

Decision-making, Negotiations and Dispute Resolution Processes in Modern Treaty Agreements – Part 1

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- One of the things people don't know about modern treaties is that much of the agreements (Yukon; Tlicho in NWT) were left to be negotiated later. Unfortunately, once signed, both senior levels of bureaucracy and politicians went away and forgot about the fact that large elements still had to be worked out.
- The Yukon Self-Government Agreement recognizes First Nations jurisdiction over large areas of responsibility. A process is needed whereby they can grow into these responsibilities, build the capacity needed to implement. Currently there is no clear process for exercising new areas of jurisdiction, negotiating. When you go to take that next step, the process has been uncertain. This has been a challenge for us, leading some to question: "Why are we still doing this? I thought we already did this."
- A lot of work is necessary to effectively transition from an Indian band to a self-governing First Nation. But there is no process in place to say "Ok, when First Nations want to take this next step to exercise jurisdiction, here's how to do that." As a result, after 20 years only one administration of justice agreement is in place.
- It's not necessarily a matter of individuals dealing with these files not doing their best. Internal frameworks and processes are simply not in place to handle these situations, so this creates a lot of barriers and delays in the evolution of self-government and the expansion of Aboriginal governance. This is slowly being addressed, but remains a major challenge.
- Administration of justice is one of the areas left to be negotiated later in modern agreements. These initiatives require high level, senior attention in order to result in workable arrangements. This is another major challenge parties will have to address going forward.
- Yukon First Nations have been fairly successful in exercising jurisdiction over programs previously identified for status Indians. These are defined funds and defined programs. But agreements talk about "citizens," and broad areas of jurisdiction. The mechanisms for responding to these proposed new initiatives inside the giant machine that is the Government of Canada are not well defined.
- In Yukon we've had three negotiation files go to dispute resolution because of some of these challenges.
- From a First Nations perspective, there are systemic barriers to fully realized self government. In Yukon Territory financing agreements there is never a direct financial relationship between the territorial government and First Nations. But Government of Canada has a policy that self-government costs have to be met within existing funding envelopes. It's impossible to reconcile those two facts. Meanwhile, there is an over-arching obligation in self-government agreements saying comparable services will be provided. There needs to be a clear process for successful program transfer.
- Looking to the future, these challenges must be addressed in order for self-government to continue to evolve and succeed.