



governance toolkit

best practices

Principle: Rule of Law
Government: Nisga'a Nation

OPPORTUNITY

Nisga'a Nation, comprised of four communities; New Aiyansh, Gitwinksihlkw, Laxgalt'sap, and Gingolx, is located in north western B.C. In the 1890s, Nisga'a hereditary chiefs and matriarchs formed the Nisga'a Land Committee and began to aggressively pursue self-government and title to their lands.

In 1973, the Supreme Court of Canada decision in the *Calder* case held that the Nisga'a's historic occupation on their lands gave rise to the legal rights to their territories.

Nisga'a immediately began treaty negotiations with Canada and subsequently with B.C. After 25 years, they reached agreement and the *Nisga'a Treaty* became effective in 2000. The treaty provides certainty with respect to Nisga'a lands and the nation's right of self-government.

In 1998, a court action was launched by the BC Liberal Party in *Campbell v. BC* arguing that the Nisga'a Treaty was unconstitutional. In 2000, the BC Supreme Court held that "the unique historical relationship

NCFNG

is a national, independent, First Nations-controlled organization dedicated to supporting First Nations as they work to implement their inherent right to self-governance. The development of a set of shared principles that clearly articulate our approach to effective governance is one way in which we support that work. This NCFNG Effective Governance Case Study profiles a best practice in the principle "Rule of Law".

To learn more about this case study, contact:
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between the Crown and aboriginal peoples is an underlying constitutional value" and affirmed that "the Constitution embraces unwritten as well as written rules."

In particular, the court supported the submission that "aboriginal rights, and in particular a right to self-government akin to a legislative power to make laws, survived as one of the unwritten underlying values of the Constitution." The court concluded "the right to aboriginal title in its full form includes both the right for the Nisga'a (and any First Nation) to make decisions as to the use of their land and therefore the right to have a political structure for making those decisions is constitutionally guaranteed."

In May 2000, Nisga'a participated in the first meeting of the transitional government which would guide their evolution from Nisga'a Tribal Council to Nisga'a Lisims Government.

PRINCIPLE IN ACTION

The *Nisga'a Constitution* begins with a declaration of the Nisga'a Nation to, among other things, observe Nisga'a law (ayuukhl Nisga'a) and to flourish as a free and democratic society.

Built on traditional culture, Nisga'a Lisims Government (NLG) is a modern, democratically-elected government composed of the NLG, the four Nisga'a village governments, and representatives from three Nisga'a urban locals. A Council of Elders advises NLG on matters related to traditional values of the Nisga'a.

Nisga'a has a Legislature (to pass laws), an Executive Council (to carry out the laws), a dispute resolution body and process, and procedures to carry out Special Assemblies (to hear matters of importance to the people).

All actions and procedures carried out by NLG originate in written laws and regulations enacted by the legislative branch. By doing so, the rule of law establishes certainty, transparency, credibility and

responsible government for the Nisga'a Nation. NLG is designed to assure democracy, transparency, and accountability.

SUCCESS FACTORS

Some of the principles that support Nisga'a in maintaining effective rule of law include:

Access to Justice: The NLG's Access to Justice Department supports Nisga'a citizens in the prevention and resolution of conflicts through increased awareness of Ayuukhl Nisga'a and Canadian laws and legal processes.

Commitment to Fairness: A Nisga'a citizen who applies for some entitlement available under Nisga'a law should expect that his or her application for that entitlement will be dealt with fairly by a Nisga'a decision-maker. By fair it is meant that his or her application should be dealt with in accordance to due process, that is, the same criteria is applied to all, that the application is reviewed in a timely fashion, and that such application is acknowledged in writing that it is being considered.

Cultural Match: Harvard Project researchers identified the establishment of a culturally-aligned dispute resolution process as a part of good governance. While the Nisga'a Administrative Decisions Review Board was originally conceived to review only certain administrative decisions, there is now thought to expand its jurisdiction to include other decisions that deal with education, social assistance, and other programs.

CHALLENGES

Kevin McKay, NLG executive chairperson identifies the most pressing challenge facing the executive as the

The Ayuukhl Nisga'a is our code of laws... ten areas that today we still observe and consider hallowed. The first is respect. When you understand the meaning of respect you have a power that emanates from you and the people around you will respond likewise – they will treat you respectfully. And so, when it comes to the laws of the Nisga'a, if you can't understand the meaning of respect, then you are going to run afoul of every area of Nisga'a law.

— (Late) Bert McKay, Nisga'a Elder

need to break down existing legislation into terms that all citizens can understand and to clarify for Nisga'a citizens why the legislation is necessary. McKay observes that, "To maintain the ability to communicate effectively with Nisga'a people is critically important and to use language that they feel comfortable with."

McKay also emphasizes that, "Strategic planning for economic development is a key issue to facilitate during this term in office. In government it is always about assessing the merits of each priority and making informed decisions on which of those priorities to allocate existing resources to. This is the challenge."

NCFNG GOVERNANCE LESSONS LEARNED

The effective governance principle of *Rule of Law* asserts that the rule of law in the traditional territory follows once jurisdiction is established. The rule of law provides clear instruction on acceptable behaviour – behaviour that benefits the community – and recourse when behaviour is unacceptable. In a civil society, the rule of law exists to minimize conflict between individuals, corporate entities, and individuals and corporate entities.

The *Nisga'a Treaty* asserts the Nisga'a people's right to self-governance and eliminates any uncertainty regarding ownership of Nisga'a land.

The impact of the *Nisga'a Final Agreement* is felt far beyond the Nass Valley. The treaty is recognized as a milestone in the development of aboriginal self-government and is being studied around the world. It is a living testament to how governments and aboriginal peoples can, in good faith, work together to build a more secure future for everyone.

LINKS AND MORE INFORMATION

Nisga'a Final Agreement, Annual Report 2001

http://diand.info/bc/treapro/mreinf/pub/nisgaa/ar01/ar2_e.pdf

Nisga'a Final Agreement,

[http://dsp-psd.tpsgc.gc.ca/Collection-RL/LoPBdP/BP/prb992-e.htm#INTRODUCTION\(txt\)](http://dsp-psd.tpsgc.gc.ca/Collection-RL/LoPBdP/BP/prb992-e.htm#INTRODUCTION(txt))

Northwest Tribal Treaty Nations Governance

www.nwttgroup.com/documents/040804%20Gov%20FINAL%20Report.pdf

A Land Reclaimed

www.ainc-inac.ca/bc/treapro/mreinf/pub/nisgaa/ar04/alanre_e.pdf