

Allan MacDonald: Director General, Implementation Branch, AANDC

Context

Treaties are not the end of something; we spend many years negotiating them, but many, many more years implementing them. On average, it takes 15 to 20 years to negotiate a treaty, and it's getting longer. We put a lot of effort into this, involving many departments, and many visits to Cabinet. But as soon as the effective date arrives, much of the activity falls off. We need to grapple with that.

Treaties are working. Modern treaties are a key component of Canadian nation-building, but agreements are only as good as their implementation. They advance the shared objective of reconciliation; promote strong and sustainable Aboriginal communities; and advance national socio-economic objectives, to the benefit of all Canadians. They are:

- Negotiated, tripartite agreements
- Not time limited – framework for new and enduring relationships
- Legally binding and constitutionally protected
- To effectively implement modern treaties, all departments and agencies need to be aware of and equipped to fulfill their obligations; cognizant of the broader implications of modern treaties on their departmental mandates; and respectful of the intergovernmental relationships created by modern treaties.

Challenge and opportunity

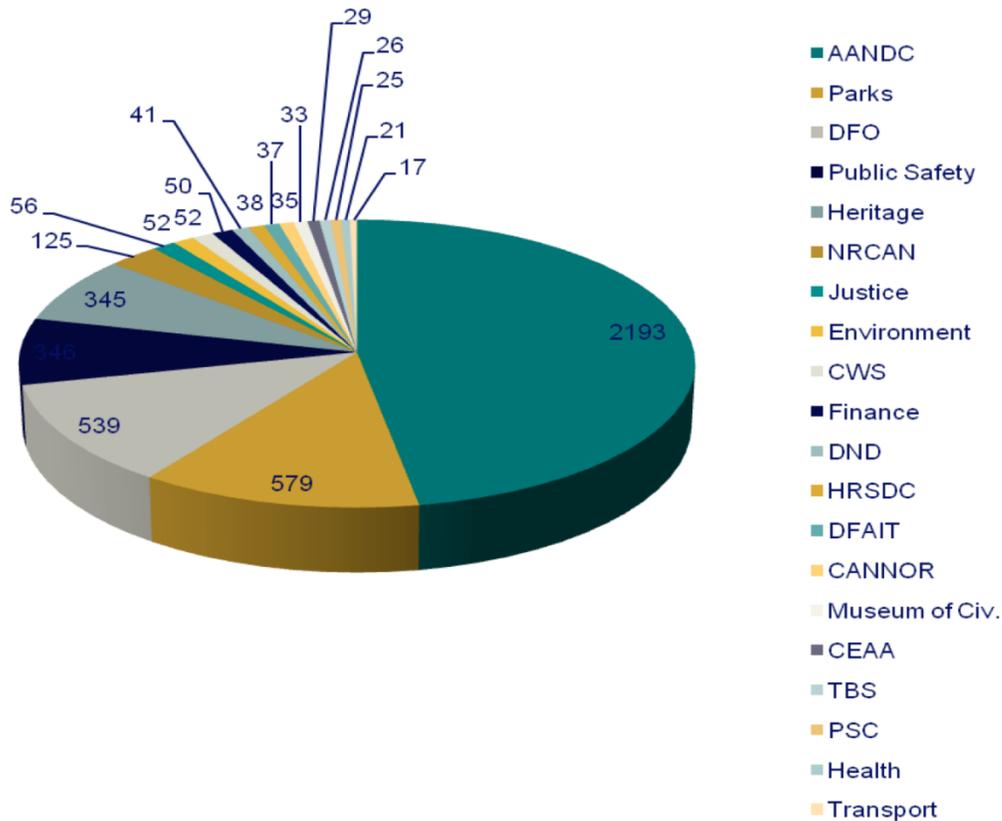
- In pursuit of the shared objectives of treaty-making, the parties dedicate significant time and resources to the negotiation of treaties:
 - During negotiations, Canada consults rigorously across departments and agencies by means of a strong horizontal management framework
- Modern treaties will only meet their intended objectives if the parties fully implement their obligations after the treaties come into effect.
- After 30 years of experience implementing modern treaties, much progress has been made towards the goals of these agreements by all signatory partners:
 - Improved certainty with respect to land and resources
 - Defined jurisdictions and co-management
 - More stable climate for economic development
- However, the scope and scale of Canada's modern treaty obligations creates some management challenges for the federal government and its component departments and agencies.
- While Departments have a diverse range of mandates, responsibilities and clients, almost every federal organization delivers its programs, policies, and services to Aboriginal clients.
- In these circumstances, Modern treaties provide government organizations with unique opportunity and context to take advantage of in successfully delivering on their mandates:
 - New, renewed, forward-looking relationship with the Crown
 - Clarity: Legal and operational certainty, defined rights and obligations
 - Established forums to work with groups (implementation committees)
 - Support through treaty management directorates
 - Client groups with established governance structures, accountability, defined responsibilities
- Treaties should make our lives easier, not harder. When we look at the amount of our country covered by treaties, we should keep that in mind.

Modern Treaties change the way we do business

- Modern Treaties are unique in the world. They touch on a multitude of subjects and jurisdictions, and include many types of obligations and responsibilities.
- Obligations may be:
 - One time vs. ongoing:
 - ☞ **One time obligations** usually take place early in the post-effective date period (e.g. capital transfers, survey of settlement lands, and the establishment of mandated boards and committees), while **ongoing obligations** require regular or periodic action on the parts of one or more parties (e.g. ongoing participation on committees; ongoing operation of boards and committees; issuing of fishing licenses)
 - Direct vs. contingent:
 - ☞ Direct obligations are generally well-defined, and fall under the responsibility of one or two departments (eg. The creation of a new national park, repatriation of artifacts). Contingent obligations are triggered by a future event (e.g. the establishment of a new national park may trigger an obligation to negotiate an impact and benefits agreement)
- Some obligations are the responsibility of one or more departments, while others are the responsibility of government as a whole. These are often triggered by departmental activity in modern treaty areas (e.g. access, procurement and employment provisions).
- Modern treaties are entered into on behalf of the Crown. Virtually every federal organization's mandate intersects with Aboriginal treaty rights at some point, from natural resource development to heritage to procurement.
- AANDC plays an important coordinating role, representing Canada in the overarching modern treaty relationship, and providing guidance to other departments and agencies in fulfilling treaty responsibilities related to their mandates. AANDC also has its own, distinct obligations to implement.
- But *all* departments and agencies have obligations. This creates a horizontal management challenge for Canada.
- Each modern treaty creates hundreds of obligations for federal departments and agencies – With 26 modern treaties currently being implemented, Canada is responsible for over 4,000 constitutionally-protected obligations.
- Over 30 departments and agencies have direct obligations under modern treaties, and *all* departments and agencies are subject to broader « whole-of-Government » obligations related to issues like contracting, employment, and consultation.
- *All* departmental activities, programs, policies and legislation must be developed and implemented in a manner that complies with modern treaty provisions.

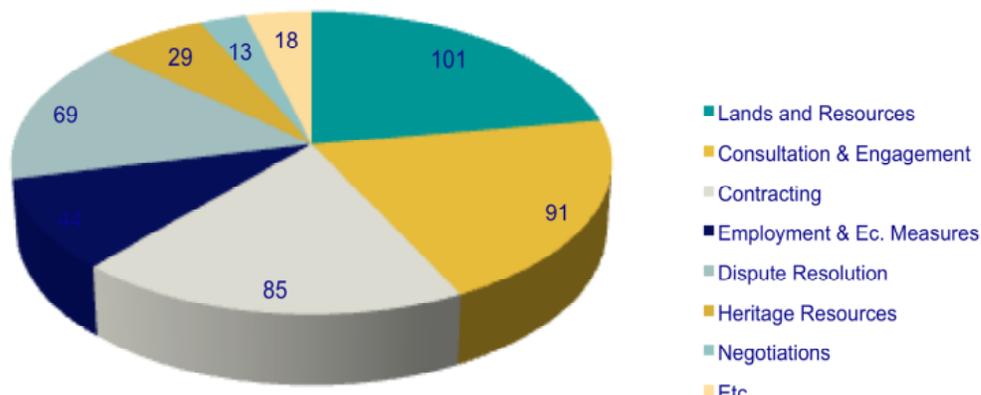
Federal modern treaty obligations: snapshot

- Modern treaties create specific obligations for many departments and agencies:
 - Over 30 federal departments and agencies have specific obligations pursuant to modern treaties
 - Departments are generally closely consulted on the development of these clauses during negotiations, and resources are often allocated to manage these obligations
 - Relatively high awareness and compliance



- Every treaty also has several categories of obligations that apply to *all* Departments and Agencies:
 - Over 400 modern treaty obligations are the responsibility of *all* departments and agencies
 - These obligations are often triggered by departmental programs, policies, legislation and activities in modern treaty areas
 - Responsibility for these obligations isn't delegated to specific departments. *All* departments need to remain vigilant to ensure that their activities in these areas are conducted in compliance with the treaties
 - These obligations are not as well understood, and departments are less prepared to manage them when an agreement comes into effect

Obligations by category



- More complicated arrangements where it's whole of government approach. This is when we tend to trip over each other, which creates the confusion and frustration.

How do we currently

manage modern treaty implementation?

- The **Implementation Management Framework** sets in place coordination mechanisms. It extends the robust interdepartmental coordination framework already in place for negotiations to also include implementation. It creates a community of implementers by connecting officials across departments in regions, headquarters and management. The Implementation Management Framework includes:

- Regional caucuses, ensure collaborative fulfillment of obligations undertaken in the regions
- Federal Caucus, provides a forum for the development policy, operational guidance and support to regional operations and senior management
- Federal Steering Committee, provides senior management guidance and direction to departments

Evaluation doesn't have enough teeth to ensure that federal departments are complying with the treaties and making decisions consistent with the treaties.

How do we manage modern treaty implementation?

- Support to departments/agencies through the Implementation Branch
- Treaty management/intergovernmental relations:
 - Represents Canada in the overall management and maintenance of respectful treaty relationships
 - Coordinates management of over 2,200 AANDC obligations, both one-time and ongoing
 - Represents the federal government at implementation committees
 - Chairs regional caucuses
 - Informal dispute resolution/issue management
 - Supports OGDs/Central Agencies on treaty implementation activities
- Implementation Negotiations:
 - Supports ongoing negotiations and new negotiation processes

- Collaborates with main table negotiators to ensure agreements are “implementable”
- Lead the negotiation and drafting of implementation plans
- Post effective date, lead renewal negotiations of fiscal agreements; implementation plans; and other agreements
- Planning, Policy and Promotion:
 - Raise awareness and understanding of treaty issues across federal departments and agencies with respect to treaty obligations
 - Develop resource material to assist federal implementers
 - Bilateral work with other federal departments and agencies on specific issues

While we do good work, we are hearing that we need to do more. That’s one reason why we’re here today.

Moving forward: strengthening the whole of government approach

- Finding solutions to our challenges requires innovation, ongoing effort and dedicated resources in three areas; we are working with LCAC on some of these:
 - 1. Education and Awareness:
 - Raising awareness of federal obligations across departments and agencies
 - Considering the broader implications of modern treaties on departmental mandates
 - We are also working with the Coalition on principles of treaty implementation which we hope will guide the federal actions.
 - 2. Coordination and Consistency:
 - We need **oversight with bite**: strengthening coordination and strategic oversight of key treaty implementation issues
 - Stronger gatekeeping in the development and delivery of federal programs, policies and legislation to ensure compliance with modern treaty provisions
 - 3. Accountability:
 - Strengthening senior-level accountability for departmental obligations for treaty implementation, from the Deputy Minister downwards

What should departments and agencies do?

- Be aware of comprehensive land claims and self-government agreements; their importance and relevance
- Understand how they work and interact with you business lines (legislative/policy/programs)
- Designate a single DG-level point of contact who is responsible for navigating treaty issues in each department
 - Ensure that processes for communicating and working horizontally within the department/agencies are in place and understood

Concluding Notes

These treaties are going to be enduring, and right now, we are the Crown. We have an opportunity to improve implementation and strengthen relationships for future generations.

- We never stop negotiating, and we all have a responsibility to continue treaty relationships
- We try to learn from our mistakes
- We are raising awareness, developing guidelines
- We need to improve coordination and consistency

- Departments need to be held accountable/ must develop stronger accountability, which is why we are here today
- Hoping for a single point of contact in each department