



Government
of Canada

Gouvernement
du Canada



Implementation of Modern Treaties and Self-Government Agreements

July 2015 – March 2018
Provisional Annual Report



Canada

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Message from the Minister



On behalf of Crown–Indigenous Relations and Northern Affairs Canada, I am pleased to present the first Provisional Annual Report on the Implementation of Modern Treaties and Self-Government Agreements July 2015 – March 2018.

With an understanding that there is no relationship more important to Canada than the one with Indigenous peoples, Canada remains dedicated to achieving a profound shift in the relationship between the Crown and First Nations, Inuit, and Métis – a relationship based on the recognition of rights, respect, cooperation, and partnership.

Canada is currently implementing 25 modern treaties, four stand-alone self-government agreements, two sectoral education agreements, and one governance agreement¹ in partnership with Indigenous and provincial/territorial governments. These agreements span six provinces and all three territories, covering over 40 per cent of Canada's land mass² and set out rights and obligations for all signatories.

As the relationship between Canada and Indigenous peoples grows stronger, the treaty-making context will continue to evolve. The Government of Canada is currently negotiating with over 80 Indigenous communities across the country, seeking to advance the recognition and implementation of Indigenous rights and self-determination in new ways that work better for Indigenous Governments.

The relationships established through modern treaties and self-government agreements can only be sustained through full and fair implementation of the obligations by all parties. Through the whole-of-government approach, Canada is improving oversight and accountability to support implementation and I am pleased that awareness of Canada's responsibilities is growing across departments.

Recognizing that many of the whole-of-government initiatives set forth in the *Cabinet Directive on the Federal Approach to Modern Treaty Implementation* are in the early stages of implementation, this report is more qualitative than quantitative in nature, and outlines Canada's efforts to implement modern treaties, stand-alone self-government agreements and sectoral agreements. As we continue to advance in this important work, subsequent annual reports will become more comprehensive and include more data and concrete examples of the benefits of modern treaties and self-government agreements.

As the Government of Canada continues to advance reconciliation and strengthen its relationships with Indigenous peoples, we will continue to work collaboratively to build a future in which Indigenous peoples and governments thrive.

The Honourable Carolyn Bennett, M.D., P.C., M.P.
Minister of Crown-Indigenous Relations and Northern Affairs

¹ For a list of modern treaties, please see Annex A. For a list of self-government agreements, please see Annex B. For a list of sectoral agreements and the governance agreement, please see Annex C.

² A map of modern treaty and self-government agreements in Canada can be found in Annex D.

Executive Summary

In this Provisional Annual Report, the Government of Canada provides an overview of its progress in implementing modern treaties and self-government agreements. It presents a portrait of the socio-economic circumstances of modern treaties and self-government agreements with Indigenous populations, and describes federal government initiatives that support implementation. Canada's commitment to the *Cabinet Directive on the Federal Approach to Modern Treaty Implementation* and the whole-of-government approach is evident and the results are becoming real. Analysis of data suggests improvements in socio-economic conditions for modern treaty and self-governing Indigenous peoples.

It is concluded in this report that, although some positive developments have been reported, more comprehensive outcome-based data is required to fully grasp the socio-economic impacts of modern treaties and self-governing agreements on Indigenous populations and all Canadians.

Although this provisional report is primarily narrative, it is expected that subsequent annual reports will become more comprehensive as data from the Modern Treaty Management Environment and performance measurement framework becomes available. As the reporting process evolves, the perspectives and experiences of Indigenous peoples with the implementation of modern treaties and self-government agreements will be increasingly incorporated.



Nation Building in Canada

Treaties are a key component of Canadian nation-building.⁴ Each one tells a story of the relationships between the Crown and First Nations, Inuit, and Métis groups over time.⁵ These treaties continue to evolve as Canada's commitment towards a new relationship with Indigenous peoples advances. "The time has come to forge new paths together," Prime Minister Justin Trudeau recently announced, "To move beyond the limitations of old and outdated colonial structures, and to create in their place something new, something that respects the inherent right of Indigenous Peoples to self-govern, and to determine their own future."⁶

There have been four phases of treaty-making in Canadian history: commercial compacts; peace and friendship treaties; historical treaties; and modern treaties.⁷ These phases can be traced through history from early colonial contact to contemporary times, reflecting the changing relationships between the Crown and Indigenous peoples.

After the War of 1812, the British Empire asserted its belief in the superiority of British ideals and society. It sought to bring British "civilization" to Indigenous peoples throughout the Empire. This assimilatory process forced First Nations to abandon their traditional ways of life in favour of a more British lifestyle.

Since then, Canada passed legislation that has had profound, long-lasting impacts on Indigenous peoples across the land. The British North American Act of 1867 (also known as the Constitution Act, 1867) made Canada's federal government solely responsible for "Indians and Lands reserved for Indians."⁸ This authority culminated in the 1876 Indian Act, which permitted the Department of Indian Affairs to subjugate First Nation populations, hindering their self-determination. The Indian Act allowed federal administrators, church missionaries, and school leaders to intervene in the "management" of First Nation peoples under the Crown's responsibility, with damaging and long lasting effects to the economy and well-being of First Nations and their way of life. The Residential School system constituted one particularly egregious example of this state intervention. Between 1876 and 1996, Canada removed and separated approximately 150,000 Indigenous children from their families and communities to attend Residential Schools, where many students commonly faced severe abuse.⁹ Nonetheless, Indigenous populations fiercely contested Canada's assimilatory policies and the paternalistic nature of the Indian Act. First Nations rejected the idea of cultural assimilation into non-Indigenous society and resented the overbearing restrictions placed upon them by the Department of Indian Affairs.

For a host of reasons, Canada suspended making treaties with First Nations for nearly 50 years during the twentieth

⁴ For an overview of the history of treaty-making in Canada, please refer to: Canada, Indian and Northern Affairs, *A History of Treaty-Making in Canada* (Ottawa, 2010), https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/ap_htmc_treatliv_1314921040169_eng.pdf.

⁵ Jim R. Miller, "Aboriginal-Crown Treaty-Making in Canada: A Many-Splendoured Thing," in *Aboriginal Policy Research: A History of Treaties and Policies*, ed. Jerry P. White, Erik Anderson, Jean-Pierre Morin, and Dan Beavon (Toronto: Thompson Education Publishing, 2010), 3-12.

⁶ Canada, Office of the Prime Minister, *Prime Minister Justin Trudeau's Address to the 72th [sic] Session of the United Nations General Assembly* (New York, 2017), <https://pm.gc.ca/en/news/speeches/2017/09/21/prime-minister-justin-trudeaus-address-72th-session-unt-nations-general>.

⁷ Miller, "Aboriginal-Crown Treaty-Making in Canada," 3.

⁸ Indian and Northern Affairs, *A History of Treaty-Making in Canada*.

⁹ Canada, Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada*, (Winnipeg, 2015), http://www.trc.ca/assets/pdf/Honouring_the_Truth_Reconciling_for_the_Future_July_23_2015.pdf.

century. When it resumed the practice in the 1970s, the agreements differed considerably from the earlier historical treaties. Not only did modern treaties differ in form from previous agreements, they also incorporated new partners, including Inuit groups, for the very first time.

Modern Treaties

The introduction of the Comprehensive Land Claims policy in 1973 marked a new era of agreements. It was renewed in 1986. Modern treaties, also known as Comprehensive Land Claims Agreements, are concluded over long periods of time and contain a high level of detail.¹⁰ These sophisticated agreements are typically tripartite,



including Indigenous organizations or nations, the Crown, and provincial/territorial governments as signatories. They provide clarity and predictability with respect to land and resource rights, ownership, and management. The rights defined in them are constitutionally protected. Modern treaties are uniquely Canadian and are reconciliation in action. They provide a path for the future by creating new relationships within the Canadian federation while balancing the interests of Indigenous peoples with those of broader society. Modern treaties promote strong and sustainable Indigenous communities while advancing national socio-economic objectives that benefit all Canadians.

Before 2000, modern treaties were negotiated in the form of comprehensive land claim agreements – only a few modern treaty partners negotiated self-government

agreements separately. After 2000, all modern treaties have included provisions for self-government. Since 1975, when Canada signed the first modern treaty, the *James Bay and Northern Quebec Agreement*, 25 modern treaties have come into effect. Eighteen of these include provisions for self-government or have accompanying self-government agreements.

Modern treaties advance a broad set of objectives that support reconciliation with Indigenous peoples. Canada is accountable for its obligations under modern treaties, which must be implemented in a manner that upholds the honour of the Crown. Implementation of each modern treaty is supported by an Implementation Committee or panel, where Indigenous partners, federal departments and agencies, and, where applicable, provincial and territorial governments, meet to ensure meaningful implementation of agreements. Ongoing efforts by each Implementation Committee or panel are reported annually to Parliament by the Minister of Crown–Indigenous Relations.

Self-Government Agreements

Indigenous peoples have an inherent right to self-government, as recognized under section 35 of the *Constitution Act, 1982*. Recognized by the Government of Canada, the inherent right to self-government forms the core of the Crown's relationship with Indigenous peoples. Canada reiterated its recognition of the section 35 right through the 1995 *Inherent Right to Self-Government Policy*, which is expected to be replaced through the Recognition and Implementation of Indigenous Rights Framework. The Government of Canada negotiates self-government agreements to give a practical effect to the inherent right of self-government.

¹⁰ For more information on commercial compacts, peace and friendship treaties, or historical treaties please refer to *A History of Treaty-Making in Canada* (Ottawa, 2010), https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/ap_htmc_treatliv_1314921040169_eng.pdf.

Self-government agreements are diverse. Most self-government provisions and agreements have been established in one of four ways:

- as a separate agreement associated with a modern treaty (pre-2000), like the Tr'ondëk Hwëch'in First Nation Self-Government Agreement (1998);
- as a provision within a modern treaty (post-2000), as in the Nisga'a Final Agreement (2000);
- as a stand-alone self-government agreement without a modern treaty, such as the Westbank First Nation Self-Government Agreement (2004); or
- as a sectoral agreement that establishes self-government over specific jurisdictions, such as the Anishinabek Nation Education Agreement (2017), which recognizes the First Nation's jurisdiction over primary and secondary education.



These agreements stipulate how Indigenous groups exercise their inherent right. They include arrangements for Indigenous groups to govern their internal affairs and assume greater responsibility and control over the decision-making that affects their communities. Each self-government agreement, which is unique:

- identifies governing structures, accountability mechanisms, constitutions, elections, and law-making authorities;
- adopts a concurrent law model, where federal and provincial laws apply alongside Indigenous Government laws;
- addresses responsibilities in providing programs and service delivery for members (e.g., health, social services, education); and,
- enables a new inter-governmental relationship with the Government of Canada.

Whether associated with a modern treaty, or as a stand-alone agreement, the Government of Canada has obligations set out in specific provisions of both modern treaties and self-government agreements. The Government of Canada is responsible for managing the overall implementation of its obligations in a manner that upholds the honour of the Crown. Thus, it continues to work with Indigenous and provincial/territorial partners, which are signatories to the modern treaties and self-government agreements, in the spirit of partnership and collaboration, to fully implement its obligations.

After meeting with Modern Treaty and Self-Governing First Nations leaders and representatives on November 1, 2017, Prime Minister Trudeau reiterated the shared commitment to support Indigenous Governments in their paths towards self-determination, including self-government.

Through the practice of establishing modern treaty and self-government agreements with Indigenous partners, the Government of Canada has affirmed its commitment to reconciliation with Indigenous peoples. The Government of Canada will continue to create a lasting partnership through a renewed, nation-to-nation, government-to-government, and Inuit–Crown relationship.

*Today, we talked about the strides taken towards self-determination, and our shared desire to ensure Indigenous Governments continue to thrive for the benefit of Indigenous communities and all Canadians ... I was inspired to hear from Indigenous Governments taking concrete steps to manage their lands and resources, and to promote the social and economic health and sustainability of their communities. This work greatly benefits their communities and the country as a whole.*¹¹

¹¹ Office of the Prime Minister. Statement by the Prime Minister on meeting with Modern Treaty and Self-Governing First Nations, Ottawa, Ontario November 1, 2017.

<https://pm.gc.ca/eng/news/2017/11/01/statement-prime-minister-meeting-modern-treaty-and-self-governing-first-nations>

PART ONE

BUILDING RELATIONSHIPS AND COLLABORATIVE EFFORTS



Whole-of-Government Relationship

Relationships are critical to successful treaty implementation but cannot be quantitatively measured. However, a number of positive demonstrations of improving relationships have surfaced through different partnerships, including joint working groups and collaborative co-development processes.

Across the country, self-governing Indigenous groups actively participate in the Collaborative Fiscal Policy Development Process. This innovative approach to policy development represents Canada's commitment to collaboration and co-development of policies that affect Indigenous self-determination and well-being. To date, Canada and self-governing Indigenous Governments have jointly developed a collaborative fiscal policy for self-government with methodologies related to:

- Governance expenditure need
- Infrastructure
- Interim approach to lands and resources
- Principles to apply culture, language, and heritage
- Interim policy for fiscal capacity (own source revenue)
- Framework to address socio-economic gaps

In a letter from the Land Claims Agreements Coalition to Crown-Indigenous Relations Canada, the close collaboration demonstrated during the co-development of the policy has been recognized by participating Self-Governing Indigenous Governments as “excellent work.” It is “an example of the kind of process we [Canada and Indigenous Governments] can embark on together.”¹²

In December 2016, Prime Minister Justin Trudeau announced his commitment to “a renewed nation-to-nation relationship between Canada and Indigenous Peoples, one based on the recognition of rights, respect, trust, co-operation, and partnership.”¹³ As an initial step, he announced the creation of Permanent Bilateral Mechanisms, including one with the Inuit Tapiriit Kanatami. On February 9, 2017, the Prime Minister, several Federal Ministers, and Inuit Tapiriit Kanatami leaders held their first meeting and signed the Inuit-Crown Partnership Committee Declaration. The resulting Inuit-Crown Partnership Committee identified land claims implementation as one of seven priorities. Collaborative efforts continue to advance recommendations to improve land claim implementation.

On November 1, 2017, the Prime Minister met with 23 Modern Treaty and Self-Governing First Nations leaders for the first annual Canada-Modern Treaty and Self-Governing First Nations Forum. The Ministers of Crown-Indigenous Relations and Northern Affairs Canada, Indigenous Services Canada, Environment and Climate Change Canada, and the Department of Justice Canada all supported the Prime Minister at this historic meeting. The Forum enables treaty partners to promote and celebrate the unique government-to-government relationships between the Government of Canada and self-governing First Nations.

¹² Letter from the Land Claims Agreements Coalition to Crown-Indigenous Relations Canada, December 5, 2018.

¹³ Office of the Prime Minister, Statement by the Prime Minister of Canada on National Aboriginal Day.

The Forum also provided space for the parties to discuss fiscal relationships and government mechanisms and structures required to implement self-government agreements, as well as the change necessary to recognize the right to advance self-determination. On November 1, 2017 productive discussions were had in three priority areas: renewing the fiscal relationship, structures of government, and participation and engagement. The Prime Minister has committed to holding this meeting annually to affirm the unique relationship between Canada and governing First Nations.



There is significant overlap between the Inuit–Crown Partnership Committee’s recommendations and those raised at the November Forum. These recommendations have been heard in other forums, including engagement with the Minister. Efforts are underway to jointly assess these recommendations and find a shared way forward. Follow up to the Canada–Modern Treaty and Self-Governing First Nations Forum will be jointly advanced through the Deputy Ministers’ Oversight Committee.

Federal officials are engaged with the Land Claims Agreements Coalition through a joint working group to collaboratively advance elements of the *Cabinet Directive*. Federal officials also attended the Land Claims Agreements Coalition’s Annual General Leadership Meetings in February 2016 and February 2017, as well as the “Modern Treaties and Reconciliation” Conference hosted in November 2017. At these events, federal officials gave presentations on implementation issues and engaged with modern treaty holders. The Land Claims Agreements Coalition and federal officials have also collaborated in developing various elements of the *Cabinet Directive*, as described above.

A critical component of the ongoing relationship with modern treaty and self-governing Indigenous partners is participation and engagement at Implementation Committees. Committee meetings are held to ensure collaboration in fulfilling obligations. Between April 2017 and March 2018, fifty-five Implementation Committee meetings were held across Canada.

Initiatives and Collaborative Efforts of Federal Departments and Agencies

Modern treaties and self-government agreements create new nation-to-nation, government-to-government, and Inuit–Crown relationships. Awareness of these new relationships is spreading across the federal government and is reflected in how departments and agencies structure their work and how they engage with Indigenous partners, provincial and territorial governments, and other federal officials. Significant strides have been made through the whole-of-government approach towards improving relationships and collaborating with modern treaty and self-government agreement partners. This movement is in the right direction and can be attributed to greater awareness and collective and collaborative efforts by individual departments, agencies, and Indigenous partners in implementing modern treaty and self-government agreements.

For example, some departments and agencies have teams to address modern treaty management and implementation. Public Safety Canada’s Indigenous Treaty Management Unit, housed within the Policing Policy Directorate in the Community Safety and Countering Crime Branch, is responsible for negotiating and implementing modern treaties where interests intersect with the mandate of Public Safety.

Employment and Social Development Canada's modern treaty implementation activities are supported by the Modern Treaties Unit, a dedicated unit in the Indigenous Affairs Directorate. In 2014, the Unit developed a Modern Treaty Framework for the Department based on three pillars: 1) understanding Employment and Social Development Canada's obligations; 2) fulfilling Employment and Social Development Canada's obligations; and 3) minimizing future risk. The Framework aligns seamlessly with the *Cabinet Directive*.

Natural Resources Canada carries out activities related to training, reporting, and outreach to modern treaty partners. In June 2015, Natural Resources Canada held a modern treaty training session for approximately 100 employees with presenters from the Land Claims Agreements Coalition, Justice Canada, and the Modern Treaty Implementation Office. In 2017, Natural Resources Canada provided staff with small group training (approximately 30 employees) on developing the Assessment of Modern Treaty Implications for Cabinet proposals. Training was also provided to scientists (approximately 30 employees) who access modern treaty land to conduct their research projects.

Modern Treaty Partnerships

Positive relationships between partners are essential for full and fair implementation of modern treaties. Federal government departments and agencies have been actively engaging Indigenous partners and organizations through meetings and working groups to advance intergovernmental relations, develop partnership opportunities, and support the implementation of modern treaty obligations.

The 2015 out-of-court settlement agreement among Canada, Nunavut Tunngavik Incorporated, and the Government of Nunavut, in conjunction with the implementation of Article 23 of the Nunavut Agreement, led to the creation of the Pilimmaksaivik¹⁴ as a central, whole-of-government, coordinating office. Pilimmaksaivik roughly translates as "a place to develop skills through observations, mentoring, practice, and effort." This aptly named, new Federal Centre of Excellence for Inuit Employment in Nunavut is tasked with helping federal departments and agencies in Nunavut achieve a representative Public Service in Nunavut.

Since its launch in May 2016, Pilimmaksaivik's Iqaluit-based team has mobilized local staff and managers, partner departments, and key central agencies to build the tools necessary to facilitate the transformative change that is needed to strengthen Inuit employment in a culturally adept manner. This work has included setting short- and medium-term Inuit employment targets through the 2023 Whole-of-Government Inuit Employment Plan. The aim is to reduce barriers to Inuit employment. It will also develop, test, and share Nunavut Inuit focused recruitment approaches. These approaches include: delivering community-based outreach and training on how to apply for Government of Canada jobs (offered in Inuktitut and English) in numerous communities across all three regions in Nunavut; establishing and maintaining a resume inventory for Nunavut Inuit to facilitate job-matching; and collecting data on where Nunavut Inuit go to seek job advertisements and targeted recruitment (e.g., social media, local media, distributing with community-based partners to include on local job boards etc.).

Pilimmaksaivik also delivered whole-of-government training that targets areas of under-representation. This includes the first ever Inuit-only, multi-phased leadership training program, Sivuliqtiunirmut Ilinniarniq (co-developed with the Canada School of Public Service), which graduated 20 Inuit participants in May 2018. It also started an education support fund that provides financial support to Inuit employees towards completion of studies that correlate with a key area of under-representation (i.e., the approximately 30 per cent of federal government positions based in Nunavut that require post-secondary education). The fund already supports three Inuit federal employees to attend law school full-time. Upon completion of their studies they will be offered full-time legal positions with the Government of Canada.

¹⁴ Pilimmaksaivik is an Inuktitut word chosen by Inuit employees at the coordinating office.

In addition, Pilimaksaivik provides cultural competency support, including a Government of Canada-wide Inuit Employees Network, Inuit Elders in Residence initiative, and cultural immersion, through Inuit Qaujimajatuqangit (Inuit traditional knowledge) learning days.



Since its inception, Pilimaksaivik has worked closely with the Government of Nunavut and Nunavut Tunngavik Incorporated to share thinking, planning, challenges, and opportunities. In the 2018–2019 fiscal year, Pilimaksaivik will be working with its treaty partners to support the continued implementation of Inuit Employment Plans. It will also work to finalize a whole-of-government pre-employment training plan that is focused on preparing Nunavut Inuit for government employment.

Environment and Climate Change Canada is working collaboratively with treaty partners on a variety of wildlife projects. One example is the work being done with community researchers in the Kivalliq region of Nunavut to design and implement research programs to gather traditional knowledge (Inuit Qaujimajatuqangit) related to light geese management. This collaborative approach has increased the capacity of community members to undertake Inuit Qaujimajatuqangit research studies on wildlife, and has helped Environment and Climate

Change Canada staff to better understand how to conduct research in the Kivalliq region. Environment and Climate Change Canada also supports and participates on many of the boards, committees, and councils created by modern treaties. For example, it participates in the James Bay Environmental Advisory Committee and Kativik Environmental Advisory Committee (established by the James Bay and Northern Québec Agreement and the Northeastern Québec Agreement) to collaborate on policy development, legislation, and regulations that may affect the environment and communities.

Recognizing ongoing engagement as an important factor in relationship building and collaboration, the Department of National Defence and the Canadian Armed Forces established regular annual engagement with the Nunatsiavut Government Executive Council to discuss issues related to its Comprehensive Land Claims Agreement. These conversations have proved especially fruitful for discussing planned military exercises with Nunatsiavut's Land and Resources Department and accessing the Labrador Inuit Settlement Area. Managed contracting in modern treaty areas has also provided opportunities for departments and Indigenous leadership to share information on traditional ways of life that inform the conduct of military activities and exercises. In addition, the Science, Technology, Engineering and Mathematics Program held interactive learning sessions at schools within the Labrador Inuit Land Claims Agreement area as a form of outreach to local school children.

Natural Resources Canada held Expert Panel engagement sessions that attracted the participation of the Grand Council of the Crees, the Gwich'in Tribal Council, Tsawwassen First Nation, Inuvialuit Regional Corporation, and Makivik Corporation. Following the release of an Expert Panel report and discussion paper, Natural Resources Canada sent meeting invitations to all modern treaty groups, providing the opportunity to comment on proposed changes within the scope of the review. Natural Resources Canada officials held direct talks with the Grand Council of the Crees, Nunavut Wildlife Management Board, Nunavut Water Board, Nunavut Tunngavik Inc., First Nations of Maa-nulth Treaty Society, Inuvialuit Regional Council, Nisga'a, and the Gwich'in Tribal Council.

Natural Resources Canada has also reached out to modern treaty partners to collaborate on its Discussion Paper regarding the "Framework for Administering Renewable Energy Development in Federal Offshore Areas," providing opportunities



for modern treaty partners to express their views at an early stage of a proposed federal policy. This engagement is part of a larger initiative to inform the development of legislation for regulating renewable energy projects in federal offshore areas.

In April 2016, following senior and working level coordination, the First Nations and Inuit Health Branch transferred community-based programs and home and community care to Tla'amin Nation through the Fiscal Financing Agreement. Furthermore, ongoing negotiations between the First Nations and Inuit Health Branch and partners led to the successful transfer of community-based funding programs to the Tlicho Government through the Fiscal Financing Agreement beginning in the 2017–2018 fiscal year. This transfer increased Tlicho control over the delivery of health programs and service, in partnership with the Government of the Northwest Territories.

Self-Government Agreement Partnerships

Positive relationships are also essential for implementing self-government agreements. Federal government departments and agencies have actively engaged self-governing Indigenous partners and organizations through meetings and working groups to advance intergovernmental relations, develop partnership opportunities, and support the implementation of self-government agreement obligations.

The First Nations and Inuit Health Branch adapted its approach to managing relationships with self-governing First Nations in British Columbia, following the creation of the First Nations Health Authority. This change has made interdepartmental cooperation between the First Nations and Inuit Health Branch and Crown–Indigenous Relations and Northern Affairs Canada essential for successfully implementing treaties and securing the flow of related funding.

Roles and responsibilities in relation to self-governing First Nations are being clarified. The First Nations Health Authority, the province of British Columbia, the First Nations and Inuit Health Branch, and Crown–Indigenous Relations and Northern Affairs Canada's Modern Treaty Implementation Office gathered together for two self-government specific workshops in July 2015 and September 2016. These workshops identified cross-cutting implementation issues within the context of transferring First Nations and Inuit Health Branch services to the First Nations Health Authority in British Columbia. Additionally, the First Nations and Inuit Health Branch engaged with Self-Governing First Nations in British Columbia to address specific issues and ensure future integrity to deliver the services assumed under treaty. Ongoing monthly implementation meetings have been established between the First Nations and Inuit Health Branch and both Nisga'a and Westbank. One example of a resolved issue is under the Maa-nulth Final Agreement, where the First Nations and Inuit Health Branch led the process of receiving the files and reimbursing capital project expenses to Ka:'yu:'k't'h'/Chek'tles7et'h' First Nations in fiscal years 2016–2017 and 2017–2018.

PART TWO

MODERN TREATIES



The Whole-of-Government Approach to Modern Treaty Implementation

In July 2015, the Government of Canada issued the *Cabinet Directive on the Federal Approach to Modern Treaty Implementation*. It was accompanied by a *Statement of Federal Principles on Modern Treaty Implementation*, which was developed in consultation with treaty partners. The *Directive* calls for a whole-of-government approach to managing Canada's modern treaty obligations with enhanced awareness, accountability, and oversight. The *Statement of Principles* provides guidance to the federal public service on the approach to modern treaty implementation.¹⁵ Together, the *Directive*, *Principles*, and other tools will support and put in place governance structures to respectfully fulfill Canada's policy on modern treaty implementation.

Cabinet Directive on the Federal Approach to Modern Treaty Implementation

The *Cabinet Directive on the Federal Approach to Modern Treaty Implementation* confirms a whole-of-government approach to implementing modern treaties and defines the roles and responsibilities of the federal government in that process. It establishes an operational framework for managing the Crown's modern treaty obligations. It also guides federal departments and agencies on fulfilling their responsibilities by requiring the federal government to take a number of actions, including the creation of the Deputy Ministers' Oversight Committee and the Modern Treaty Implementation Office.

The Deputy Ministers' Oversight Committee

The Deputy Ministers' Oversight Committee is mandated to provide executive oversight of the implementation of the *Cabinet Directive*, and by extension, of Canada's roles and responsibilities related to the implementation of modern treaties. Chaired by the Deputy Minister of Crown-Indigenous Relations and Northern Affairs Canada, the Committee includes members from 18 other departments and agencies.¹⁶ The Committee is mandated to provide:

- program and policy direction to fulfill Canada's obligations under modern treaties;
- decision-making and dispute resolution, as necessary, when cross-cutting issues arise requiring senior executive intervention;
- coordination of a federal approach to broad, cross-cutting obligations; and
- oversight of monitoring, reporting, and performance measurement.

The first Deputy Ministers' Oversight Committee meeting took place on September 29, 2015, two months after the introduction of the *Cabinet Directive*. In total, there have been 14 Committee meetings: three in the 2015–2016 fiscal year; six in the 2016–2017 fiscal year; and five in the 2017–2018 fiscal year.

¹⁵ To view the *Statement of Federal Principles on Modern Treaty Implementation*, see Annex H.

¹⁶ For a list of the member departments of the Deputy Ministers' Oversight Committee, please refer to Annex E.

Committee members have discussed a range of topics, including:

- cross-cutting issues related to the implementation of agreements;
- implications of the federal government’s Indigenous reconciliation mandate; and
- advancement of *Cabinet Directive* deliverables, such as the Assessment of Modern Treaty Implications, the Modern Treaty Management Environment, the Performance Measurement Framework for Modern Treaty Implementation, and an annual report.

The Deputy Ministers’ Oversight Committee has also welcomed Indigenous partners to discuss specific implementation issues, collaborative efforts, and Indigenous partner visions.

The Modern Treaty Implementation Office

As part of the *Cabinet Directive*, the Government of Canada created the Modern Treaty Implementation Office with a mandate to:

- serve as the Secretariat of the Deputy Ministers’ Oversight Committee;
- work with departments to establish ongoing oversight and accountability;
- provide interdepartmental coordination by serving as a liaison function between Implementation Committees, regional and federal officials-level interdepartmental caucuses, and the Deputy Ministers’ Oversight Committee; and
- coordinate issues management across departments.



Effective intergovernmental relationships are vital to the success of modern treaty implementation. The Modern Treaty Implementation Office plays a relationship-building role by serving as a federal government interface with the Land Claims Agreements Coalition.¹⁷ It supports various committees and participates in the joint Land Claims Agreements Coalition/Crown–Indigenous Relations and Northern Affairs Canada Working Group, the Working Group on Performance Measurement Framework, and Implementation Committees. It also works with modern treaty holders, as well as federal and provincial/territorial colleagues.

Since its inception, the Modern Treaty Implementation Office has developed numerous tools, including the Assessment of Modern Treaty Implications guide and template, and the Issue and Dispute Resolution Management Tracker. It is also collaboratively developing the Performance Measurement Framework for Modern Treaty Implementation, in partnership with other federal departments and agencies, members of the Land Claims Agreements Coalition, and individual modern treaty representatives.

Assessment of Modern Treaty Implications

Federal departments and agencies are responsible for ensuring that their initiatives are designed and implemented in a way that respects modern treaties and the rights of modern treaty holders, which are protected under section 35 of the *Constitution Act*. To this end, the *Cabinet Directive* requires departments and agencies to conduct an Assessment of Modern Treaty Implications on all Cabinet proposals.

The Assessment of Modern Treaty Implications has been designed so that departments and agencies are encouraged to apply a modern treaty lens, not only for new proposals, but also when conducting their day-to-day business, thereby promoting the shared objectives of modern treaties.

In December 2015, the deputy heads of the Privy Council Office, the Treasury Board Secretariat, and Crown–

¹⁷ Formed in 2003, the Land Claims Agreements Coalition has membership representing Inuit, First Nation and Métis modern treaty organizations and governments in Canada. Their objective is to ensure that modern treaties are fully implemented in spirit and intent, and to work closely and collaboratively with the Government of Canada and other partners to bring this about. <http://landclaimscoalition.ca/>

Indigenous Relations and Northern Affairs Canada jointly released the Assessment of Modern Treaty Implications template, as well as tools to support departments and agencies in conducting their assessments. Both the Privy Council Office and Treasury Board Secretariat amended their Cabinet submission templates so that the Assessment of Modern Treaty Implications is now a required annex.

Since the roll-out, departments and agencies are conducting assessments to identify potential implications for their initiatives, sometimes seeking support and guidance from the Modern Treaty Implementation Office. Since 2015, the Office has provided assistance to 20 departments and agencies on a total of 170 assessments (144 Memoranda to Cabinet and 26 Treasury Board Submissions). It is important to note that not all assessments are reviewed by the Modern Treaty Implementation Office; these figures do not represent the total number of Assessments of Modern Treaty Implications completed. Based on questions and feedback, beginning in the spring of 2017, the Modern Treaty Implementation Office delivered 11 Assessment of Modern Treaty Implications training sessions to over 180 federal officials across four departments.

After having received training, many departments and agencies no longer rely solely on the Modern Treaty Implementation Office for Assessment of Modern Treaty Implications advice. They now have internal experts providing assistance to their officials. For example, the Indigenous Treaty Management Unit, housed within the Community Safety and Countering Crime Branch of Public Safety Canada, has developed department-specific tools and resources. Natural Resources Canada has implemented the assessment of Cabinet proposals using its own departmental form, approval procedures, and tracking system. In November 2016, the Department of National Defence published new departmental guidelines, including new processes and tools, to enable compliance with Assessment of Modern Treaty Implications requirements, along with other requirements under the *Cabinet Directive on the Federal Approach to Modern Treaty Implementation*. Environment and Climate Change Canada has been completing its own Assessments of Modern Treaty Implications on all proposals to Cabinet since July 2017, increasing awareness of modern treaty implications within the entire department. While the First Nations and Inuit Health Branch¹⁸ has also developed its own process to assess new proposals to Cabinet for modern treaty implications, work is still ongoing to refine and expand the tools and awareness throughout the department. In April 2017, the First Nations and Inuit Health Branch created a dedicated unit to work directly with modern treaty holders and Crown–Indigenous Relations and Northern Affairs Canada to ensure health is adequately represented in negotiations and implementation. As efforts and awareness continue to grow within departments, the Modern Treaty Implementation Office continues to develop and improve training and support for public servants.



Modern treaty partners have raised questions on the level of consultation and engagement in the assessment process, where treaty partners feel they are not always adequately engaged. Joint revision of the Assessment of Modern Treaty Implications template and guidance materials is underway to address these other concerns. Formal reporting on the way departments comply with the Assessment of Modern Treaty Implications requirement will be embedded in subsequent annual reports. To support this reporting, the Modern Treaty Implementation Office and central agencies are working to implement a whole-of-government system to report on the completion of the Assessment of Modern Treaty Implications and to undertake a qualitative assessment.

Modern Treaty Training

The Canada School of Public Service is developing an Indigenous Learning Series in response to number 57 of the Truth and Reconciliation Commission's Calls to Action.¹⁹ The Modern Treaty Implementation Office has provided expertise to the Canada School of Public Service to ensure a Modern Treaty component is included in this training.

The Modern Treaty Implementation Office continues to bring an increased awareness of modern treaties to public

¹⁸ Formerly housed inside Health Canada, First Nations and Inuit Health Branch is now within Indigenous Services Canada.

¹⁹ Canada, Truth and Reconciliation Commission of Canada, *Truth and Reconciliation Commission of Canada: Calls to Action* (Winnipeg, 2015), http://trc.ca/assets/pdf/Calls_to_Action_English2.pdf.

servants by providing training for federal officials. To date, approximately 260 federal officials have completed the training. Members of the Land Claims Agreements Coalition and the Modern Treaty Implementation Office jointly developed a specific course on modern treaty implementation with the aim of improving awareness and understanding of modern treaties across the federal government. This training was being updated, and roll-out resumed in September 2018.

With support from Crown–Indigenous Relations and Northern Affairs Canada, the Land Claims Agreements Coalition also developed a free, bilingual, one-hour online training module on modern treaties, which can be found on the Land Claims Agreements Coalition website.²⁰ Additional work to add two new modules is underway.

Issues Management

The Modern Treaty Implementation Office developed the Modern Treaty Issue and Dispute Resolution Management Tracker to support Deputy Ministers when cross-cutting issues arise that require senior executive intervention.

Although continuing to be refined, the objectives of the Issue and Dispute Resolution Management Tracker are to:

- report on the status of implementation issues and disputes;
- identify trends for analysis;
- inform measures to strengthen Canada’s approach; and
- track implementation issues and disputes to facilitate executive discussion, management, and mitigation.

Updates are reported at every other Deputy Ministers’ Oversight Committee meeting, or approximately three times per year.

During the reporting period, the Tracker has identified 15 issues and three disputes, affecting 22 modern treaty partners; one issue has been resolved. The issues identified by the Tracker and discussed by the Deputy Ministers’ Oversight Committee include those related to programs and services, funding, negotiations, consultation/engagement, and board appointments.

Performance Measurement Framework

The Performance Measurement Framework is one of the key tools required under the *Cabinet Directive* to support the Deputy Ministers’ Oversight Committee and other partners in strengthening awareness, accountability, and oversight. In July 2016, the Modern Treaty Implementation Office established a performance measurement working group, which now consists of 19 federal and treaty partners, to discuss a proposed approach to developing a Performance Measurement Framework for Modern Treaty Implementation.

Although discussions are ongoing, proposed elements of the Performance Measurement Framework include:

- obligation status indicators, which will be used to measure the implementation status of Canada’s obligations;
- common objectives²¹ shared across all modern treaties, which will include performance indicators to measure socio-economic outcomes in modern treaty areas; and
- where appropriate, modern-treaty-specific performance measurement frameworks, which will be developed over time with interested modern treaty partners, and which may also be used by treaty groups to assist in their reporting and decision-making.

Once the Performance Measurement Framework is fully developed and implemented, it is anticipated that it will

²⁰ Land Claims Agreements Coalition, “Modern Treaties Canada,” <http://landclaimscoalition.ca/treaty/>.

²¹ The Modern Treaty Implementation Office identified the common objectives through a review of all modern treaties. These objectives do not create new obligations for Canada as they are aggregated statements from clauses already in the agreements. Please see Annex F for a list of modern treaty common objectives areas and statements.



provide insight into the status of Canada's efforts in implementing and fulfilling its obligations. It will also assess outcome-based results against the objectives of modern treaties.

Monitoring the Implementation Status of Canada's Modern Treaty Obligations:

Canada has thousands of obligations under existing modern treaties. The nature and number of obligations continue to evolve as some obligations are fulfilled, some are recurrent, others are contingent on other activities, and some are created as new agreements come into effect. While some of Canada's obligations can be identified as the responsibility of a specific department or agency, others are the responsibility of many or even all departments and agencies.

The *Cabinet Directive* called for an update of the Treaty Obligations Monitoring System. When it became apparent that updates to the existing System would have had a limited capacity to track the implementation status of obligations, a complete overhaul was envisioned. As a result, a decision was made to develop the Modern Treaty Management Environment to provide a more comprehensive working environment for federal departments and agencies to manage their responsibilities by recording and tracking their activities and the implementation status of their obligations. The Modern Treaty Management Environment is currently being released in phases, and will replace the outdated Treaty Obligations Monitoring System. As it is rolled out, system adjustments are being identified and addressed.



The Modern Treaty Management Environment will enable federal officials to create and manage activity records related to obligation implementation. To date, 75 training sessions have been delivered to 184 federal officials from 20 departments. Uptake of the Modern Treaty Management Environment has been slower than anticipated. To respond to these challenges, work continues to address access issues and training has been re-scoped. To increase user uptake, system updates and interface amendments are being introduced.

Obligation status indicators incorporated in the Performance Measurement Framework will leverage data from the Modern Treaty

Management Environment to provide a more comprehensive portrait of the Government of Canada's obligation work load, as well as its performance in fulfilling its obligations. With a sufficient level of accurate obligation status and activity data generated, it will be possible to gain clearer insight into the implementation status of Canada's modern treaty obligations. This data is still being entered into the system.

Measuring Socio-Economic Outcomes and Impacts of Modern Treaties:

It is important to measure and be aware of Canada's status in fulfilling its obligations. It is equally important for all partners to have insight into whether progress is being made towards realizing the objectives envisioned in modern treaties by assessing results against objectives. Canada is working with modern treaty partners to establish outcome-based measurements, as part of the Performance Measurement Framework. These measurements are intended to:

- track progress being made towards objectives articulated in modern treaties; and
- collaboratively identify areas where further attention and discussions are required.

Common Objectives of Modern Treaties

Although every modern treaty is unique, modern treaties across Canada share some common objectives. A performance measurement technical working group, that includes treaty and federal partners, has co-identified six common objectives shared across modern treaties. This is a first step required to develop outcome-based indicators that will provide a more accurate picture of the socio-economic conditions resulting from modern treaties. These indicators are anticipated to not only inform subsequent annual reports, they will also support evidence-based decision-making and inform future agreements and modern treaty implementation. The following common objective areas have been identified:

- culture, language, and heritage;
- economic development;
- environment;
- governance/relationships;
- land and resources management; and
- social development.

Modern-Treaty-Specific Performance Measurement Frameworks

Offers have been extended to modern treaty holders, asking for groups to identify if they are interested in developing treaty-specific performance measurement frameworks that could be used by partners to report on outcomes to their population. These frameworks would also assist with evidence-based decision-making, planning, monitoring, and managing of programs and initiatives. For the Government of Canada, data generated and shared by partners is expected to provide a better understanding of the impacts of each agreement on a particular population and could inform future discussions.

The Modern Treaty Implementation Office has offered assistance in developing these treaty-specific frameworks to all modern treaty holders. To date, interest has been expressed by:

- Nisga'a Nation;
- Maa-nulth First Nations; and
- Tsawwassen First Nation.

Moving Forward:

More collaborative work is required before measurement frameworks are developed and trend data can be reported. In the coming months, efforts will be directed towards:

- continued phased roll-out of the Modern Treaty Management Environment and training of federal officials;
- structuring data in the Modern Treaty Management Environment for the most effective reporting on obligation implementation, consistent and valid analysis of obligation data, and reporting on the status of obligations;
- roll-out of Assessment of Modern Treaty Implications reporting;
- developing relevant performance indicators to measure identified common objectives; and
- co-developing agreement-specific performance measurement frameworks.



Impacts of Modern Treaties on Indigenous Peoples

Indigenous peoples in Canada face significant socio-economic and well-being gaps when compared to non-Indigenous people across Canada.²²

Modern treaties are a means for Indigenous partners to improve socio-economic circumstances and seize economic and development opportunities for the benefit of all Canadians. A few studies using Census and National Household Survey data have highlighted some socio-economic improvements for modern treaty holders.

For example, a 2017 study by Krishna Pendakur and Ravi Pendakur found that Indigenous households in modern treaty areas (both with and without associated self-government agreements) have seen income gains since the effective date of their agreements.²³ In October 2015, the C.D. Howe Institute also reported increases in income for modern treaty holders.²⁴ Quantitative evidence that demonstrates the full socio-economic impacts of modern treaties on Indigenous populations, however, is limited.

A 2016 BC Treaty Commission report that investigated existing performance measurement frameworks for modern treaty groups found, however, that no frameworks are currently sufficient to comprehensively

measure the socio-economic benefits of modern treaties.²⁵ The Commission advocates that a performance measurement regime be established and maintained at both local and national levels so that all modern treaty partners have a better understanding of the key factors that make modern treaties successful.

Recent annual reports prepared by some modern treaty holders also suggest improved social well-being of their citizens. These reports offer snapshots of positive impacts that modern treaties have for members and where efforts are being directed in implementing these agreements.

In its 2013–2014 Implementation Report, the Nisga'a Nation focused on the repatriation of cultural artifacts and heritage.²⁶ This report also highlighted how the Nisga'a Lisims Government and Canada worked jointly to ensure skills and labour training for economic and sustainable prosperity. One example is the bilateral agreement for the delivery of the Aboriginal Skills and Employment Training Strategy program for Nisga'a citizens. This partnership resulted in the opening of the Nisga'a Employment, Skills, and Training program, which helps Nisga'a citizens thrive and succeed in a rapidly developing economy by helping them find meaningful and demand-driven employment.²⁷

In its 2016–2017 annual report,²⁸ Nunavut Tunngavik Incorporated reported on Inuit empowerment, language and culture, collective healing, and Inuit identity, as well as bridging Inuit traditions and skills between elders and youth. Learning and development for Inuit, as outlined in Article 23 of the Nunavut Agreement, remain a priority area for Nunavut Tunngavik Incorporated. For example, the Qikiqtaaluk Corporation and Group of Companies, owned by



22 Canada, Aboriginal Affairs and Northern Development Canada, *Community Well-Being: Report on Trends in Inuit Communities, 1981-2011* (Ottawa, 2015), <https://www.sac-isc.gc.ca/eng/1421175988866/1557322849888?wbdisable=true>; Canada, Aboriginal Affairs and Northern Development Canada, *The Community Well-Being Index: Report on Trends in First Nations Communities, 1981-2011* (Ottawa, 2015), <https://www.aadnc-aandc.gc.ca/eng/1358365895098/1358365993926>.

23 Krishna Pendakur and Ravi Pendakur, "The Effects of Modern Treaties and Opt-In Legislation on Household Incomes in Aboriginal Communities." *Social Indicators Research Volume 137, Issue 1* (2018):139-165.

24 Fernando M. Aragon, "The Effects of Modern Treaties on Local Income," issued 28 October 2015 on behalf of the C.D. Howe Institute, https://www.cdhowe.org/sites/default/files/attachments/research_papers/mixed/e-brief_218_0.pdf.

25 Canada, British Columbia, BC Treaty Commission, *Socio-economic Benefits of Modern Treaties in BC*, (Victoria, 2016), <http://www.bctreaty.ca/sites/default/files/Deloitte-BCTC-FinalReport.pdf>.

26 Canada, Aboriginal Affairs and Northern Development Canada, *Nisga'a Final Agreement: Implementation Report, 2013-2014* (Ottawa, 2014), https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ-LDC/STAGING/texte-text/nisga_fin_agree_impl_rep_2013-2014_1506097232581_eng.pdf.

27 Aboriginal Affairs and Northern Development Canada, *Nisga'a Final Agreement*, 7.

28 Canada, Nunavut, *Nunavut Tunngavik Incorporated, Nunavut Tunngavik Incorporated Annual Report, 2016-2017* (Iqaluit, 2017), <http://www.tunngavik.com/files/2017/12/NTI-2017-Annual-Report.pdf>.



the Qikiqtani Inuit Association (a Regional Inuit Association affiliated with Nunavut Tunngavik Incorporated, which establishes the Qikiqtaaluk Business Development Corporation) received specific attention. Established in 2016, the Qikiqtaaluk Business Development Corporation's mandate is to work with 13 communities in the Qikiqtaaluk region to develop a new model of collaboration for socio-economic opportunities with government and industry. In 2016, the Qikiqtaaluk Corporation and Group of Companies increased its Inuit employment within all its companies and maintained an 81 per cent Inuit employment rate.²⁹

In January 2018, the Canadian Broadcasting Corporation reported that Tsawwassen's property value went up nearly 45 per cent, the largest average increase seen in the province of British Columbia. The growth has been attributed to the recent commercial developments of Tsawwassen Mills and Tsawwassen Commons, as well as the residential complex of Tsawwassen Shores.³⁰ Moreover, according to its 2016–2017 Annual Report, the Tsawwassen First Nation benefited financially through its direct taxation power by collecting approximately \$6.8 million in property taxes, up from \$3.8 million in 2015–2016.³¹

As noted in these examples, there is some evidence that modern treaties are having a positive impact. However, there remains a lack of available empirical data to support a more robust analysis of trends. Future analysis will require more comprehensive outcome-based data to fully understand the socio-economic impacts of modern treaties.

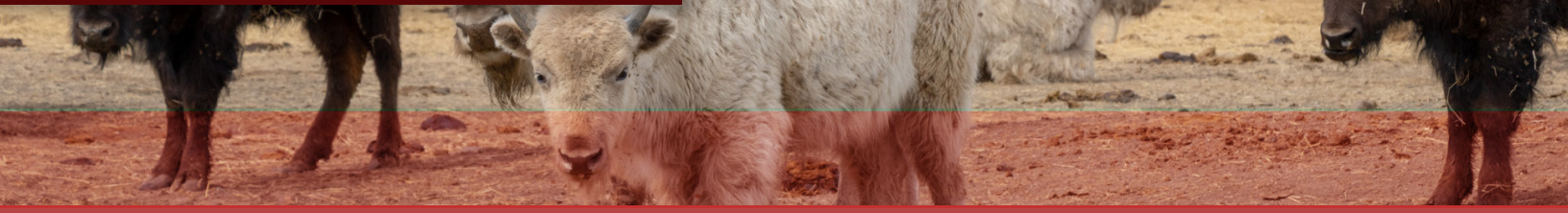
²⁹ Nunavut Tunngavik Incorporated, *Nunavut Tunngavik Incorporated Annual Report, 2016-2017*, 40.

³⁰ Anna Dimoff, "Tsawwassen First Nation Property Values Show Biggest Increase in 2018 Assessment," *CBC News*, 7 January 2018, <http://www.cbc.ca/beta/news/canada/british-columbia/tsawwassen-growth-property-value-1.4476157>

³¹ Canada, *British Columbia, Tsawwassen First Nation, Tsawwassen First Nation Annual Report 2016/2017* (Tsawwassen, 2017), http://www.tsawwassenfirstnation.com/pdfs/TFN-About/Information-Centre/Annual-Reports/2017-2018_Annual_Report.pdf.

PART THREE

SELF-GOVERNMENT AGREEMENTS



The Whole-of-Government Approach to Self-Government Agreement Implementation

Sustained commitment by the federal government as a whole is required for Canada to fulfill its responsibilities under self-government agreements. As with modern treaties, the Modern Treaty Implementation Office serves as a liaison and coordinating body between federal departments and agencies on matters relevant to self-government agreement implementation. Activities where productive relationships have been demonstrated include joint working groups and collaborative co-development processes.

Efforts are underway with self-government agreement partners to develop agreement-specific performance measurement frameworks. Agreement-specific frameworks may be used by partners to report to their populations on outcomes, and assist with evidence-based decision-making, planning, monitoring, and managing their programs and initiatives. This information is expected to also assist the Government of Canada to better understand the impacts of agreements, thus informing future developments. The Modern Treaty Implementation Office has provided introductory information on this initiative to self-government agreement partners. To date, interest has been expressed by Sioux Valley Dakota Nation and Westbank First Nation.

In May 2016, federal and Indigenous Government representatives embarked on a collaborative process to co-develop a new federal self-government fiscal policy for the Government of Canada. In December 2017, participants reached a major milestone by releasing a jointly developed draft fiscal policy for self-government agreement holders. The draft fiscal policy incorporates the following key changes for consideration by Canada:

- enhanced funding models based on expenditure needs, focusing first on governance functions, and recognizing the role of culture, language, and heritage;
- using members or citizens as the basis of service population (de-linking of Indian Status);
- enhanced capital infrastructure funding via a “life cycle” approach;
- support for measures to close social well-being gaps; and
- access to revenues and cost-sharing.

The process moved slowly at first as it took time to build trust and understanding between participants. However, taking this time enabled effective working relationships to be developed. Through open sharing of information and frank discussion of issues, participants are now effectively working through important fiscal issues and shaping new approaches. Participants understand that this form of exploration involves some risks and that there are no guarantees that all ideas will eventually be supported. Stepping outside the constraints of current approaches and mandates, however, has been productive for all. While the draft fiscal policy is under review by the Government of Canada, the momentum continues in 2018–2019, with a focus on jointly developing an Indigenous Government governance funding model, developing a framework aimed at closing social well-being gaps, and addressing other key issues.

This Collaborative Fiscal Policy Development Process has involved over 100 meetings of technical working groups and a policy steering committee over the last 18 months, with more planned in 2018–2019. This collaborative process has demonstrated how the Government of Canada and Indigenous Governments can work together respectfully and productively engage with one another to address fiscal issues and co-develop policy. On March 21, 2018 federal officials and Indigenous participants co-presented on the developments of the collaborative process to the Deputy Ministers' Oversight Committee.

Impacts of Self-Government Agreements on Indigenous Peoples



Using data from the 1996–2006 Census and 2011 National Household Survey, a few studies have highlighted some socio-economic improvements for self-governing groups. For example, the 2016 Impact Assessment of Self-Government Agreements, issued by Crown–Indigenous Relations and Northern Affairs Canada, found that self-governing First Nations reported higher education and economic outcomes when compared to Registered Indians on Reserve.³² Studies such as those conducted by Michael J. Chandler and Christopher E. Lalonde on suicide risk among First Nations³³ also shed some light on the benefits of self-government agreements, as indicators of cultural continuity and to community well-being.³⁴ For example, they found that communities with self-government have significantly lower suicide rates than those without. They found that increased control over education, health, police, and other services help to steer support within communities where it is needed.

A brief survey of current annual reports available from self-governing First Nations also supports the correlation that community-focused activities improve the well-being of citizens. For instance, in its 2016–2017 annual report,³⁵ Westbank First Nation focused on collaborative fiscal policy work. It also focused on joint efforts with various governments in relation to governance, safety and land, and community-focused activities that improved financial

³² "2016 Impact Assessment on Self-Government Agreements" Policy Development and Coordination Branch, Operational Policy Directorate, Crown-Indigenous Relations and Northern Affairs Canada (2016).

³³ Michael J. Chandler and Christopher J. Lalonde, "Cultural Continuity as a Moderator of Suicide Risk Among Canada's First Nations," in *Healing Traditions: The Mental Health of Aboriginal Peoples in Canada*, ed. L. Kirmayer and G. Valaskakis (Vancouver: University of British Columbia Press, 2008), 221-248. <http://web.ubc.ca/~lalonde/manuscripts/2008HealingTraditions.pdf>

³⁴ Chandler and Lalonde, "Cultural Continuity as a Moderator of Suicide Risk Among Canada's First Nations," 239-241.

³⁵ Canada, British Columbia, Westbank First Nation, *Westbank First Nation Annual Report 2016/2017* (Kelowna, 2017), http://www.wfn.ca/docs/2016-17_annual_report_web.pdf. The Government of Canada is involved in the drafting process of the Westbank First Nation annual report.

results. The report provides a snapshot of the positive impacts that self-government agreements can have on members and where efforts are best being placed in implementing these agreements.

The most recent published annual report for the Mi'kmaq Education Agreement in Nova Scotia (2015–2016) highlights nine goals with specific objectives and targets to improve overall primary, secondary, and post-secondary education for agreement member students. This includes support for maintaining and revitalizing language through technology, as well as professional development, assessment tools, and assistance for teachers.³⁶

The *Agreement on Cree Nation Governance*, signed in the summer of 2017, sets out a comprehensive regime of Cree self-governance on land subject to federal jurisdiction under the *James Bay and Northern Quebec Agreement* of 1975, which was the first modern treaty in Canada. Under the Governance Agreement, the Crees of Eeyou Istchee can make laws on a wide variety of local governance issues, including environmental protection and public order and safety, as well as land and resource use and planning.

In August 2017, after 20 years of negotiations, the Government of Canada and 23 Anishinabek First Nations signed a historic self-government agreement on education. The *Anishinabek Nation Education Agreement* is an important step away from the *Indian Act* towards greater self-determination for the participating First Nations. This initiative will allow the Anishinabek to develop culturally-relevant and community-tailored education programs for the benefit of Anishinabek students.



³⁶ Canada, Nova Scotia, Mi'kmaq Kina'matnewey, *Annual Report 2015-2016* (Sydney, 2016), <http://kinu.ca/document/annual-report-2015-2016>, 93-149.

CONCLUSION

Full and fair implementation of modern treaties and self-government agreements supports Canada's commitment to reconciliation with Indigenous peoples. The agreements establish new relationships between Canada and Indigenous agreement holders and require commitment from all parties to advance shared objectives. Through the whole-of-government approach, Canada will continue to advance implementation initiatives and build relationships across government and on a nation-to-nation, government-to-government, and Inuit–Crown basis.

Modern treaties deal with the unfinished business of treaty-making in Canada. These claims generally arise in areas of Canada where Indigenous land rights have not been dealt with by treaty or through other legal means. In these areas, forward-looking agreements are negotiated between an Indigenous group, Canada, and generally a province or territory.

These treaties are grounded in legislation and remain the most comprehensive way of addressing Indigenous rights and title. Achieving more treaties remains a critical factor in achieving lasting certainty and true reconciliation. This includes shared understanding about the ownership, use, and management of land and resources for all parties, and in some instances, provisions related to Indigenous self-government. The rights set out in these treaties receive constitutional protection.

Since 1973, Canada and its negotiation partners have signed 25 comprehensive land claims and 4 self-government agreements. Of the 25 signed agreements, 18 included provisions related to self-government.

These settlements have provided:

- Indigenous ownership over 600,000 km² of land (almost the size of Manitoba);
- Capital transfers of over \$3.2 billion;
- Protection of traditional ways of life, including preservation of languages;
- Access to resource development opportunities;
- Participation in land and resources management decisions;
- Certainty with respect to Indigenous land rights in approximately 40 per cent of Canada's land mass; and
- Associated self-government rights and political recognition.³⁷

To ensure that Canada fully and fairly implements its obligations, major steps have been taken to uphold a whole-of-government approach to the 2015 *Cabinet Directive on the Federal Approach to Modern Treaty Implementation*, including the creation of the Deputy Ministers' Oversight Committee and the Modern Treaty Implementation Office. Each of the initiatives reported on in this report are key components of the whole-of-government approach to implementing modern treaties and self-government agreements.



³⁷ Canada, *Aboriginal Affairs and Northern Development Canada, Comprehensive Claims*. (Ottawa, 2015), <https://www.aadnc-aandc.gc.ca/eng/1100100030577/1100100030578>

An initial survey of existing studies and some Indigenous partners' annual reports suggests improvements in socio-economic conditions for modern treaty peoples and self-governing First Nations. Although there are some reported positive impacts of modern treaties and self-government agreements, significant empirical data that confirms a stronger correlation between the implementation of agreements and positive socio-economic outcomes is still required. We will work with treaty partners on developing indicators and data collection that will provide a more robust understanding of the socio-economic impact of modern treaties and self-governing agreements.

The implementation of the Assessment of Modern Treaty Implications has been initiated and is ongoing. Efforts to monitor and report on the implementation status of Canada's obligations, to co-develop common objectives of modern treaties, and to engage modern treaty and self-government partners on agreement-specific performance measurement frameworks are also ongoing. Measuring results against objectives through performance measurement frameworks will provide all parties with a better understanding of how modern treaties and self-government agreements contribute to improved socio-economic conditions for the modern treaty peoples and self-governing First Nations. This work is progressing.

Since the release of the *Cabinet Directive* in 2015, working relations between Canadian officials and modern treaty and self-government agreement partners have strengthened, including many day-to-day exchanges and senior-level meetings. At the highest level, the Prime Minister has committed to bilateral mechanisms, such as the Inuit–Crown Partnership Committee and the Canada–Modern Treaty and Self-Governing First Nations Forum. These interactions are examples of improving relationships between Canada and Indigenous partners at all levels.



Annex A: List of Modern Treaties

Newfoundland and Labrador

- Labrador Inuit Land Claims Agreement

British Columbia

- Maa-nulth Final Agreement
 - Huu-ay-aht First Nations
 - Ka:'yu:'k't'h'/Che:k:tlles7et'h' First Nations
 - Toquaht
 - Uchucklesacht
 - Ucluelet First Nation
- Nisga'a Final Agreement
- Tla'amin Final Agreement
- Tsawwassen First Nation Final Agreement

Nunavut

- Nunavut Agreement (formerly Nunavut Land Claims Agreements)

Northwest Territories

- Gwich'in Comprehensive Land Claim Agreement
- Sahtu Dene and Métis Comprehensive Land Claim Agreement
- Tlicho Land Claims and Self-Government Agreement
- Inuvialuit Final Agreement

Québec

- James Bay and Northern Québec Agreement
- Northeastern Québec Agreement
- Nunavik Inuit Land Claims Agreement
- Eeyou Marine Region Land Claims Agreement

Yukon

- Yukon First Nations Final Agreements
 - Champagne and Aishihik First Nations
 - First Nation of Nacho Nyak Dun
 - Teslin Tlingit Council
 - Vuntut Gwitchin First Nation
 - Little Salmon/Carmacks First Nation
 - Selkirk First Nation
 - Tr'ondëk Hwëch'in First Nation
 - Ta'an Kwäch'än Council
 - Kluane First Nation
 - Kwanlin Dün First Nation
 - Carcross/Tagish First Nation

Annex B: List of Self-Government Agreements

British Columbia

- Sechelt Indian Band Self-Government Agreement
- Westbank First Nation Self-Government Agreement

Manitoba

- Sioux Valley Dakota Nation Self-Government Agreement

Northwest Territories

- Déline Final Self-Government Agreement

Yukon

- Yukon First Nations Self-Government Agreements
 - Champagne and Aishihik First Nations
 - First Nation of Nacho Nyak Dun
 - Teslin Tlingit Council
 - Vuntut Gwitchin First Nation
 - Little Salmon/Carmacks First Nation
 - Selkirk First Nation
 - Tr'ondëk Hwëch'in First Nation
 - Ta'an Kwäch'än Council
 - Kluane First Nation
 - Kwanlin Dün First Nation
 - Carcross/Tagish First Nation

Annex C: List of Sectoral Agreements

Education Agreements

Nova Scotia

- Mi'kmaq Education Agreement

Ontario

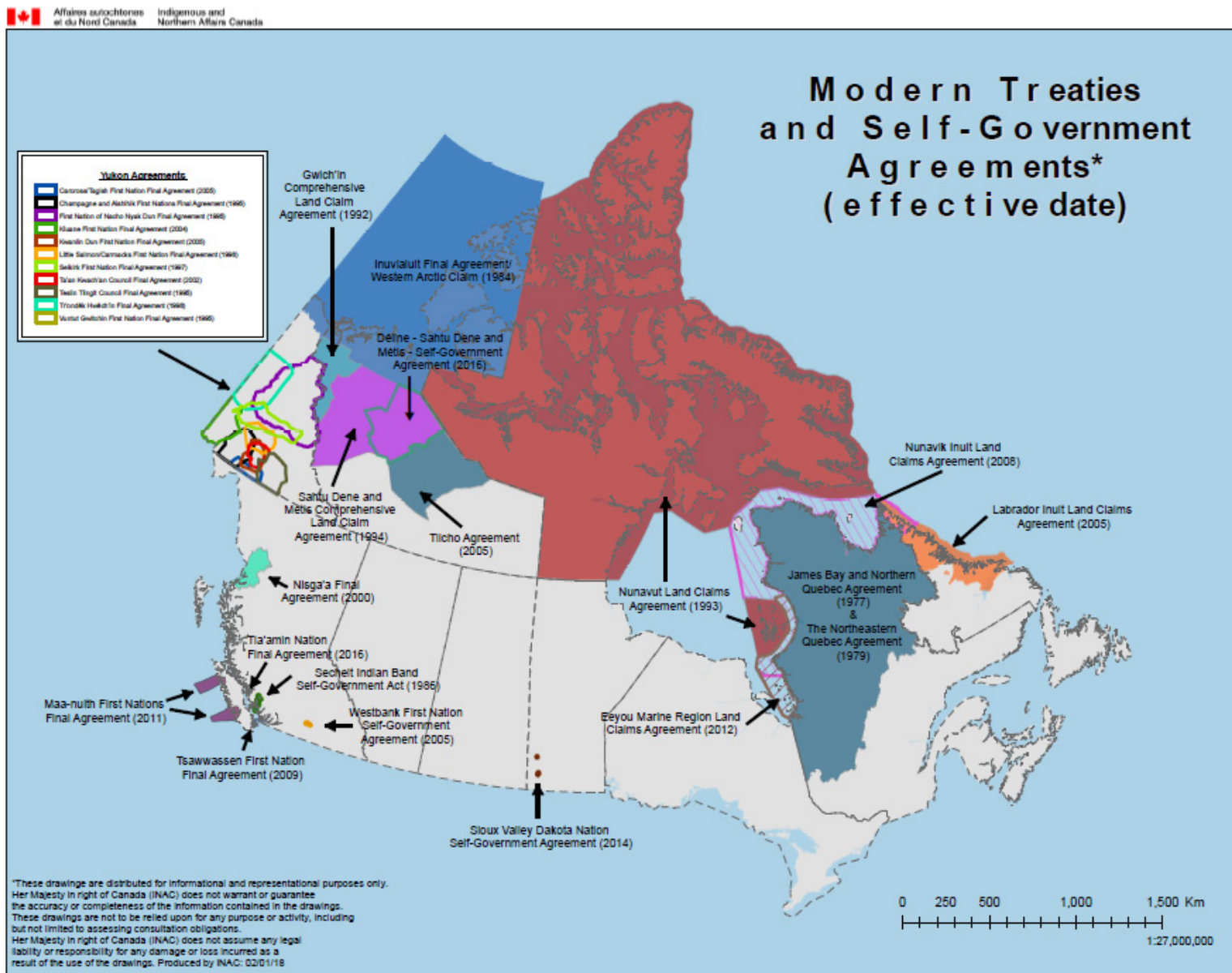
- Anishinabek Nation Education Agreement

Governance Agreement

Québec

- Agreement on Cree Nation Governance

Annex D: Map of Modern Treaties and Self-Governing First Nations



This is the broad area to which a Modern Treaty or Self-Government Agreement applies, often composed of the sum of the specific geographies defined within the treaty. Sometimes known as the "settlement area," this boundary is usually not surveyed but helps to delineate, in a general way, the geographic extent of the rights of the Indigenous beneficiaries of the Agreement. The Overall Treaty Area (OTA) includes both lands that are wholly owned by the Indigenous Treaty Partner, as well as other lands that are subject to the treaty but not wholly owned. These latter lands are not indicated on this map.

Annex E: Member Departments of the Deputy Ministers' Oversight Committee

- Crown–Indigenous Relations and Northern Affairs Canada (Chair)
- Canadian Heritage
- Canadian Environmental Assessment Agency
- Employment and Social Development Canada
- Environment and Climate Change Canada
- Finance Canada
- Fisheries and Oceans Canada
- Global Affairs
- Health Canada
- Indigenous Services Canada
- Justice Canada
- Department of National Defence and the Canadian Armed Forces
- Natural Resources Canada
- Parks Canada
- Privy Council Office
- Public Safety Canada
- Public Services and Procurement Canada
- Transport Canada
- Treasury Board of Canada Secretariat

Annex F: Modern Treaty Common Objectives Areas and Statements

Common Objective Areas

Common Objective Statements

Culture, Language and Heritage	<ul style="list-style-type: none">• Preserve, promote, protect, or enhance Indigenous culture, traditional knowledge, language, identity, or oral history.
Economic Development	<ul style="list-style-type: none">• Enhance the traditional economy of Indigenous peoples.• Achieve self-reliance and promote opportunities to participate in the economy.
Environment	<ul style="list-style-type: none">• Collaboratively manage, assess, protect, preserve, or conserve the environment, land, air, water, and respond to emergencies.
Governance / Relationships	<ul style="list-style-type: none">• While recognizing the role of intergovernmental relationships, manage own affairs, exercise jurisdiction, and develop institutions.
Land and Resources Management	<ul style="list-style-type: none">• Provide certainty and clarity of rights to ownership, management, and use of land and natural resources.• Conserve, collaboratively manage, and sustainably use resources, including wildlife, fish and migratory birds.
Social Development	<ul style="list-style-type: none">• Achieve better outcomes in health, education, housing or standard of living.• Achieve growth and stability in traditional territories.

Annex G: Cabinet Directive on the Federal Approach to Modern Treaty Implementation

This Directive lays out an operational framework for the management of the Crown's modern treaty obligations. It guides federal departments and agencies to fulfill their responsibilities.

1 – Roles and Responsibilities

All Federal Departments and Agencies:

- Will ensure that they are aware of, understand, and fulfill their departments' obligations pursuant to all modern treaties in effect.
- Will ensure that they are aware of, understand and are prepared to fulfill their departments' obligations, prior to approving new modern treaties under negotiation.
- Will develop and deliver activities, programs, policies and legislation in a manner that respects and complies with modern treaty provisions and the rights therein. To this end, departments and agencies will conduct an Assessment of Modern Treaty Implications on all policy, plan and program proposals to Cabinet.
- Will report on the status of their obligations on an annual basis by contributing to an Annual Report, coordinated by AANDC, provided to the Minister of AANDC.
- Will participate in treaty-related governance structures as per the terms of reference of those structures, and as appropriate to the scope of their responsibilities.

Assessment of Modern Treaty Implications

In developing policy, plan and program proposals to Cabinet, departments and agencies are expected to consider the implications of modern treaties on the proposals, and to attest to the compliance of the proposals with the legal obligations contained in modern treaties.

More specifically, departments and agencies will complete an assessment of modern treaty implications of a legislative, policy, plan or program proposal, when:

1. the proposal is submitted to Cabinet for approval; and
2. implementation of the proposal may have implications on modern treaties in effect and the rights enshrined therein.

Cabinet

- Ministers, through meetings of Cabinet committees, will have the shared responsibility of determining if assessments of modern treaty implications have been undertaken on proposals to Cabinet.

Department of Aboriginal Affairs and Northern Development Canada

- AANDC is responsible for federal representation on implementation committees.
- AANDC will coordinate the interdepartmental committee structures put in place to manage the Crown's approach to modern treaties.
- AANDC will administer the Treaty Obligation Monitoring System (TOMS); will be accountable for regularly updating the system to reflect new or revised obligations, and will provide direction to departments and agencies reporting into the system.
- AANDC will provide guidance for other departments and agencies in interpreting modern treaty provisions and their implications for departmental activities; in determining potential implications of modern treaties on departmental policy, programs and legislation; in completing Assessments of Modern Treaty Implications, and in undertaking intergovernmental relationships with Aboriginal signatories.

Central Agencies

- Central agencies, including the Privy Council Office, the Department of Finance and the Treasury Board Secretariat will confirm that the assessment of modern treaty implications has been completed prior to referral of proposals to Cabinet.

Department of Justice

- The Department of Justice will provide advice and guidance to departments and agencies with respect to their legal responsibilities pursuant to modern treaties; potential legal repercussions/risk of contemplated departmental activities; relationship of laws and interpretation of key legal concepts related to modern treaties, such as honour of the Crown.

2 – Deputy Ministers' Oversight Committee

A Deputy Minister-level Oversight Committee will be created and chaired by the Deputy Minister of Aboriginal Affairs and Northern Development Canada. The Oversight Committee's mandate will be to provide executive oversight of the implementation of the Directive, and by extension, of Canada's roles and responsibilities under modern treaties. This mandate will encompass:

- Program and policy direction to departments in fulfilling the Canada's responsibilities under modern treaties;
- Decision-making (and dispute resolution), as necessary, when cross-cutting issues arise that require senior executive intervention;
- Coordination of the federal approach to broad, cross-cutting obligations;
- Oversight of monitoring and reporting and performance measurement;
- Meeting with Aboriginal and other treaty partners as appropriate and as prescribed in the committee terms of reference.

3 – Modern Treaty Implementation Office

A Modern Treaty Implementation Office will be established in AANDC to provide ongoing coordination and oversight of Canada's modern treaty obligations, and to support the mandate of the Deputy Ministers' Oversight Committee. The Office's mandate will be two-fold:

- The Office will work with departments to establish ongoing oversight and accountability through the development and implementation of a performance measurement framework, the development and administration of monitoring and reporting tools, the coordination of departmental input into these tools, and the development of an annual report provided to the Minister of AANDC.
- The Office will provide interdepartmental coordination by serving a liaison function between implementation committees, regional and federal officials-level interdepartmental Caucuses, Federal Steering Committee and the Deputy Ministers' Oversight Committee. Further, the Office will provide a secretariat function for interdepartmental committees and will coordinate issues management across departments.

4 – Evaluation of the Directive

Within five years of the implementation of the Directive, AANDC will conduct an evaluation to assess the effectiveness of the Directive in meeting its stated objectives; to assess the ongoing need for the Directive, and to determine if changes to the Directive and its component tools and structures should be pursued.

Annex H: Statement of Principles on the Federal Approach to Modern Treaty Implementation

This statement of principles is intended to provide guidance to the Crown in right of Canada on the approach to modern treaty implementation to which it should aspire. Working towards such an approach will help to promote reconciliation with Indigenous peoples. Nothing in this statement is intended to restrict the positions of any treaty party on the principles that govern treaty interpretation, or implementation, as a legal matter, nor on the legal nature and scope of underlying treaty rights.

1 – Modern treaties are a key component of Canadian nation-building

Modern treaties are a key component of Canadian nation-building. They promote strong and sustainable Aboriginal communities, and create enduring intergovernmental relationships between treaty partners. Further, modern treaties establish certainty with respect to the ownership and management of lands and resources, create a stable climate for investment, and promote broader economic and policy objectives to the benefit of all Canadians. Many modern treaties also establish and provide certainty with respect to self-government, laying out Aboriginal groups' law-making powers and equipping them to develop and deliver programs and services that are tailored to the unique needs of their communities.

2 – Modern treaties are reconciliation in action

The Supreme Court of Canada wrote that treaties serve to reconcile the prior occupation of North America by Aboriginal peoples with the assertion of Crown sovereignty. Treaty rights are recognized and affirmed by section 35 of the *Constitution Act, 1982*. Treaties establish a mutually agreed-on and enduring framework for reconciliation and ongoing relationships between the Crown and Aboriginal people.

Reconciliation frames the Crown's actions in relation to section 35 rights and informs the Crown's broader relationship with Aboriginal peoples. Canada's approach to reconciliation is informed by legal principles articulated by the courts and by negotiation and dialogue with Aboriginal peoples and provincial and territorial governments.

3 – Modern treaty implementation is an ongoing process

Modern treaties require ongoing implementation of the obligations therein.

4 – The implementation of modern treaties must reflect the agreements entered into

Canada's approach to implementing modern treaties must be informed by the text of the particular treaty and by implementation documents entered into by the parties from time to time.

Canada's approach to funding treaty partners for the purposes of treaty implementation must be informed by the text of the particular treaty and by financial agreements entered into by the parties from time to time.

5 – Modern treaties must be implemented in a manner that upholds the honour of the Crown

The honour of the Crown is at stake in Canada's approach to implementing its modern treaty obligations. It speaks to *how* obligations of the Crown must be fulfilled. The honour of the Crown requires the Crown and its departments, agencies and officials act with honour, integrity and fairness in all its dealing with Aboriginal peoples. The Crown must act diligently to fulfill its obligations in accordance with the terms of the modern treaties. Modern treaty provisions are to be interpreted in a reasonable and purposive manner that requires giving effect to the common intention of the parties at the time the treaties took form.

6 – Aboriginal and treaty rights are constitutionally protected

Modern treaties are implemented by legislation giving the treaties the force of law. Modern treaty rights are recognized and affirmed by section 35(1) of the *Constitution Act, 1982*. The *Constitution Act, 1982* offers a strong measure of protection for section 35 rights including those enshrined in modern treaties.

7 – The implementation of modern treaties supports a set of broad objectives

Through the implementation of modern treaties, Canada supports a set of broad objectives that it shares with its Aboriginal treaty partners, including the promotion of social, economic, and cultural well-being of Aboriginal peoples; and contribution to the development of prosperous and sustainable Aboriginal communities in Canada. Further, individual modern treaties often articulate shared objectives specific to the unique priorities and circumstances of the Aboriginal signatory. Canada supports these broad objectives, and is committed to collaborating with its treaty partners to work towards them through the negotiation and implementation of treaties that contain mutually acceptable, clearly defined obligations, and through other measures.

8 – The implementation of modern treaties is a shared responsibility

Federal, provincial/territorial and Aboriginal treaty partners each have implementation obligations pursuant to modern treaties. Each party is to diligently meet its obligations.

9 – The Crown as a whole is accountable for its obligations

Modern treaties are entered into on behalf of the Crown as a whole. Consequently, the Crown in right of Canada is accountable for the decisions and actions taken to implement its obligations therein as laid out in the treaty.

Therefore it is important for every federal department and agency to be aware of and to play its proper role in fulfilling those modern treaty obligations of the federal Crown which apply to it.

10 – All federal departments and agencies will conduct their business in a manner that is consistent with Canada's modern treaty obligations

Federal departments and agencies will carry out all functions in line with their mandates, including the development and delivery of programs, services, policy and legislation, in a manner consistent with modern treaty obligations and the evolving legal framework.

11 – A whole-of-Government approach to modern treaty implementation is required

In order to manage the responsibilities of the Crown in right of Canada, the federal government will continue to work to develop effective tools and systems for raising awareness, monitoring and reporting on modern treaty compliance, establishing senior-level oversight, and establishing a strong accountability framework across federal departments and agencies.

12 – Effective intergovernmental relationships are vital to the success of modern treaties

Modern treaties foster mutually respectful, long-term relationships between the treaty signatories. In order for modern treaties to be successfully negotiated and implemented, and to contribute to their objectives, the parties need to commit to working together in an open dialogue. Canada is committed to continuing these collaborative relationships with its treaty partners.

Where disagreements between treaty partners occur, Canada is committed to resolving them in the most expeditious and cost-effective manner possible, in a non-adversarial, collaborative atmosphere. Where disagreements persist, Canada is committed to pursuing their resolution through the use of the dispute resolution mechanisms, as laid out in the treaties.

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