



CTFN Fiscal Renewal

10 YEARS IN 10 MINUTES

Historic Overview



- ▶ Self-government Agreement (SGA) effective date, February 2006
- ▶ Package deal:
 - ▶ Final Agreement
 - ▶ Final Agreement Implementation Plan (with fiscal contract)
 - ▶ Self-government Agreement
 - ▶ Self-government Agreement Implementation Plan (with fiscal contract)
 - ▶ Self-government Financial Transfer Agreement (SGFTA)

SGFTA

- ▶ Aggregate of agreement implementation plan funding and program transfer funding
- ▶ Adjusted annually—land programs (inflation), governance and people programs (produce of inflation and population [3%])
- ▶ Total transfer calculation:
[aggregate of base funding] x [adjustments] = Gross Expenditure Base – [Eligible Own Source Revenue x 50%]

Yukon Fiscal Review History

- ▶ 1st renewal was 2000—Parties agreed that for funding purposes five years of data did not result in an informed review
- ▶ 2nd renewal scheduled for 2005
- ▶ 2003 1st of several reviews begin
 1. YFN Self-government Financial Transfer Agreement Review
 2. Comprehensive Review [including funding adequacy]
- ▶ Process took nearly 5 years due to federal mandate issues
- ▶ Resulted in multi-party costing study
- ▶ All studies generally rejected [some acceptance of new funding for governance]

CTFN Experience



- ▶ Effective date occurred during review of fiscal agreements featuring 7 Yukon FNs with effective dates prior to 2000
- ▶ Participated as an observer at times
- ▶ 1st 7 review results not concluded until CTFN renewal process
- ▶ Canada obtained negotiation mandate based on review of 7
- ▶ Failed to take in build in equity—predecessor band funding as basis of SGFTA results in natural inequities:
 - ▶ Band funding frozen or escalators frozen
 - ▶ Based on ability to obtain proposal funding
- ▶ Despite same review provisions Canada had no mandate to address CTFN reviews

Non-Negotiations

- ▶ Canada offer: We gave everyone else x so you can have x
- ▶ CTFN and three other YFNs raised a number of unaddressed issues
 - ▶ Located in Yukon's only area with significant population
 - ▶ Uneven impact of DIAND funding legacy
- ▶ Canada response: no mandate for any changes, offered additional \$150k/year (no linkage to any specific reason/issue)
- ▶ 4 YFNs were unhappy with offer
- ▶ All YFNs other than CTFN signed
- ▶ CTFN rejected the offer based on consultation the direction of the citizens

Refusal, Threats and Discretization

- ▶ Canada refused to negotiate with CTFN on any issue they raised
- ▶ Threats:
 1. When CTFN and 3 others hesitated at taking the deal, Canada provided a deadline—sign or the new money being offered goes away for that fiscal year
 2. When CTFN did not capitulate to risk of losing the new money, Canada threatened to suspend all funding including for treaty implementation, governance and programs and services
- ▶ 1st time since the signing of the 1st modern treaty Canada threatened to defund a modern treaty
- ▶ Discretization
 1. DIAND employees speaking to other YFNs, warning them not to work with or be closely associated with CTFN
 2. DIAND employees suggesting to CTFN political people that their negotiation team was misleading them
 3. DIAND employees suggesting through CTFN citizens employed in the Department that the CTFN government was misleading the people
 4. DIAND requesting to by-pass the CTFN political system and let them take the decision to the citizens

Extensions



- ▶ The CTFN FTA was set to expire, Canada was prepared to let it lapse and refused to discuss an extension, refused to negotiate and refused to discuss an alternate funding mechanism
- ▶ With the help of the Yukon's MP (and the fact that the Yukon Regional office was technically unprepared to implement their 3rd Party Management approach) the FTA was extended for 6 months
- ▶ Purpose of the extension was "to let CTFN think about and accept Canada's offer"
- ▶ Was not to allow the Parties to conclude a new agreement
- ▶ Days before the six-month extension expired Canada filed for mediation and offered a second 3 month extension

[Note] while filing for mediation Canada continued to a) threaten CTFN with funding reductions for not signing and their attempts to discredit.

- ▶ Later extended for a second 3 month period and into the next fiscal year

Mediation



- ▶ 1st fiscal related matter to go to dispute resolution process
- ▶ Mediation process is confidential so some elements cannot be disclosed
- ▶ Benefit was it allowed a conversation that due to mandate restrictions the Parties could not have—or at least DIAND was unwilling to have
- ▶ Result was a new FTA that met the interests of both Parties by shoehorning enough of CTFNs issues into the Federal mandate that it took the funding over the necessary thresholds
- ▶ Unfortunately it did not address the major issue—program funding comparability

What we Learned



- ▶ Don't be afraid to say no—but be prepared
 - ▶ know why you are saying no
 - ▶ Know where you can flex and where you can't
 - ▶ Know your costs and be prepared to pay them
- ▶ Don't be afraid to let discuss the contrary position—when DIAND is threatening to cut off all your funding, the community needs to understand the position
- ▶ Be diligent and consistent—state what you want, why you want it and why its good for all sides, rinse, repeat [in the case of CTFN for nearly 3 years]
- ▶ Make sure you've covered your losses—don't accept that money went away

What Canada Learned [we think/hope]

- ▶ You can't not fund a modern treaty just because they don't accept the take-it or leave it offer you put on the table
- ▶ Don't be afraid of mediation—it's there for just these types of disagreements

Fiscal Approach

- ▶ To avoid situations like the CTFN dispute Canada has set out a Fiscal Approach
- ▶ The approach is supposed to be a formula based, transparent funding methodology
- ▶ In reality it is a regressive articulation of the poverty management funding approach DIAND has historically taken
- ▶ Contains limited transparency
- ▶ Fails to address the commitments of the treaties
- ▶ Drags modern treaties back into the *Indian Act* world
- ▶ Canada consistently uses funding negotiations to renegotiate portions of the treaty they regret including
- ▶ Guarantees that more disputes like the CTFN dispute will happen

Fiscal Research

- ▶ There is a lack of independent research on the fiscal elements of modern treaties
- ▶ What do clauses such as 16.1 of the Yukon SGAs mean?

Canada and the Carcross/Tagish First Nation shall negotiate a self-government financial transfer agreement in accordance with 16.3, with the objective of providing the Carcross/Tagish First Nation with resources to enable the Carcross/Tagish First Nation to provide public services at levels reasonably comparable to those generally prevailing in Yukon, at reasonably comparable levels of taxation.

- ▶ What are the legacy costs of DIANDs poverty management funding approach?
- ▶ What are the socio-economic impacts of modern treaties?
- ▶ How do funding levels impact implementation?
- ▶ How does Canada fund its own implementation requirements?
- ▶ What is the most impactful approach to cost sharing?
- ▶ How do modern treaty fiscal arrangements fit in the fiscal architecture of Canadian Federalism—base transfers, targeted transfers, tax sharing etc?



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Thank you.

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