

Breakout Session 3E: Jurisprudence and Legislative Developments: The Impact on Modern Treaties

February 26, 2025
10:15 AM - 11:45 AM

Moderator: Daniel T'seleie, K'asho Got'ine, Chief Negotiator

Speakers:

- Dave Joe— President, Dave Joe Law Corporation
- Nuri Frame— Managing Partner, Pape Salter Teillet LLP
- Alastair Campbell— Senior Policy Advisor, Nunavut Tunngavik Incorporated
- William David—Director of Legal Affairs, ITK

Dave Joe:

- Discussed the historical context of the Charter of Rights and Freedoms, comparing it to the Magna Carta and the Bill of Rights.
- Explained the challenges faced in applying the Charter to First Nations laws and the need for negotiation to resolve these issues.
- Elaborated on the historical context of the Charter of Rights and Freedoms, emphasizing its Western values and their impact on First Nations.
- Discussed the constitutional conferences in Canada and the failure to recognize and entrench the rights of First Nations, Métis, and Inuit.
- Explained the case in Old Crow, where a local citizen challenged a requirement for elected councilors to move to Old Crow, arguing it was unconstitutional.
 - The Yukon Supreme Court ruled that the Charter applied to First Nations laws, and this decision was upheld by the Court of Appeal and the Supreme Court of Canada.
- Emphasized the need for negotiation to resolve the constitutional uncertainty surrounding the application of the Charter to First Nations laws.

Nuri Frame:

- Discussed the challenges of implementing Modern Treaties, emphasizing the arduous nature of negotiations and the need for ongoing commitment.
- Highlighted the case of the First Nation of Na-Cho Nyäk Dun (NND), which sought to develop a land use plan but faced challenges from the Yukon government.
- Explained the importance of land use planning in modern treaties and the failure of the Yukon government to address NND's concerns.
- Described the litigation brought by NND against the Yukon government, which resulted in a court victory upholding the importance of land use planning.

Alastair Campbell and William David:

- Alastair Campbell introduced himself and William David, explaining their roles and the focus of their presentation on the Amendment to the Interpretation Act.

- They discussed the history of the Amendment, which was lobbied for by the Land Claims Agreements Coalition and passed in 2023.
- The Amendment states that every enactment is to be construed as upholding the Aboriginal and Treaty rights of Indigenous peoples, not as abrogating or derogating from them.
- Alastair Campbell explained the challenges faced in getting the Amendment passed, including the need for bipartisan support and the involvement of various Indigenous groups.
- William David provided a legal perspective, discussing the importance of the Amendment in clarifying the application of Section 35 rights and the need for consistent interpretive provisions.

Q&A:

- Daniel opened the floor for questions from the audience, addressing topics such as the application of the Charter of Rights and Freedoms to Indigenous governments and the need for negotiation.
- An attendee asked about the passive versus active approach to implementing Modern Treaties by the Crown, referencing Quebec legislation.
 - Nuri Frame responded, emphasizing the importance of active implementation and the need for government to fulfill its obligations under modern treaties.
 - William David added that the concept of a duty of diligent implementation is crucial for ensuring that treaty rights are respected.
- The discussion also touched on the broader implications of sovereignty and the need for collaboration between First Nations, territorial, and provincial governments.