



Government  
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***A Federal Implementer's Guide  
to Reviews in Self-Government  
and Comprehensive Land Claim  
Agreements***

Canada 



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A photograph of a birch forest with a warm orange overlay and a curved white line.

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# **BACKGROUND**



Comprehensive land claim and self-government agreements (CLCAs and SGAs, respectively) are agreements of fundamental importance to Canada, the provinces and territories, and Aboriginal signatories. CLCAs describe the rights of Aboriginal people to, and clarify the ownership of, lands and natural resources in the land claim agreement area. SGAs set out arrangements for Aboriginal groups to govern their internal affairs and assume greater responsibility and control over their own decision-making. They may be negotiated as a stand-alone agreement or part of a CLCA. Both CLCAs and SGAs establish a basis for an ongoing relationship between the signatories and cover a wide range of subjects that affect many federal departments and agencies.

Given the wide scope of agreement obligations and the many federal departments and agencies involved in the implementation process, the Implementation Branch at Aboriginal Affairs and Northern Development Canada (AANDC) has developed a number of tools and structures to support a more coherent federal approach to CLCA and SGA implementation, including the following:

1. *A Federal Framework for the Management of Modern Treaties* (Implementation Management Framework) to facilitate discussion and decision-making across the federal government (<http://www.aadnc-aandc.gc.ca/eng/1306241376318>);
2. *A Guide for Federal Implementers of Comprehensive Land Claims and Self-Government Agreements* to help federal officials in various departments manage their implementation responsibilities, as well as a number of other Guides on specific implementation topics (<http://www.aadnc-aandc.gc.ca/eng/1306240926854>);
3. *A Guide for the Management of Dispute Resolution Mechanisms in Modern Treaties* that outlines the federal approach when using or agreeing to use dispute resolution mechanisms to solve implementation-related disputes (<http://www.aadnc-aandc.gc.ca/prev-prev/eng/1343831539714>);
4. The *Treaty Obligation Monitoring System* (TOMS), which is able to monitor the status of all federal government obligations; and
5. CLCA.net, which is used to report on federal procurement in CLCA areas (<http://www.aadnc-aandc.gc.ca/eng/1100100032266/1100100032267>).

*A Federal Implementer's Guide to Reviews* (Reviews Guide) is a component of this broader toolkit.



## WHAT ARE REVIEWS?

Reviewing implementation activities is an important part of ensuring a high level of accountability in the implementation process. Reviews mandated by CLCAs and SGAs provide signatories with an opportunity to examine agreed-upon aspects of a CLCA or SGA within a clearly defined time period (often five or ten years) and to exchange information and share perspectives. Information gathered during the review process may assist signatories in moving the implementation forward.

There are typically three types of reviews included in CLCAs and SGAs:

- 1. Periodic General Reviews:** Usually required after five or ten years. They are done to assess the overall implementation of the agreement.
- 2. Funding Reviews:** These reviews may be part of a general review or be a distinct review. They often include specific requirements for technical reviews of self-government fiscal transfer agreements and/or own source revenue agreements.
- 3. Reviews of Economic Measures:** These reviews are used to assess economic measures provisions in CLCAs, or programs relating to economic measures.

(Please refer to Annex A for examples of different kinds of review clauses found in CLCAs and SGAs.)

## WHY A REVIEWS GUIDE?

Reviews examine complex issues, and there is currently little information available regarding the process to assist reviewers. Not only may signatories bring divergent perspectives and expectations to the review process but, within the federal government, reviews require a considerable amount of coordination and cooperation between AANDC, other federal departments and central agencies.

The Reviews Guide provides federal implementers with a general framework for approaching the review process, while still taking the unique aspects of each agreement into account. The Guide is intended to:

- ❖ provide guidance on how to approach a review process;
- ❖ bring consistency to the federal approach to reviews;
- ❖ provide federal officials with clear parameters for conducting reviews; and
- ❖ provide other signatories with information on Canada's approach to reviews.

Part 1 communicates Canada's general approach to all reviews required by CLCAs and SGAs and sets out parameters governing the participation of federal officials in review processes. Part 2 acquaints federal officials with the various roles and responsibilities of different federal organizations and the activities that have been undertaken at different stages of the review process.

This Guide applies to reviews that are conducted pursuant to review provisions in CLCAs and SGAs as well as their ancillary agreements (e.g. financial agreements and implementation plans).<sup>1</sup> It is important to state that this Guide is not intended to alter or interpret any agreement or to change the responsibilities of any party as described in an agreement. Where an agreement provides direction on the conduct of a review, it will prevail over anything set out in this guide.

<sup>1</sup> In some circumstances legislation is used to implement CLCA or SGA obligations (for example, the *Yukon Environmental Assessment and Socio-economic Act* implements provisions in the Council for Yukon Indians Umbrella Final Agreement). This guide applies for legislation reviews conducted as required under: (1) review provisions in CLCAs and SGAs; or (2) review provisions in the legislation itself.

# **PART 1**

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## **Federal Approach and Parameters**



**T**hrough its experience in conducting a variety of reviews, the Government of Canada has noted a number of common challenges in the review process. In most instances, review provisions describe the subject area to be reviewed and indicate when the review is to take place. Review provisions in CLCAs, SGAs and implementation plans do not usually address how the parties will undertake the review or what the parties intend to accomplish through the review. As a result, agreement signatories sometimes come to reviews with different expectations and goals.

## FEDERAL APPROACH TO REVIEWS

Implementation committees and panels should be the primary forum for parties to collaborate on all joint implementation activities, including reviews.<sup>2</sup> Implementation committees can help keep a review focused and manageable by providing the following: a forum to discuss and address challenges as they arise; a record of key implementation issues that the parties can refer back to during the course of a review; and a forum for the parties to plan for a review in advance.

Canada's perspective is that a review allows the signatories to come together to discuss the subject matter identified for review. The process is about asking questions, listening to the perspectives of all parties, and gathering and recording as much information as possible so that the parties can, together, describe what happened during the period under review. Review participants may also choose to make findings or recommendations. The federal government's preference is to articulate review findings (as opposed to recommendations), as this provides agreement signatories with more flexibility to work within their respective organizations and with each other to develop solutions once the review is complete.

The federal government sees reviews as distinct from the negotiation processes that result in the renewal of financial agreements and implementation plans. A review is not a negotiation or a venue to make funding or other adjustments. As such, federal officials do not have a mandate to negotiate such matters during a review. The review may, however, provide the parties with information to make decisions about how they can improve the implementation of a particular aspect of the CLCA or SGA. In some cases, issues identified during a review will have no financial implications, and changes to implementation may be made within existing policies and mandates. In other instances, a review will precede a funding renewal negotiation process. In these latter circumstances the information gathered during the course of a review may inform the development of a renewal mandate.

The Government of Canada recognizes that not all of its agreement partners share its perspective with respect to the review process and is committed to working with Aboriginal and provincial/territorial signatories to structure individual reviews so that the views of all parties are reflected. A review process should enable participants to express divergent opinions on the subject matter being discussed without necessarily requiring agreement or commitments from the other participants.

Successful review processes have been characterized by clear communication, forward planning and timeliness. To support the best possible review process, the federal government is committed to approaching reviews with its agreement partners, and within the federal government, in this manner.

- ❖ **Clear Communication:** Federal officials are committed to communicating the federal approach to reviews to our agreement partners, while also listening to the perspectives other signatories bring to the review processes.
- ❖ **Forward planning:** In the years leading up to a review, the parties to the agreement should use their regular implementation forum (e.g. implementation committee or panel meetings) to discuss the type of information that will be needed for the review. Depending on the nature of the review, planning should begin a year or more in advance. This provides an opportunity for the parties to come together and develop a common understanding of how they will work together to undertake the review.
- ❖ **Timeliness:** Proper fulfillment of obligations in the future is often dependent on the timely completion of a review. Advance planning at regular implementation forums, and within the federal government, will help ensure that reviews play their proper role in moving implementation forward.

<sup>2</sup> Note: The situation is somewhat different in the Yukon, where there is an Implementation Working Group that gathers to discuss implementation issues common to all 11 self-governing Yukon First Nations. Implementation issues are also addressed on an as-needed basis between federal, territorial and First Nation implementation representatives.

## PARAMETERS FOR FEDERAL OFFICIALS INVOLVED IN REVIEWS

**W**hen working to prepare for and conduct a review, federal officials will work within the parameters outlined below. These parameters are aimed at ensuring that the final review report is consistent with the federal government's approach to reviews.

### Terms of Reference (ToR)

The lead federal reviewer will work with other agreement signatories to develop a ToR document that is specific and detailed.

Federal representatives must ensure that the following key areas are clearly set out in the ToR:

- ❖ the scope of the review is confined to the subject area(s) and time period specified in the respective CLCA and/or SGA;
- ❖ the ToR clearly defines the roles and responsibilities of reviewers; and
- ❖ the information gathered during a review does not necessarily shape a broader federal mandate; however it may be used to *inform* future federal negotiation mandates.<sup>3</sup>

(See Annex B for suggested elements that may be included in a ToR)

### Review process

Federal officials are committed to listening to what other agreement signatories have to say and to communicating to other signatories the federal government's understanding of what has happened during the review period. Federal reviewers may also explain or clarify federal implementation processes and policies for the purpose of the review.

### Recommendations

Joint recommendations are not appropriate if they require the following:

- ❖ a change to, or exemption from, an existing federal policy or mandate;
- ❖ a decision or approval involving one or more Ministers of the Crown;
- ❖ changes to funding provided to any group under a CLCA, SGA, implementation plan or related financing agreement;
- ❖ changes to CLCAs or SGAs or related documents; and/or
- ❖ changes to federal legislation.

There are, however, circumstances where one or more parties to the review may seek to identify changes that fall outside the authorities or mandate of the federal representatives. In these circumstances it is possible for a final review report to lay out the respective, but differing, viewpoints of each party to the review. While the federal government will not be bound to implement findings or recommendations, these may serve to inform future policy or mandate development processes.

### Responses to reviews

The type of federal response to a review will largely depend on the type of review being undertaken. While there may be circumstances where a formal response from Canada may be appropriate, in other situations an official response to a review may not be required. For example, in the case of reviews that precede financial agreement renewal negotiations, the information gathered during the course of a review may inform the development of a renewal mandate. In such cases, the federal government's response to the review would be the mandate that is developed.

<sup>3</sup> While it is normally the federal government's preference that reviews be conducted by those who are involved in the ongoing implementation of agreements, some agreements allow for the signatories to hire a contractor to conduct the review or parts thereof. In these circumstances, the ToR for the contractor must ensure that the contractor's report will conform to the parameters outlined above. Alternately, a contractor's role may be limited to fact-finding.



## **PART 2**

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### **Federal Roles and Responsibilities**

**P**art 2 is intended to acquaint federal officials participating in a review process with the various roles and responsibilities of different federal officials/organizations and the activities that have to be undertaken by federal officials at different stages of the review process.

## CONDUCTING A REVIEW

**A** review generally progresses through four stages: (1) planning; (2) conducting the review; (3) finalizing the review report; and (4) review follow-up.

AANDC usually leads Canada's participation in reviews on behalf of the federal government, while other government departments and agencies participate in reviews when the area under review is related to their respective mandates. Much of the coordination between AANDC and other departments will occur within existing communication channels (for example, with federal and regional caucus representatives) that support the implementation of federal obligations and responsibilities under CLCAs and SGAs. In order to ensure a timely exchange of information between AANDC and other departments and the fulfilment of the roles and responsibilities outlined below, departments must ensure that they advise AANDC of changes to their federal or regional caucus membership.

Below is a description of the responsibilities undertaken by different parts of the federal government. Annex C summarizes these responsibilities at each of the four review stages noted above.

### Federal reviewer and review team

The AANDC's Implementation Branch or AANDC regional office is usually responsible for leading federal participation in reviews. In many cases the lead federal reviewer will also be Canada's implementation representative (for example, at the Implementation Committee or panel) or another official who works with agreement signatories on a regular basis to address ongoing implementation priorities and issues. This helps ensure continuity between

the ongoing implementation of an agreement and the review processes. However, there are occasions when a review pursuant to a CLCA or SGA may be led by another part of AANDC or by another department.

The federal reviewer and review team are responsible for the following:

- 1) Working with the other agreement signatories, and within the federal government, to plan the review in advance by:
  - ❖ developing/identifying appropriate indicators and/or information sources;
  - ❖ ensuring regional and federal caucus members are informed of upcoming review requirements and, if needed, seeking any initial input or information from departments; and
  - ❖ determining who will conduct the review (CLCA and SGA provisions may allow for the review to be conducted by the implementation committee, a sub-set of the committee or a contractor).
- 2) Conducting or overseeing the review with the other agreement signatories by:
  - ❖ developing Terms of Reference;
  - ❖ representing the federal government at review sessions;
  - ❖ coordinating input from, and the participation of, other government departments and Central Agencies; and
  - ❖ participating in drafting the final report.

- 3) Working with central agencies and departments when aspects of a review fall within their responsibilities by:
- ❖ providing the draft ToR and draft final report for their review prior to finalization with agreement signatories;
  - ❖ advising appropriate officials from other government departments, including the federal caucus representative, when an issue relating to their department's portfolio is raised during a review;
  - ❖ providing updates on key issues raised during the review process; and
  - ❖ soliciting and integrating feedback/participation from central agencies and departments into the review process and final report.
- 4) Coordinating federal government follow-up to the review by:
- ❖ distributing the final review report to federal stakeholders;
  - ❖ working with agreement signatories to implement any joint recommendations; and
  - ❖ if appropriate, coordinating a federal response or internal federal strategy to address issues raised during the review.

### Other government departments

Participants from other departments will usually be the departmental representatives on the federal or regional caucus and/or subject matter specialists. Other government departments are responsible for the following:

- ❖ coordinating the participation of their departmental officials (federal and regional caucus representatives, subject matter specialists, etc.) in review processes;

- ❖ keeping Implementation Committee representatives informed of emerging implementation issues as well as issues related to the broader federal context that may impact a review;
- ❖ assisting in the advance identification and collection of information, as needed;
- ❖ reviewing the draft ToR and draft final report if aspects of a review fall within their mandate(s);
- ❖ providing information on program areas for the purpose of a review;
- ❖ participating in review sessions, as appropriate;
- ❖ assisting in the development of findings in areas that concern their departmental implementation responsibilities; and
- ❖ providing guidance on appropriate ways to address issues raised by other agreement signatories during a review.

### Finalizing a review report

Prior to finalizing a review report with agreement signatories that includes a Government of Canada position, finding or recommendation relating to a mandate of another government department, the lead federal reviewer will consult the department(s) concerned. If there is disagreement, AANDC will work with the other department(s) to seek a mutually agreeable resolution to the issue. This work will include the Federal Caucus representative(s) and involve more senior levels as requested or required. If no other federal departments are involved in the review, or departments are in agreement, the lead federal reviewer will seek approval from his/her Director General.





# **CONCLUSION**

**T**he reviews mandated by CLCAs and SGAs are an important part of the implementation of agreements. The articulation of parameters and responsibilities is intended to bring consistency and transparency to how the federal government approaches reviews. Clear expectations, roles and responsibilities are key to achieving effective and efficient review processes that support the implementation of agreements and the relationship between signatories.

# **ANNEXES**

## ANNEX A

### Examples: Review Provisions in CLCAs and SGAs and related documents

**R**eview clauses are included in comprehensive land claims and self-government agreements as well as in the implementation plans and financial agreements that support them. Review provisions may also be included in legislation used to implement an aspect of a CLCA or SGA. Below are examples of review provisions found in these agreements.

#### Periodic general reviews

*Nunavut Land Claims Agreement*, section 37.3.3:  
The implementation panel shall [...]

- ❖ (b): monitor the implementation of the Implementation plan... and shall for that purpose, without duplicating other independent reviews, arrange for an independent review at five-year intervals unless otherwise agreed by the [Implementation] Panel.  
[...]

*Labrador Inuit Land Claims Agreement*, Implementation section 23.3.4: The Implementation Plan shall identify [...]

- ❖ (d) a process for the periodic review and renewal of the Implementation Plan beyond the initial term of the Implementation Plan;  
[...]

Section 23.4.4: The Implementation Committee has the following responsibilities [...]

- ❖ (e) to conduct periodic reviews of implementation of the Agreement [...]

*Selkirk First Nation Self-Government Agreement*, section 6.6: The Parties shall review this Agreement within ten years of the Effective Date for the purpose of determining whether [...]

- ❖ 6.6.3 this Agreement has been implemented in accordance with the implementation plan;
- ❖ 6.6.4 the negotiated transfer of programs, responsibilities and resources pursuant to this Agreement has been successful; and
- ❖ 6.6.5 this Agreement should be amended in accordance with 6.1 and 6.2 to reflect the outcome of the review.

*1992 Implementation Plan for the Gwich'in Comprehensive Land Claim Agreement*, Annex E (Implementation Committee), section 11:

- ❖ A general review of the Implementation Plan shall be carried out by the Implementation Committee in year five following settlement legislation.



## Funding reviews

*1992 Implementation Plan for the Gwich'in Comprehensive Land Claims Agreement, Annex C (Financial Payments), item 1 (Boards and Committees), initial paragraph:*

- ❖ [...] The overall adequacy of implementation funding will be reviewed in Year 5.

*Champagne and Aishihik First Nations, Land Claims Agreement Implementation Plan, paragraph 22:*

- ❖ Unless the Parties otherwise agree, they shall complete a review of the CAFA [Implementation] Plan to determine the adequacy of the provisions of the CAFA Plan and of the implementation funding provided under the CAFA Plan, 22.1 in the fifth fiscal year following the Effective Date of the CAFA; 22.2 in the ninth fiscal year following the Effective Date of the CAFA; and 22.3 thereafter, as the Parties may agree.

*Tlicho Financing Agreement, paragraph 35:*

- ❖ The Tlicho Finance Committee will: [...] d. during the fourth year of this agreement, carry out a comprehensive review of this agreement; [...]

*Nisga'a Nation Own Source Revenue Agreement, Paragraph 33:*

- ❖ The members of the Tripartite Finance Committee will: [...]
- ❖ d. During the eighth and fifteenth years of this Agreement, carry out a comprehensive review of this Agreement.  
[...]

## Reviews of economic measures

*Nunavut Land Claims Agreement (with respect to Government Contracts) 24.9.3:*

- ❖ The Government of Canada, the Territorial Government and the DIO shall conduct a review of the effect of this Article within 20 years of its implementation. If the DIO and the Government of Canada or the Territorial Government, as the case maybe, agree after the review that the objectives of this Article have been met, the obligations under this Article of the Government of Canada or the Territorial Government, as the case may be, shall cease within one year of the completion of the review. If the obligations of the Government of Canada or the Territorial Government under this Article remain in effect after the initial review, the Parties shall review the requirement to continue such provisions every five years or at such other times as they may agree.

*The Umbrella Final Agreement between the Government of Canada, The Council for Yukon Indians and the Government of the Yukon (with respect to Chapter 22 – Economic Development Measures), 22.9.1:*

- ❖ A full and complete review of the effectiveness of the provisions of this chapter shall be carried out in the year 2010 by Government and the Yukon First Nations. If, after the review, the parties to the Umbrella Final Agreement agree that the objectives of this chapter have been met, the obligations of Government under this chapter shall cease commencing January 1, 2011. So long as these obligations remain in effect, a like review shall be carried out every five years thereafter.

## ANNEX B

### Suggested Terms of Reference Elements

#### Purpose

The purpose of the review should be framed clearly:

- ❖ What is being reviewed and why?
- ❖ What is the intended product of the review? (For example, is it issue identification? Findings? Recommendations?)

#### Review process/parameters

- ❖ What, specifically, will be reviewed (areas/subject matter/questions for examination)?
- ❖ How it will be reviewed (information sources, including experts, reports, data gathering etc.)?
- ❖ What elements will be included in the final report (e.g., summaries, outstanding issues/considerations for the signatories, findings and recommendations)?

#### Roles and responsibilities

- ❖ Who will conduct the review, including roles and responsibilities
- ❖ Who may participate on an ongoing, occasional or as-needed basis

If the signatories choose to involve one or more third parties (contractors), the terms governing the contractors' work should also be outlined here. The roles that each participant will be responsible for should also be laid out in this section.

#### Conducting the Review

This section addresses general elements of the review, including the following:

- ❖ How the review will be conducted (meetings, tele-conference, expert panels, and others)
  - Who is responsible for chairing review meetings; producing minutes/records of decision?
- ❖ Decisions on the location of review meetings and whether teleconferencing / video conferencing are viable options;
- ❖ How, when and to whom updates / progress reports / final reports are to be provided;
  - How will the parties present the results of the review? Who will be responsible for drafting a final report? Who will approve the report, and what parties will it be distributed to?
- ❖ Ground rules (e.g. proceeding without prejudice) and common understandings.

#### Methodology

This section discusses the methodology that the parties will use over the course of the review, including:

- Data: what types of information will be required, and how will that information be gathered and consolidated?
- What process will the parties use to assess data and make findings or recommendations?

#### Timelines and resources

- ❖ target dates (start, key milestones, completion) – the parties may wish to develop a schedule and work plan for the review's progress
- ❖ the resources required to conduct the review, financial and otherwise (each signatory is generally responsible for funding its own participation in review processes)

# ANNEX C

## Staged Process to Reviews

STAGED PROCESS TO REVIEWS		
STAGE	FEDERAL REVIEWER AND TEAM	CENTRAL AGENCIES AND FEDERAL DEPARTMENTS
<b>1. Planning</b>	<ul style="list-style-type: none"> <li>❖ Determine, with agreement signatories, who will conduct the review.</li> <li>❖ Establish relevant indicators and information sources.</li> <li>❖ Ensure federal stakeholders are informed of upcoming review requirements and seek initial input if needed.</li> </ul>	<ul style="list-style-type: none"> <li>❖ Keep Implementation Committee representatives informed of emerging implementation issues.</li> <li>❖ Participate/plan for advance collection of data and information (as appropriate).</li> </ul>
<b>2. Conducting the Review</b>	<ul style="list-style-type: none"> <li>❖ Develop ToR with agreement signatories.</li> <li>❖ If relevant to departmental portfolio, provide other government departments and Central Agencies with draft ToR for review.</li> <li>❖ Represent federal government at review sessions.</li> <li>❖ Advise other government departments and Central Agencies when issues relating to their portfolio are raised.</li> <li>❖ Coordinate other government departments and Central Agencies participation and input in review sessions.</li> </ul>	<ul style="list-style-type: none"> <li>❖ If relevant to departmental portfolio, review ToR</li> <li>❖ Participate in review sessions and provide input to lead federal reviewer, as necessary.</li> <li>❖ Keep review team informed of broader federal context.</li> <li>❖ Assist in the development of findings that concern departmental responsibilities.</li> </ul>
<b>3. Finalizing the Review</b>	<ul style="list-style-type: none"> <li>❖ Draft final report with agreement signatories</li> <li>❖ Provide draft final report to other government departments and Central Agencies for review, as appropriate.</li> </ul>	<ul style="list-style-type: none"> <li>❖ If relevant to departmental portfolio, review draft report.</li> </ul>
<b>4. Review Follow-up</b>	<ul style="list-style-type: none"> <li>❖ Distribute final report to federal stakeholders.</li> <li>❖ Coordinate response and/or internal strategy to address issues raised during a review.</li> <li>❖ Work with federal stakeholders and agreement partners to implement any joint recommendations.</li> </ul>	<ul style="list-style-type: none"> <li>❖ Distribute final report to relevant departmental stakeholders.</li> <li>❖ Provide guidance on addressing issues raised by agreement signatories during the review.</li> </ul>

