bodies) in making their decision.
13. Any dispute with respect to the stewardship and custody of Heritage Resources between different First Nations shall be resolved by one or more designated representatives of each First Nation Authorized Body, or by representative(s) appointed by the respective Council of each First Nation.
  - (a) Any resolution of a dispute shall be documented and forwarded to the Yukon Heritage Resources Board.
  - (b) Any dispute resolution failure shall be documented and forwarded to the Yukon Heritage Resources Board.

## Determining Relatedness

### 14. Definition:

- (a) **Determining Direct Relatedness** means determining whether or not a Yukon Heritage Resource, Site or other intangible heritage interest is “directly related to” the culture and history Yukon First Nations.
15. Any determination of relatedness (that is, whether or not a Heritage Resource is directly related to the culture and history of Yukon First Nations, as required for the implementation of the Tr'ondëk Hwëch'in Final Agreement) shall be made by the Authorized Body.
16. In rendering its decision on the relatedness of a Heritage Resource to a Yukon First Nation, the Authorized Body shall provide written reasons why the Heritage Resource is connected to the Yukon First Nation.
17. If the Authorized Body is not able to readily identify whether a Heritage Resources found on non-settlement land is directly related to the culture and history of Yukon First Nations, the Authorized Body shall refer the matter to the Heritage Resources Board, with recommendations regarding the manner in which the relatedness to Yukon First Nations should be determined.

## Ownership

18. This Act recognizes the custody and stewardship responsibilities for heritage and the land that Yukon First Nations customary laws require.
19. For the purposes of determining the ownership of Heritage Resources under the Tr'ondëk Hwëch'in Final Agreement 13.3.2, **ethnographic** Heritage Resources can include everything of heritage value – whether found in or on the land or water, whether animal or human or any other product of the land, that at any time was or is related to the culture and history of Yukon First Nations Peoples – regardless of whether it might also be described in the “western way” as *archaeological* or *paleontological* resources.

## General Provisions

### Regulations

20. The Council may make regulations it considers advisable for the purposes of this Act, including, but not limited to, the following matters:
  - (a) stewardship standards in the management and care of Tr'ondëk Hwëch'in Heritage Resources, including Heritage Sites;
  - (b) stewardship standards with respect to developments taking place in the Tr'ondëk Hwëch'in Traditional Territory;
  - (c) research being conducted with Tr'ondëk Hwëch'in people or on the Traditional Territory of the Tr'ondëk Hwëch'in;
  - (d) place names in the Traditional Territory of the Tr'ondëk Hwëch'in;

- (e) communication protocols between
  - i. researchers and the Tr'ondëk Hwëch'in,
  - ii. a person (including an official of another government) or a company conducting business who discovers anything of Yukon First Nations heritage value,
  - iii. different governments regarding anything of Yukon First Nations heritage value and including information being provided about the Tr'ondëk Hwëch'in; and
- (f) any other matter the Council considers advisable for the operation of this Act.

### Discovery of Heritage Resources

#### 21. Definitions:

- (a) **Person** means any person including officials of other governments or a company conducting business.

22. Any person who finds a Heritage Resource as defined in this Act in the Traditional Territory of the Tr'ondëk Hwëch'in that is or may be related to the history or culture of Yukon First Nations on or in the Traditional Territory of the Tr'ondëk Hwëch'in must report the finding to the Tr'ondëk Hwëch'in within 5 days or as soon as is practicable.

23. A person who finds a Heritage Resource under Section 22 shall not damage or remove it from the place it was found without the written consent of the Tr'ondëk Hwëch'in, unless the discovery is accidental and the object may be difficult to re-locate if it is left where it was found.

- (a) If a Heritage Resource is discovered accidentally and may be difficult to relocate then the finder shall report the finding and deliver the object to the Tr'ondëk Hwëch'in, immediately or as soon as is practicable.

24. If there is any inconsistency or conflict between the provisions of this Act and the provisions of the Final Agreement, the Final Agreement shall prevail to the extent of the inconsistency or conflict.

### Penalties

25. A person who contravenes this Act commits an offence is liable to:

- (a) a fine up to \$5,000, or 6 months imprisonment or both; or
- (b) any other culturally prescribed remedy that is not in conflict with Canadian or Yukon Law.

### Commencement

26. This Act comes into force on the date proclaimed by the Tr'ondëk Hwëch'in Council.