

# CEDE, RELEASE, SURRENDER, AND YIELD

By the 19<sup>th</sup> century, the area that came to be known as the Northwest Territories was already long established as the chief source of fur for Europe's fashion industry.

Indigenous trappers who provided the pelts to the Hudson's Bay Company trading posts received in exchange items that would be useful in the bush.

The arrangement was mutually beneficial, but few aboriginal people likely were aware that the land of their ancestors had been granted to the company by an English sovereign 200 years before.

KING CHARLES II

The land itself was considered inhospitable to settler agriculture so even after it was transferred to the Dominion of Canada in 1870, the Dene and Métis (who are descendants of mixed Dene and European unions) were mostly left to themselves.

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That changed in the late 1800s when the discovery of petroleum and gold prompted the government to formalize its reach over the indigenous people and the land.

In that period, the Dominion extended its control not by the slaughter that defined the advance of the white race south of the national border, but clinically, methodically, and administratively - through treaties.



Treaty 8 (1899 and 1900) and Treaty 11 (1921) were the instruments by which Canada ingested broad swaths of the west, including most of the Northwest Territories.

If one reads Treaty 11, which covers the Mackenzie River Valley, one can hardly escape the impression that the "Indians" gave away the land they lived on for the promise of an annuity of a few dollars each, some tools, and medals for those persons acting as their chiefs.

Certainly phrases that called for the "extinguishment of all their past claims" and obligated them to "cede, release, surrender and yield... their rights, titles, and privileges whatsoever to the lands" are as clear as day to the John Locke that resides in every Western heart.

René Fumoleau wrote the definitive account of Treaties 8 and 11, 'As Long as This Land Shall Last.'



He characterizes the Dene viewpoint this way:

'THE LAND DOESN'T BELONG TO US. WE BELONG TO THE LAND.'

'THE WHITE PEOPLE CAME IN AND THEY WANTED TO SHARE WITH US AND ASKED IF WE COULD DO SOMETHING FOR THEM...'

BUT THE QUESTION OF THE LAND WAS IMPOSSIBLE...

YOU DON'T SELL YOUR DAD [AND] YOU DON'T SELL YOUR MOM.

Ironically, many Dene don't reject Treaty 11, which came cloaked in verbal assurances, because they still interpret it the way their forebears did, as a friendship pact guaranteeing their livelihood—based on hunting, fishing, and trapping—that in no way prejudiced their relationship to the land.

In Tulit'a, Theresa Etchinelle tells us she knew an eyewitness to one of the 1921 community signings who insisted that the land was never surrendered but that the treaty promising good will would last—

'AS LONG AS THE SUN KEPT GOING OVERHEAD, AND AS LONG AS THE RIVER DIDN'T FLOW BACKWARDS.'



In a culture where stories are the way knowledge is passed down, oral pledges all the people could hear and then repeat to their children were of more significance than a legal document in a language few of them could understand.



Over time, however, indigenous people began to appreciate the consequences of the Euro-Western insistence on the preeminence of the written word.

Stephen Kakfwi, who was born in Fort Good Hope and would one day become premier of the Northwest Territories, tells me about the day he came across a copy of Treaty 11 in his school library.

I REMEMBER READING IT AND BEING STRUCK BY THE FACT THAT... THE DENE HAD EXTINGUISHED ALL THEIR RIGHTS ... AND GIVEN UP ALL THEIR LAND FOR \$5 A YEAR, FOR SOME BULLETS AND FISHNETS

I REMEMBER JUST THINKING, 'THIS HAS GOT TO BE THE CRAZIEST THING I'VE EVER HEARD OF.' I WAS 12 YEARS OLD.

HOW COULD ANYBODY DO THAT? BUT THAT'S WHAT IT SAID.

"And I asked my grand-father at one point about it..."

"He thought it was a foolish question from a young kid."

"He basically just laughed..."

WHO WOULD EVEN SAY SOMETHING LIKE THAT, LET ALONE THINK IT?  
...WHO NEEDS \$5?

Stephen Kakfwi looked for more information about his people but found nothing, he tells me in his Yellowknife home.

IT'S ALMOST LIKE WE DIDN'T EXIST.

# THIS IS OUR LAND, AND HOW COME WE'RE NOT IN CHARGE OF IT?

Initially, as a teenager in the 1960s, he would find political meaning outside his own reality.

I'M NOT SLEEPY AND THERE IS NO PLACE I'M GOING TO

Bob Dylan  
Bringing It All Back Home

He absorbed the words and music of Bob Dylan,

and observed the both great and "senseless" act of white hippies across North America "disowning their parents and their whole way of life."

BUT I IDENTIFIED WITH THE ANGER AND THE STRANGE DETACHMENT YOU HAVE ... BEING IN A COUNTRY CALLED CANADA THAT ... DIMINISHED YOU AND DEHUMANIZED YOU TO A GREAT EXTENT.

He read what he could about the American Indian Movement (AIM), the civil rights struggle, Martin Luther King Jr., and Malcolm X.

"I knew about the Black Panthers and the revolutions around the world," he says.



In Fort Simpson, Jim Antoine, who would also become premier one day, tells us he drew similar inspiration as a student at the University of Wisconsin in the early 1970s.



NIXON WAS PRESIDENT, AND EVERYBODY DIDN'T LIKE HIM.

THERE WAS BIG DEMONSTRATIONS...

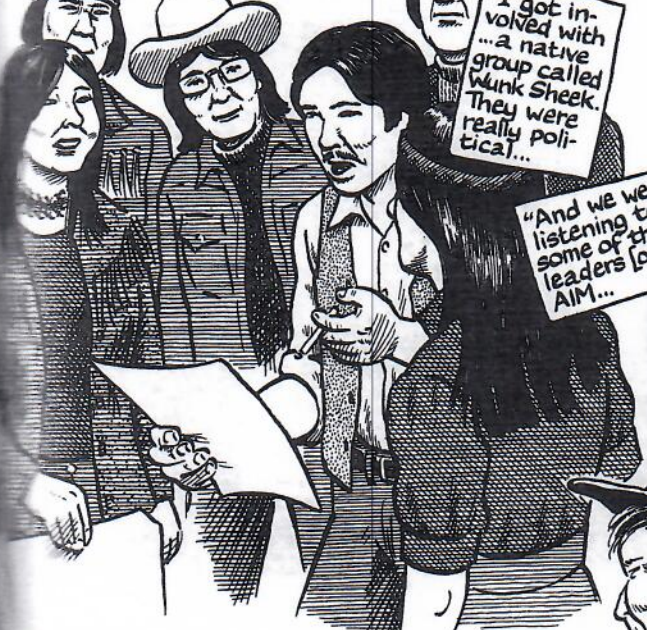
"I got involved with ...a native group called Wunk Sheek. They were really political..."

"And we were listening to some of the leaders [of] AIM..."

"Russell Means..."

"Dennis Banks."

"All of those guys."



THEY WERE TALKING ABOUT THE SAME THING THAT PEOPLE UP HERE WERE TALKING [ABOUT]...

'THIS IS OUR LAND AND HOW COME WE'RE NOT IN CHARGE OF IT?'

'HOW COME THESE WHITE PEOPLE ARE RUNNING THE TOWNS AND RUNNING THE NORTH?..'

'THEY'RE PUTTING CUT LINES ON OUR LAND LOOKING FOR OIL AND GAS.'

'WE'RE THE LAST PEOPLE TO KNOW.'



In 1972, Jim returned home and became a field worker for the Indian Brotherhood of the Northwest Territories, the foremost expression of Dene solidarity and political engagement.

"We were talking about community development work," Jim tells us "listening to people... and explaining to them what we know, what we are doing. And everybody agreed. So it was a movement."

"Back then the elders... raised an agenda item, and then someone will talk about it."

"Once he's finished, somebody else would say, 'Yeah, what he's saying I agree with!'"

"and then they'd add onto it..."

"Everybody was in sync..."

"Nobody had their own personal agenda."

IT'S DIFFERENT TODAY AMONG OUR OWN PEOPLE.

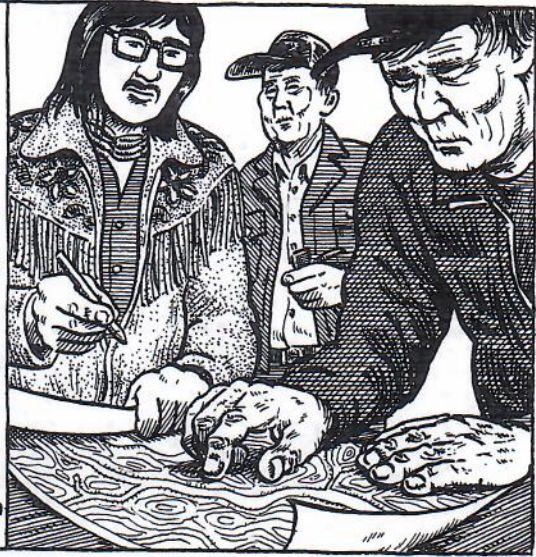
"We had a series of workshops, and slowly we realized what we're up against... with the people who are non-Dene, their view, their attitudes."



THERE WERE TWO KEY, BIG NATIONAL EVENTS THAT HAPPENED FOR US.

FIRST WAS... THE PAULETTE CASE.

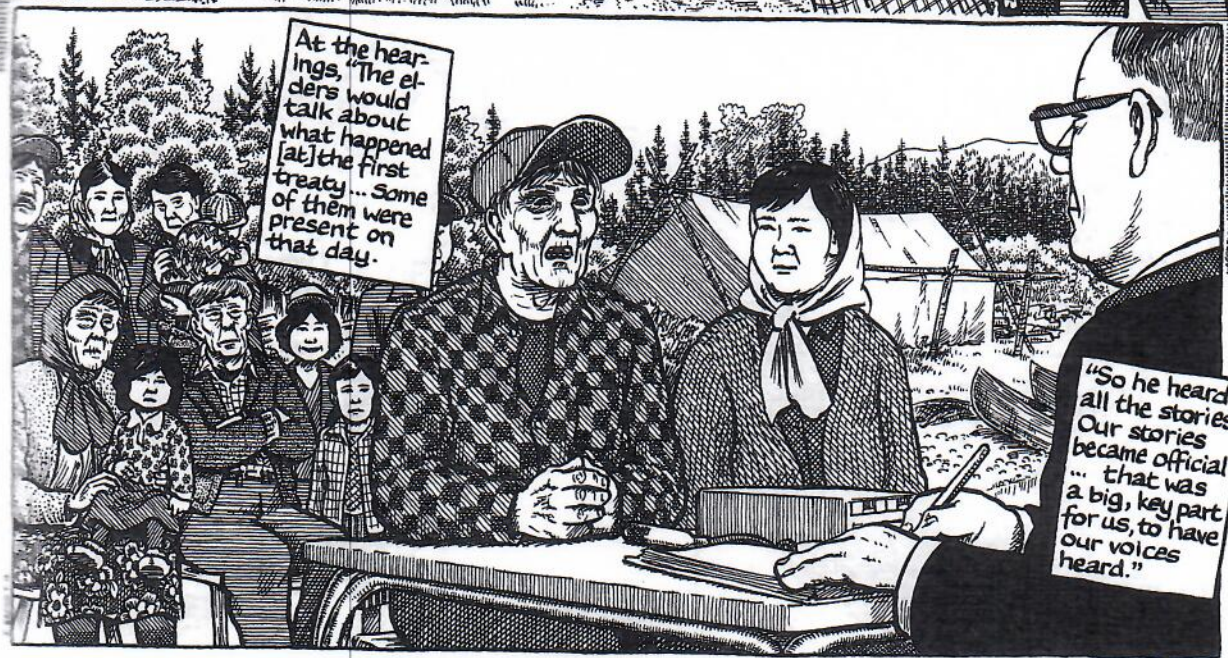
In 1973, a group of 17 chiefs - of which Fort Smith chief François Paulette was one - filed a legal caveat asserting aboriginal rights to 400,000 square miles of Denendeh - "The Land of the People" - based, Jim says on maps the Indian Brotherhood had drawn up to show the extent of indigenous habitation and land use.



Justice William Morrow of the Supreme Court of the Northwest Territories visited communities to examine the claim.

The Indian Brotherhood had prepared the ground.

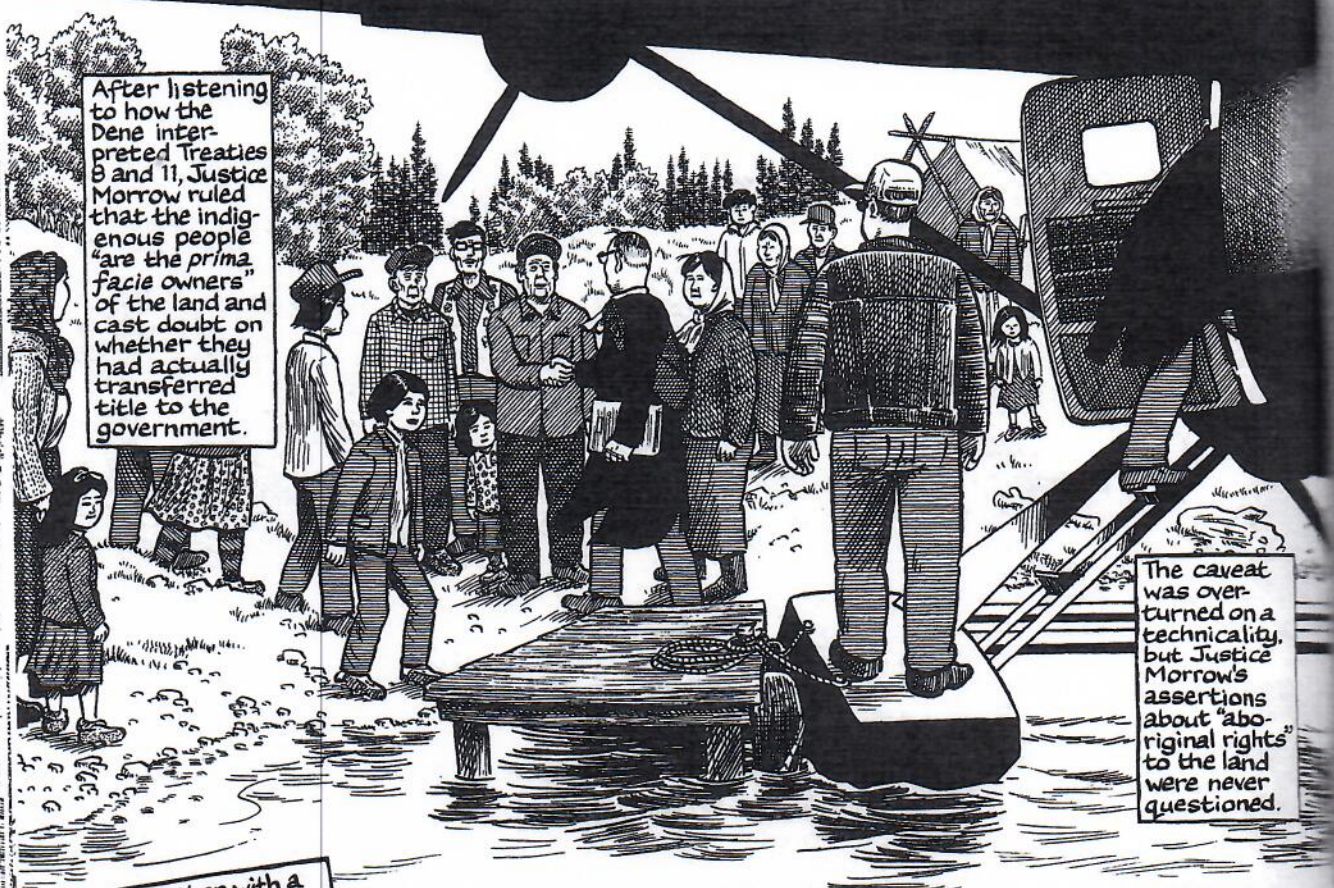
"We explained to the people ... what was going on," says Jim. "this guy's going to show up."



At the hearings, "The elders would talk about what happened [at] the first treaty ... some of them were present on that day."

"So he heard all the stories. Our stories became official ... that was a big, key part for us, to have our voices heard."





After listening to how the Dene interpreted Treaties 8 and 11, Justice Morrow ruled that the indigenous people "are the *prima facie* owners" of the land and cast doubt on whether they had actually transferred title to the government.

The caveat was overturned on a technicality, but Justice Morrow's assertions about "aboriginal rights" to the land were never questioned.

Together with a Supreme Court ruling\* that pointed to a similar conclusion, the Paulette case was important because up until then, the government "even said there's no such thing as aboriginal rights," according to Jim.

\*CALDER V BRITISH COLUMBIA (AG)

In fact, a 1969 white paper† had recommended abolishing Indian status in favor of "equality" and assimilation.

Such a policy might have mooted any special claim indigenous people had to the land.

† THE STATEMENT OF THE GOVERNMENT OF CANADA ON INDIAN POLICY

So the Paulette case

WAS A BIG MILESTONE IN THE WHOLE CANADIAN FRAMEWORK... AND A LOT OF GROUPS... PICKED UP ON THAT AND PURSUED THEIR OWN LEGAL FIGHT WITHIN THEIR OWN JURISDICTION...

With Treaties 8 and 11 now open to question, the stage was set for the second "big event."

THE NEXT ONE WAS THE BERGER HEARING.

# OUR OWN PLANS

WE ARE WAKING UP AND REALIZING THAT, APART FROM THE GLOSSY PAMPHLETS AND PROMISES, APART FROM THE SMILES AND SLAPS ON THE BACK, APART FROM THE GOOD-NATURED SMALL TALK, WHAT YOUR NATION IS REALLY DOING TO US IS DESTROYING US.

OUR REALITY IS THAT THERE IS A SIMPLE CHOICE — DENE SURVIVAL WITH NO PIPELINE, OR A PIPELINE WITH NO DENE SURVIVAL.

PROGRESS TO US MEANS BECOMING A WISER PERSON... IT MEANS LIVING WITH THE LAND AND NATURE AS CLOSE AS POSSIBLE. THE PIPELINE MEANS MORE WHITE PEOPLE WHO WILL BE FOLLOWED BY EVEN MORE WHITE PEOPLE... THEY PUSH THE INDIAN ASIDE AND TAKE OVER EVERYTHING.



FRANK T'SELEIE  
FORT GOOD HOPE



STEPHEN KAKFWI  
FORT GOOD HOPE



RICHARD NERYSOD  
FORT McPHERSON

These were words spoken by indigenous people in the mid-1970s during the extraordinary Berger Inquiry hearings on a proposed natural gas pipeline through the Mackenzie River Valley.



It was a ready time for the Dene of the Northwest Territories;

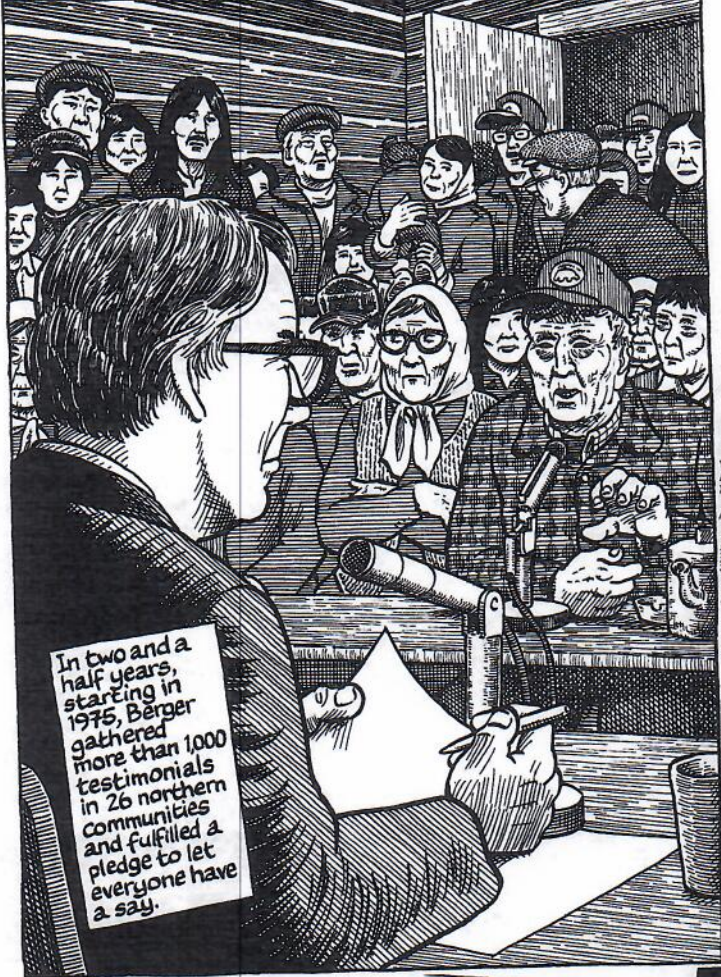
they seemed to speak with one voice.

The pipeline was intended to bring natural gas through traditional Inuvialuit\* and Dene territory to southern Canada and the United States, but the ambiguities surrounding ownership of the land — put into relief by the Paulette case — necessitated more clarity before the project could proceed.

According to Jim Antoine, the Dene consensus was "we got to settle our claims" first.

\* INUITS LIVING IN THE WEST CANADIAN ARCTIC

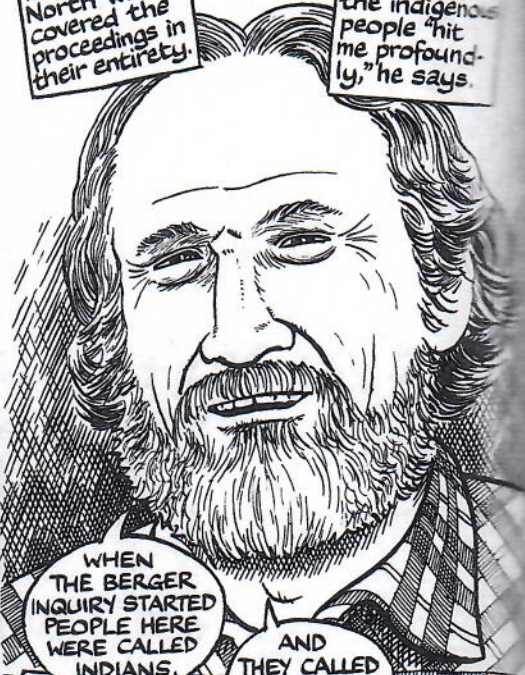
Canada tasked Justice Thomas Berger of the Supreme Court of British Columbia to assess the impact of the proposed pipeline on the people and their environment.



In two and a half years, starting in 1975, Berger gathered more than 1000 testimonials in 26 northern communities and fulfilled a pledge to let everyone have a say.

Patrick Scott was a cameraman for CBC North who covered the proceedings in their entirety.

Watching how the hearings transformed the indigenous people "hit me profoundly," he says.



WHEN THE BERGER INQUIRY STARTED PEOPLE HERE WERE CALLED INDIANS.

AND THEY CALLED THEMSELVES INDIANS.

But as the inquiry progressed, he says, first one person,



DENE

then dozens,

DENE

then hundreds,

DENE

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DENE

began to insist on a new definition.

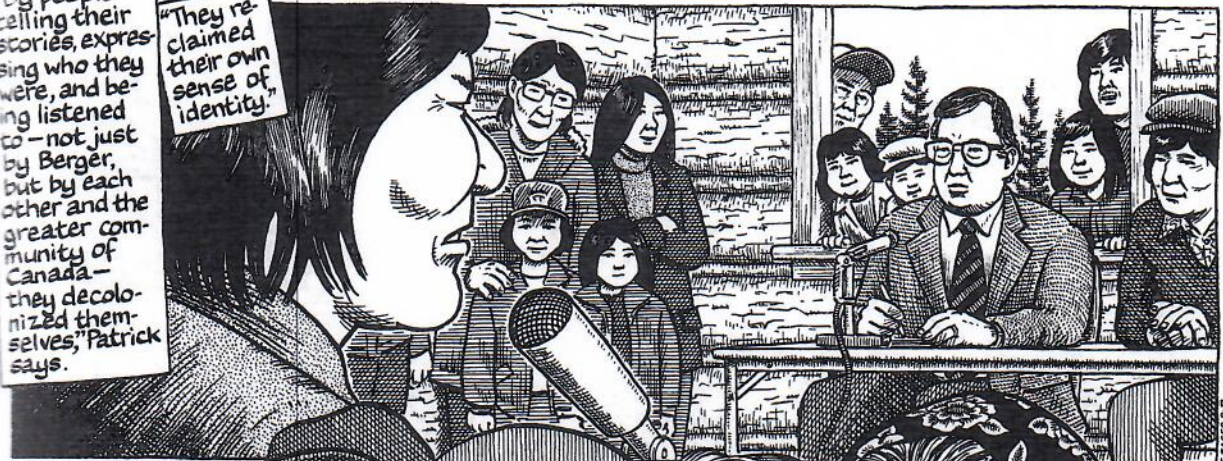
DENE

DENE

70

"By people telling their stories, expressing who they were, and being listened to—not just by Berger, but by each other and the greater community of Canada—they decolonized themselves," Patrick says.

"They reclaimed their own sense of identity."



According to Jim, the inquiry was "very positive." Once again the elders had spoken about their past and the land, and their voices had been recorded for posterity.

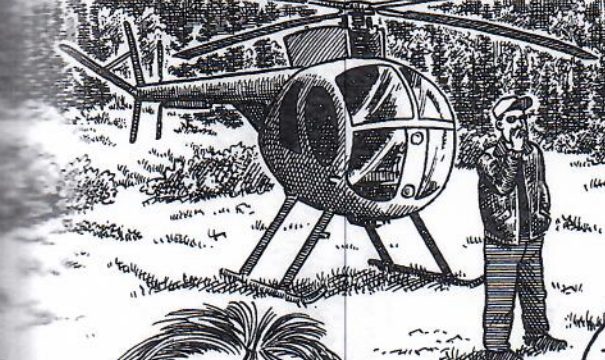
But not everyone was pleased with the proceedings.

He tells us that "loud," white business people showed up in Fort Simpson to buy up properties.

THEY WERE GETTING THEMSELVES READY FOR THE PIPE-LINE.

GUYS CAME IN WITH A COUPLE OF HELICOPTERS.

IT MEANS THEY'VE GOT WEALTH, RIGHT?





At the conclusion of the hearings, Berger recommended a ten-year moratorium on the pipeline while aboriginal land claims were addressed.

The loud business people "were all pissed off, and a lot of them left," Jim says.

The project never went forward.

The Dene of the Northwest Territories—the Gwich'in, the Sahtú Dene, the Tłı̨chǫ, the Dehcho Dene, the Akaitcho Dene—were now closing in on a vision of what might be achieved.

The moment WAS SINGULAR IN THAT WE SAID, 'NO, WE DON'T WANT A PIPE-LINE.'

WHY?

'BE-CAUSE WE HAVE OUR OWN PLANS.'

WHAT ARE OUR PLANS?

'WE WANT TO GET BACK CONTROL OF OUR LAND..'

'WE WANT TO DEVELOP OUR OWN ECONOMY.'

'WE WANT TO TAKE CONTROL OF OUR COMMUNITIES, OUR SCHOOLS, OUR HEALTH PROGRAMS.'

WE BASICALLY WANTED TO SEIZE CONTROL OF EVERYTHING THAT HAD ANYTHING TO DO WITH OURSELVES.

WE BASICALLY SAID WE WANT TO SET UP OUR OWN GOVERNMENT..

# DIVIDE AND CONQUER

For the next several years the Dene Nation — the renamed Indian Brotherhood — joined the Métis in a single bloc to negotiate a collective land claim with the federal and territorial governments.

The Dene were led by a savvy younger generation of English-speaking leaders backed by the elders, who traditionally guided the people.

Patrick Scott, who moved here from British Columbia after the Berger Inquiry and married a Dene woman, is eminently qualified to untangle the machinations that followed.

He has worked as a negotiator for both the Government of the Northwest Territories and the Dehcho First Nations, one of the Dene's regional coalitions — essentially contending camps.

CANADA'S POLICY WAS ONE CLAIM FOR THE DENE AND METIS OF THE NORTH-WEST TERRITORIES.

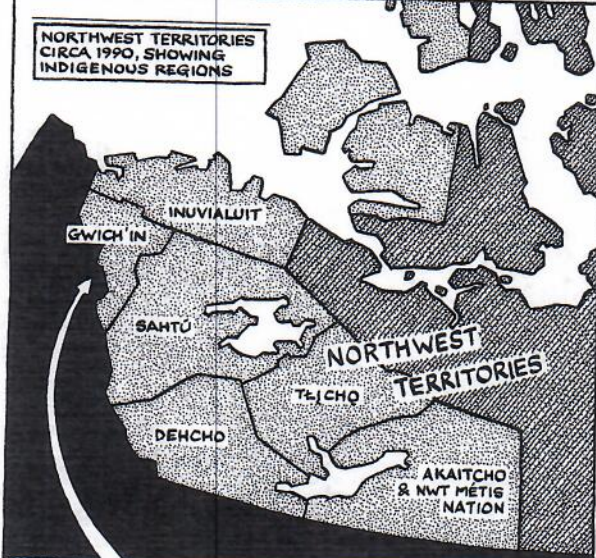
He tells us that indigenous unity collapsed in a dispute over the already initialled final agreement, which included the same extinguishment clauses that made Treaties 8 and 11 so odious.

According to Jim Antoine,

EVERY KNOWN ENGLISH WORD IN THE DICTIONARY WAS IN THE AGREEMENT TO SAY THAT YOU AGREE TO EXTINGUISH ALL YOUR RIGHTS TO THE LAND, WATERS, AND EVERYTHING.

In 1990 a Dene-Métis assembly voted "not to go for it and to try to get the feds to change that [language] to something else," Jim says.

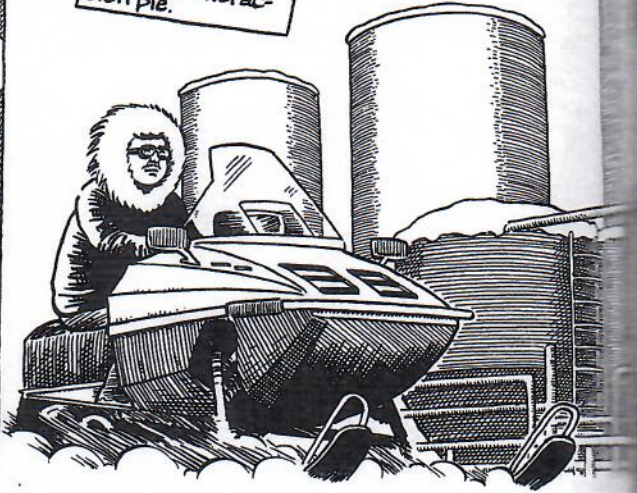
NORTHWEST TERRITORIES CIRCA 1990, SHOWING INDIGENOUS REGIONS



Seeing the agreement about to be placed in limbo, the northernmost Dene tribe, the Gwich'in, balked.

They had watched their Inuvialuit neighbors finalize their separate land claim in 1984, cut deals with the oil and gas industry, and begin to carve out a piece of the resource-extraction pie.

The Gwich'in wanted to move forward quickly in the same way.



Patrick remembers Robert Alexie, their lead spokesperson, telling the assembly.

THE GWICH'IN CAN'T WAIT.

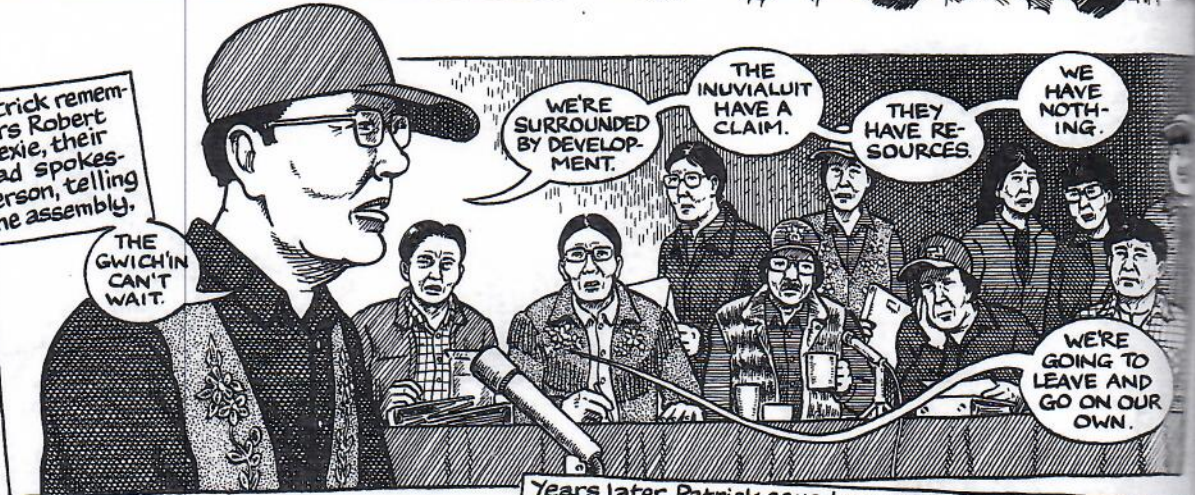
WE'RE SURROUNDED BY DEVELOPMENT.

THE INUVIALUIT HAVE A CLAIM.

THEY HAVE RESOURCES.

WE HAVE NOTHING.

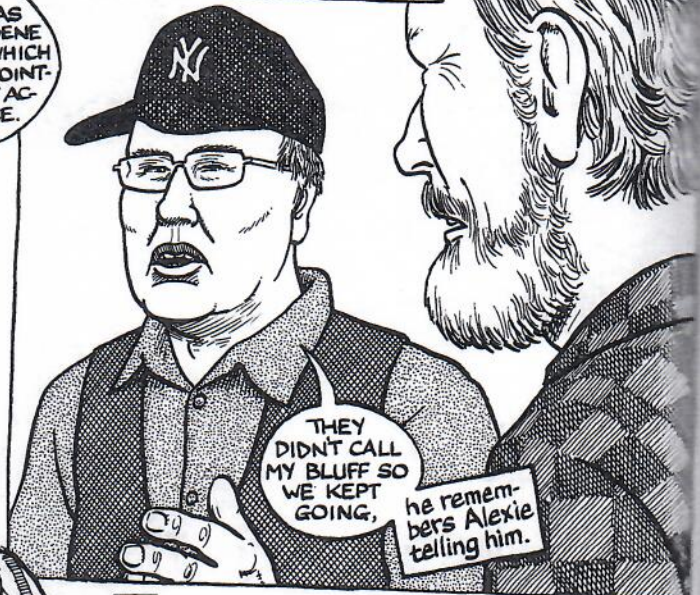
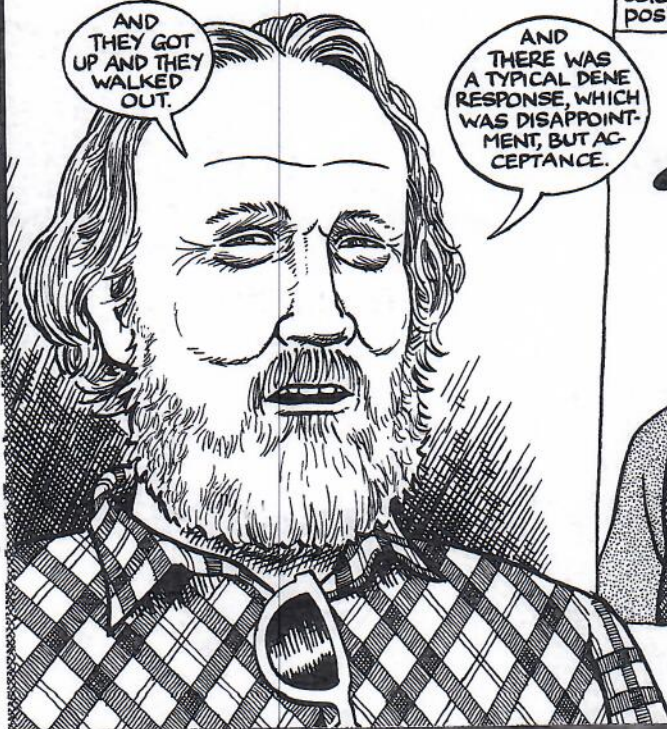
WE'RE GOING TO LEAVE AND GO ON OUR OWN.



Years later, Patrick says, he was incredulous when Alexie told him the Gwich'in had been bluffing to improve their position within the Dene Nation.

AND THEY GOT UP AND THEY WALKED OUT.

AND THERE WAS A TYPICAL DENE RESPONSE, WHICH WAS DISAPPOINTMENT, BUT ACCEPTANCE.



THEY DIDN'T CALL MY BLUFF SO WE KEPT GOING,

he remembers Alexie telling him.

We've already met Willard Hagen, who heads the Mackenzie Valley Land and Water Board. Like many people I encounter in the Northwest Territories, he has worn many hats. He was a bush pilot and an airline owner.

In 1990, the entrepreneur was elected president of the Gwich'in Tribal Council, and he says he was the motivating force behind the Gwich'in departure.

I LOOKED AT IT FROM THE BUSINESS END...

The now stalled negotiations had already cost the Gwich'in \$14 million in lawyers' fees and other professional services and expenses.

YOU OWED \$14 MILLION AND YOU FAILED.

WELL, IF YOU'RE IN BUSINESS, THAT'S CALLED BANKRUPTCY.

SO WHY WOULD YOU WANT TO STAY IN A BANKRUPT SITUATION?

The Gwich'in "didn't want to lose any momentum" so they approached the government to cut their own deal, Willard says.

The feds wanted something to hold up for their own troubles, "and I made sure they saw that was us..."

"I freely admit that I took advantage of the situation because it was a perfect storm," he says.

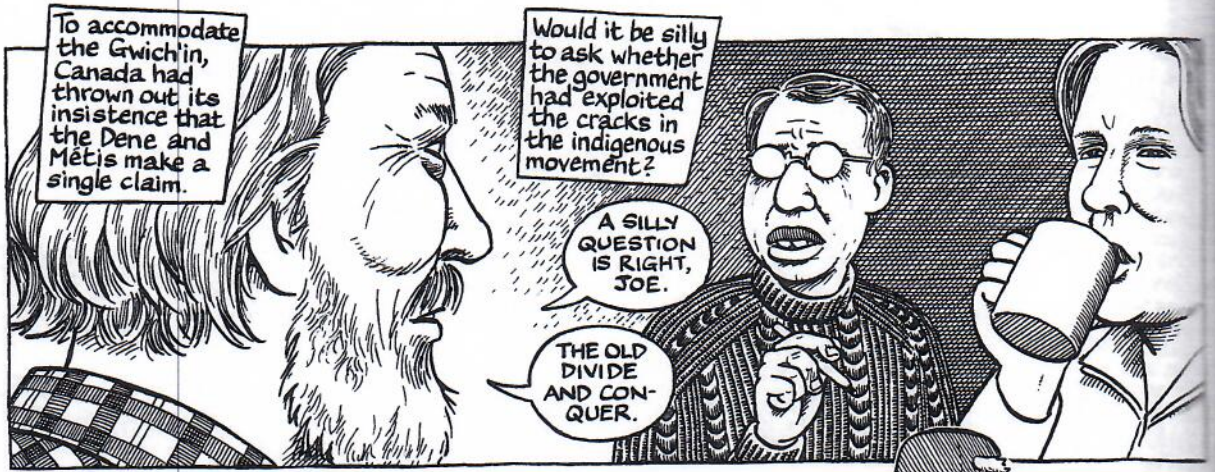
About 18 months later, Willard signed a comprehensive land-claim agreement on behalf of the Gwich'in.

It granted an area spanning over Yukon and Northwest Territories and mineral rights, but included the same extinguishment clauses rejected by the Dene-Métis assembly.

1992

Proud to be Gwich'in





To accommodate the Gwich'in, Canada had thrown out its insistence that the Dene and Métis make a single claim.

Would it be silly to ask whether the government had exploited the cracks in the indigenous movement?

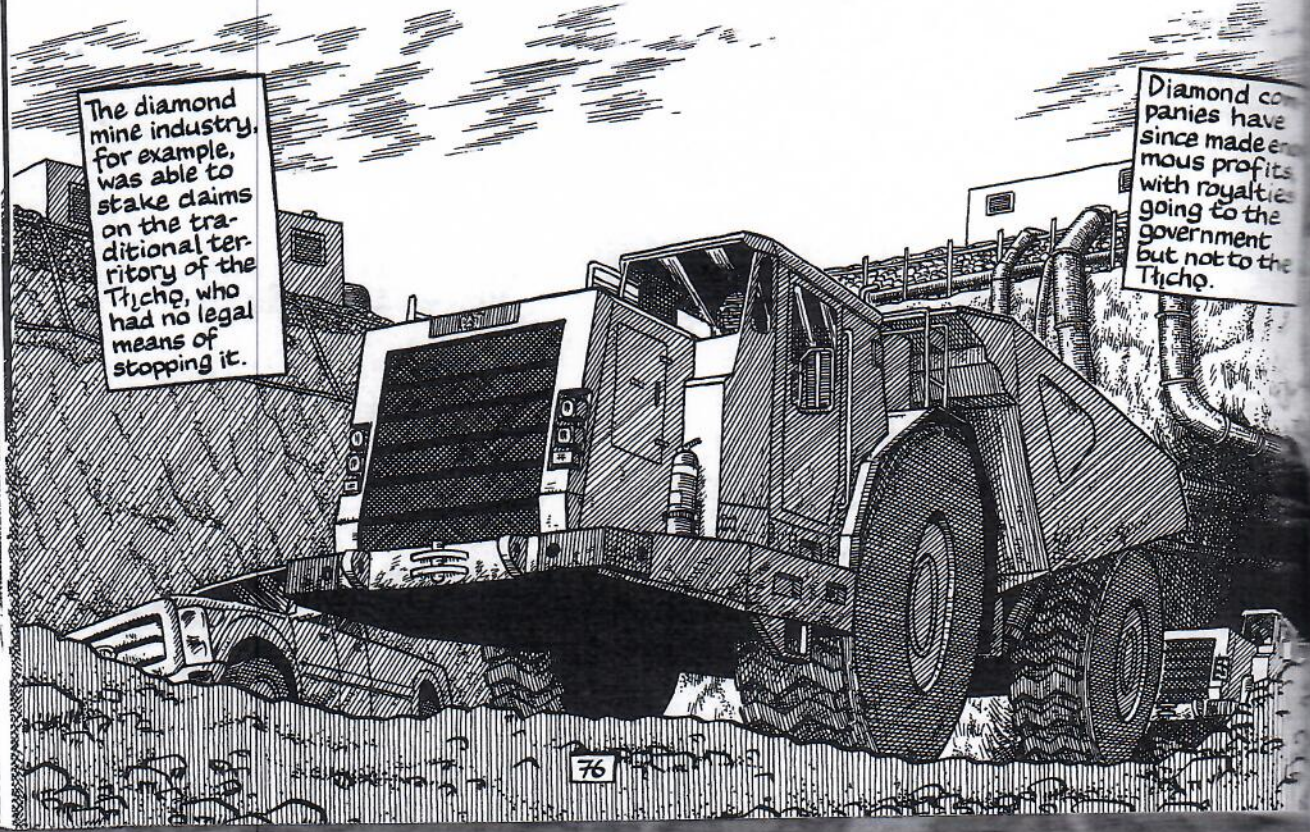
A SILLY QUESTION IS RIGHT, JOE.

THE OLD DIVIDE AND CONQUER.



Indigenous groups also were facing a potentially ruinous legal twist: Land under negotiation is considered "with-drawn" from exploitation, but if talks break down, the land is no longer protected in that way.

Its resources are up for grabs.



The diamond mine industry, for example, was able to stake claims on the traditional territory of the Tlicho, who had no legal means of stopping it.

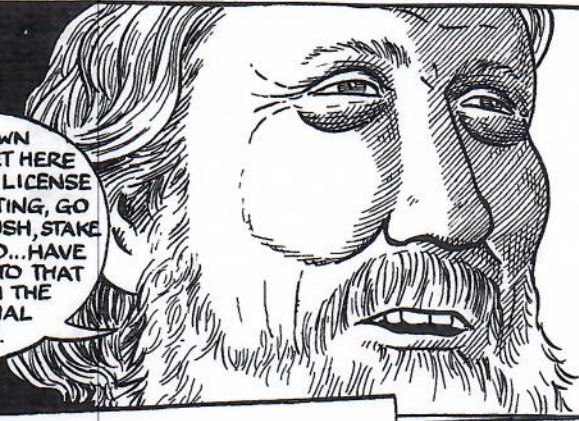
Diamond companies have since made enormous profits with royalties going to the government but not to the Tlicho.

This is possible under Canada's free-entry system whereby anybody can

GO DOWN THE STREET HERE AND BUY A \$5 LICENSE FOR PROSPECTING, GO OUT IN THE BUSH, STAKE A CLAIM, AND... HAVE MORE RIGHT TO THAT LAND THAN THE ABORIGINAL PEOPLE.

In fact,

AS SOON AS THE DENE-MÉTIS CLAIM COLLAPSED... CANADA EXPERIENCED THE BIGGEST PROSPECTING RUSH IN THE HISTORY OF THE COUNTRY.



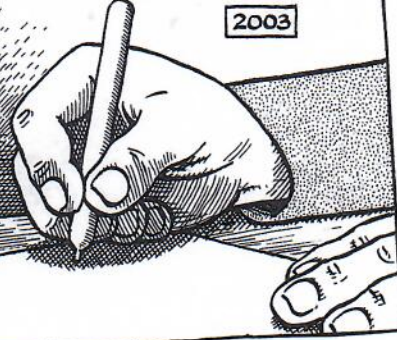
Getting a say in the resource extraction push was a main factor prompting the Sahtú Dene to sign a separate land claim with Canada.

1993



as it was for the Tłı̨chǫ.

2003



As each region now pursued its own land-claim strategy, the Dene began identifying themselves "in a narrow sense, in a more tribal sense," Patrick says.



GWICH'IN

SAHTÚ

TŁĮCHǪ

DENCHO

AKAITCHO

In some cases even communities of a few hundred approached the government on their own behalf, with Treaty 11 as their precedent.



The treaty "underpins their argument for a community-based claim" because in 1921 the government signed with each far-flung Dene group separately - a de facto acknowledgment of localized sovereignty, Patrick says.

In land-claim talks, each region or community must negotiate its territorial area - called land quantum - and settle its surface and sub-surface mineral rights.

I ask Jim how the Dene reconcile the legalistic, Euro-Western concept of land with their own worldview.

MY OLD GRANDMOTHER, WHEN I WAS VERY YOUNG, SHE TOLD ME ONE TIME,

DON'T EVER LET THEM PUT A FENCE AROUND US.

He wonders whether I've seen maps showing the enormous area Dene trappers and hunters traversed even in the time of the dogsleds.

IT'S LIKE A SPIDER-WEB...

JUST AN EXAMPLE OF HOW MUCH OUR LAND WAS USED...



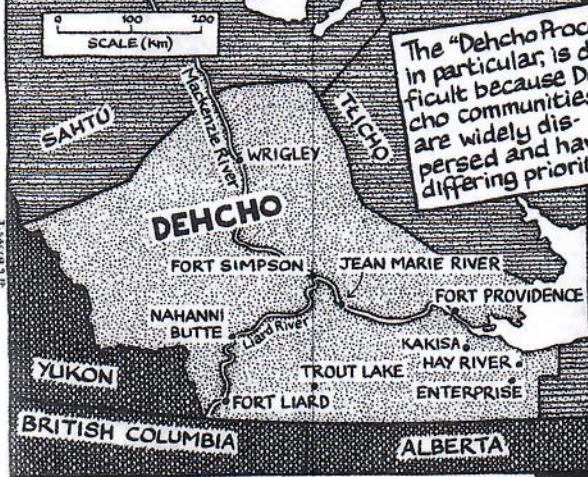
BUT WHEN YOU TALK ABOUT QUANTUM... AND SURFACE AND SUBSURFACE,

THAT'S THE LANGUAGE THAT THE FED NEGOTIATORS HAVE PUT ON THE TABLE...

AND IT'S A CONCEPT THAT IS TOTALLY FOREIGN TO US. BUT WE HAVE TO EDUCATE OURSELVES ON IT AND SEE WHAT HAPPENS.

Jim lives in the Dehcho region.

The Dehcho First Nations—together with the Akaitcho—have not yet settled their land claim.



The "Dehcho Process," in particular, is difficult because Dehcho communities are widely dispersed and have differing priorities.

Land-claim talks are further complicated by the Canadian government's handing full negotiating authority to the Government of the Northwest Territories (GNWT).

The "devolution" of powers angers many indigenous people because the territorial government was not a signatory to Treaties 8 and 11 and has had only a secondary role in subsequent understandings.

And with devolution the GNWT is more responsible for its own revenue.

"They need money to run their programs and services, and the only way they get money is from developing our resources," says Jim.

THAT'S THE END-GAME FOR THEM.

The Dehcho First Nations' vision isn't as clear, he tells us.

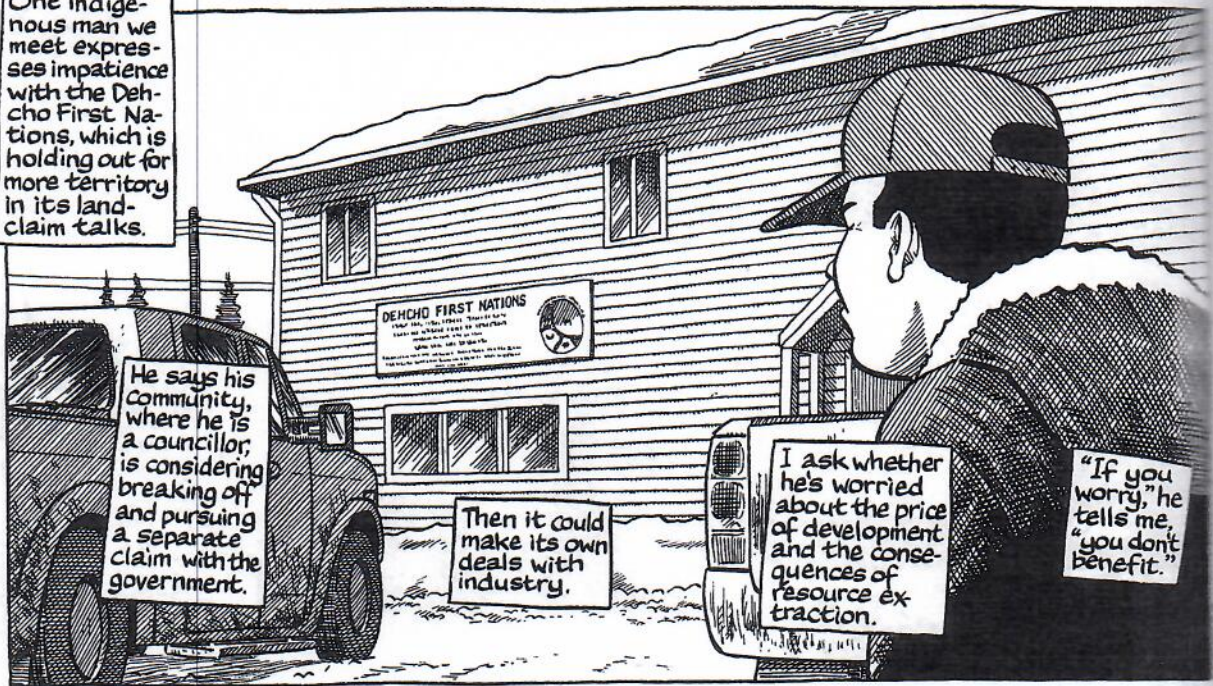
WE HAVE GOT TO GET OUR SHIT TOGETHER HERE...

EVERYBODY'S GOT TO BE IN SYNC AGAIN...

THERE'S ALL KINDS OF DIFFERENT INTERESTS THAT'S GOING ON.

SOME OF OUR PEOPLE ARE REALLY COLONIZED.

One indigenous man we meet expresses impatience with the Dehcho First Nations, which is holding out for more territory in its land-claim talks.



He says his community, where he is a councillor, is considering breaking off and pursuing a separate claim with the government.

Then it could make its own deals with industry.

I ask whether he's worried about the price of development and the consequences of resource extraction.

"If you worry," he tells me, "you don't benefit."

In the Sahtú region, which finalized its land claim and has granted concessions to energy firms, not everyone agrees that the benefits are spread around evenly.

Douglas Yallee, whom we met earlier, was once a member of the Tulit'a Land Corporation.



He tells us that some of the indigenous leaders administering the Sahtú land-claim agreement are in "business for themselves..."

"Our own people," he laments, "make deals with the oil and gas industry, which then farms out contracts to companies they or their relatives own."



I'M JUST GOING TO SAY IT POINT-BLANK:

THE ONLY ONES ...MAKING MONEY [ARE] THE CONTRACTORS.

...THERE'S NOTHING FOR THE COMMUNITY.

Further down the murky path of negotiations is self-government, which, on a regional scale, has been achieved only by the Tłı̨chǫ.

But the Tłı̨chǫ agency that delivers health, education, housing, and other social programs, was fashioned by the GNWT, is funded by the GNWT, and still operates under GNWT law, says Patrick.

\*THE TŁĮCHǪ LAND-CLAIM AND SELF-GOVERNMENT AGREEMENTS WERE NEGOTIATED TOGETHER.

Hunting and fishing, culturally defining activities, are only partly under Tłı̨chǫ authority.

"The GNWT likes the partnership 'cause it means they are still in control," he adds.

IT'S THEIR MONEY, THEIR LAWS, AND THEIR EMPLOYEES THAT DETERMINE HOW AND WHAT IS DONE.

SELF-GOVERNMENT HAS NO REAL TEETH WITH THIS APPROACH.

Patrick should know.

He was one of the chief negotiators for the GNWT at the time of the Tłı̨chǫ talks.

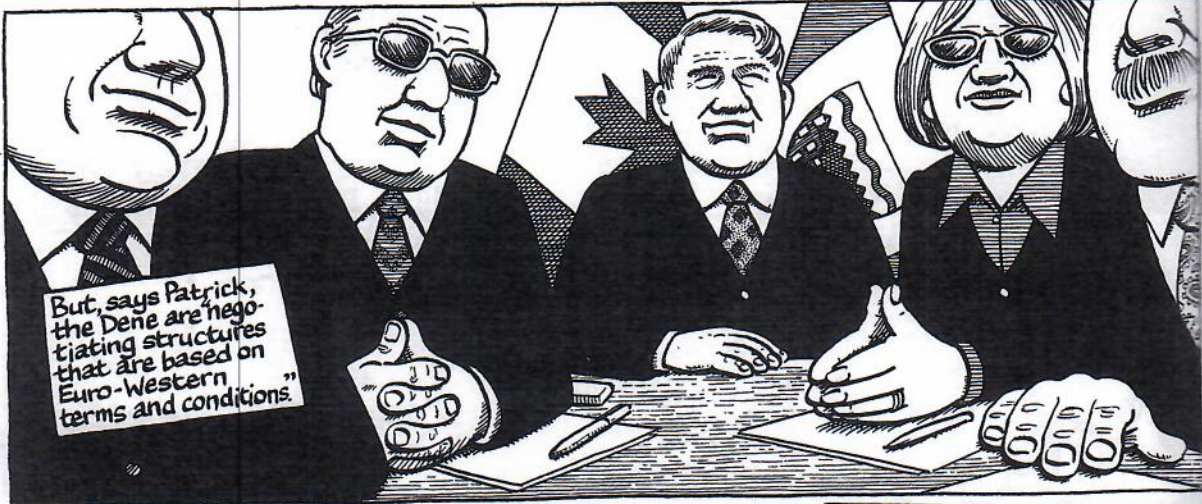
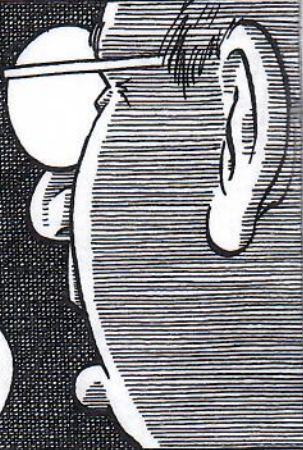


THE PEOPLE ARE REALLY FRUSTRATED THAT THINGS HAVEN'T TURNED AROUND OVER-NIGHT.

WHAT DO YOU THINK THEY EXPECTED?

A STRONGER CULTURAL REALITY IN TERMS OF GOING FORWARD,

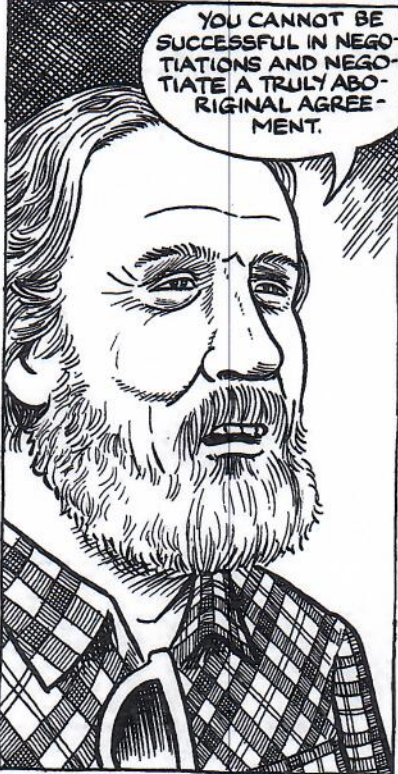
A MORE HUMANE RESPONSE THAN A BUREAUCRACY.



But, says Patrick, the Dene are negotiating structures that are based on Euro-Western terms and conditions."

An agreement based on a Dene worldview—which favors consensus-building over voting, for example—“can’t be done,” he believes

YOU CANNOT BE SUCCESSFUL IN NEGOTIATIONS AND NEGOTIATE A TRULY ABORIGINAL AGREEMENT.



But what options do the Dene have?

THEY HAVE NO OTHER MECHANISM—UNLESS THEY WANT TO BE TOTALLY RADICAL AND ASSERT THEIR RIGHTS AND DO CONFRONTATION DAY AFTER DAY AFTER DAY.



The Dene, he says, are not like that. They seek “peace and friendship” while the government approach is “confrontational and combative.”



Struck by the difference, Patrick resigned from the GNWT and began working as a negotiator for the Dehcho First Nations.