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Modern Treaties, Lands and Resources in Canada

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Overview

- Modern Treaties and Lands and Resources
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  - Key players
  - Governance
  - Core Terms
  - Examples of Provisions
- Differences between North and South in Canada
- Environmental Assessment in the North
- Principles of Accessing and Using Modern Treaty Lands
- Challenges
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Modern Treaties and Lands and Resources

A primary goal of modern Comprehensive Land Claims Agreements are:

- Articulating Aboriginal rights;
- Clarifying the scope of those treaty rights; and
- Developing a common understanding of the application of those treaty rights.

In particular, modern treaties clarify rights in regards to lands and resources.

Features of Land And Resource Management

Modern treaties across Canada codify:

- Aboriginal authority over treaty lands;
- Who may access, use, and/or develop treaty lands, waters and resources;
- Roles and responsibilities for the Crown, territorial or provincial governments, Industry and implementing bodies; and
- The scope and mandate of environmental assessments and reviews.

Modern treaties are uniquely suited to each treaty group.

Key Players and their Roles

- The Crown (Canada),Departments, Agencies, Crown Corporations
- Territorial or Provincial Government(s)
- Aboriginal Treaty Group(s)
- Private Industry
- Private Citizens

Land and Resources Governance

- Treaties and their associated agreements
- Federal Policies
- Legislation
- Territorial devolution

Core Terms and Definitions

Some important definitions, drawn from modern treaties:

- Resource Management
- Renewable/Non-Renewable Resource
- Surface Rights, Sub-Surface Rights
- Co-Management
- Public Board
- Land Use Plan

Examples of Modern Treaty Land and Resource Provisions

- Yukon Umbrella Final Agreement

5.5.1 *Subject to its Settlement Agreement, each Yukon First Nation, as owner of Settlement Land, may exercise the following powers of management in relation to its settlement land:*

5.5.1.3 *to charge rent or other fees for the use and occupation of its Settlement Land;*

- Inuvialuit Final Agreement

7.(2) *The Inuvialuit shall, by virtue of the Settlement Legislation, be granted title in fee simple absolute to the beds of all lakes, rivers, and other water bodies found in Inuvialuit lands.*

7.(3) *For greater certainty, the Crown shall retain ownerships to all waters in the Inuvialuit Settlement Region.*

- Labrador Inuit Land Claims Agreement

4.6.1 *A Person who wishes to extract, use or dispose of Carving Stone from Labrador Inuit Lands must obtain a permit from the Nunatsiavut Government.*

North versus South

The management of land and resources in treaty regions varies between the North and South. Common to both, however, is the National Energy Board.

South of 60

- Canadian Environmental Assessment Agency
- Canadian Nuclear Safety Commission

North of 60

- Boards, Committees, Panels

Environmental Assessment in the North

Environmental assessment is a planning/decision making process to predict environmental effects of proposed initiatives.

- Minimize adverse environmental effects before they occur.
- Incorporate environmental factors into decision making.

Socio-economic assessment is a process that identifies the potential effects of proposed activities

- Conducted to ensure that potential projects do not undermine the social systems of individuals and communities

Principles of Accessing and Using Treaty Lands

Accessing and using treaty lands

- ...when you're a public stakeholder;
- ...when you're Government; and
- ...if you're a member of Industry.

Challenges

The creation of modern treaties has challenged the treaty relationship in new ways such as, but not limited to:

- Working through litigation;
- Different interpretations of treaty provisions; and
- “We’ve never done this before.”

Useful Tools for Federal Civil Servants

Tools that support federal officials when dealing with lands and resources in a modern treaty context:

- **The Treaty and its associated agreements;**
- **Your colleagues; and**
- **Legal Opinions.**

Final Thoughts

- It’s the obligation of government, industry and the public to understand and respect land claim and self-government agreements.

- The treaty relationship is important. Relationships are the core of modern treaty implementation and will help in times of conflict or disagreement. Be respectful.