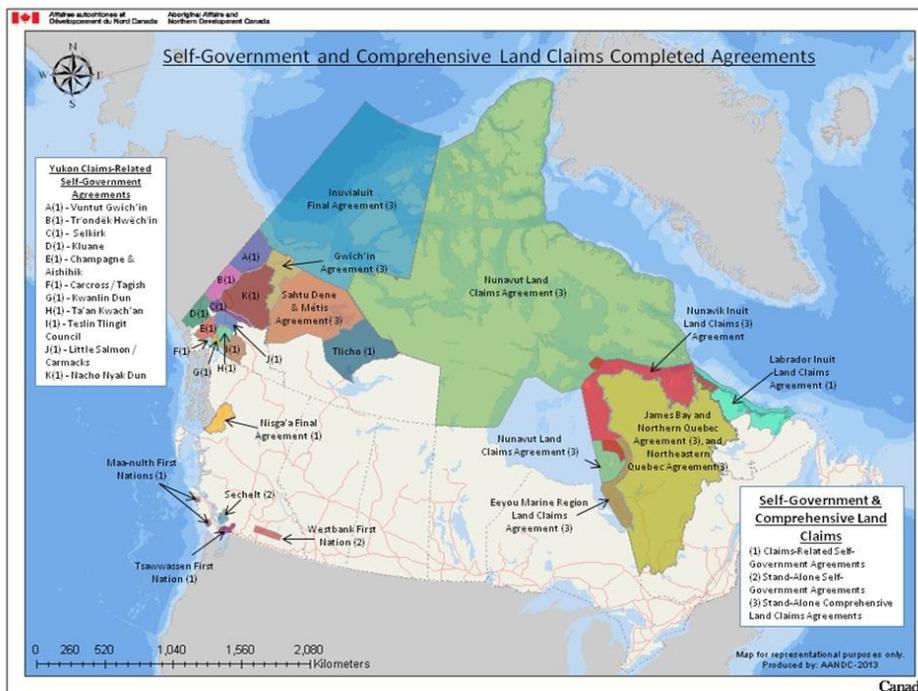


## Natalie Neville: Director, Implementation Branch, AANDC

### Overview of Modern Treaties

- There are 26 comprehensive land claims and self-government agreements in Canada that have been implemented since the announcement of the Government of Canada's Comprehensive Land Claims policy in 1973 and the establishment of the B.C. Treaty Process in 1992. Modern treaties cover over 40% of Canada's land mass.
- Modern treaties provide ownership, use and management over lands and natural resources for Aboriginal groups for a clearly defined package of rights and benefits agreed to in the Settlement Agreement. These rights and benefits are legally protected under Section 35 of the *Constitution Act, 1982*.
- Common goals of comprehensive land claims and self-government agreements in Canada are to:
  - Promote strong and self-reliant Aboriginal communities;
  - Establish certainty and clarity over ownership and management of lands and resources;
  - Contribute to creating a positive environment for investment and the development of Aboriginal businesses (Airlines, Commercial leasing, fisheries, Construction, etc)
  - Enable Aboriginal groups to position themselves to take advantage of resource development (economic measures such as impact and benefit agreements, training and procurement provisions)
  - Ensure a meaningful, effective voice in land and resource management and decision making (land use plans, heritage co-management, parks co-management, etc)
  - Contribute to the protection of the cultures of Aboriginal signatories
- The signatories to a modern treaty include the Aboriginal group, the federal government and the relevant province/territory. The James Bay and Northern Quebec Agreement is an exception to this because there are seven signatories on the Agreement.
- Each modern treaty covers a multitude of subjects and touches on the jurisdictions of three levels of government. Each brings different views, perspectives and priorities to the table.
- Within the federal government modern treaties impact the mandates of multiple departments and agencies, taking a "whole-of-government" approach to implementation.

### Modern Treaties in Canada



### Diverse Agreements, Diverse Signatories

- Many types of modern treaties have been negotiated to fit the wide variety of geographical contexts, and history of Aboriginal peoples across Canada.

- The different types of agreements highlight the unique needs, priorities and concerns of Aboriginal people across Canada. The languages, cultures, and economic circumstances of Aboriginal groups differ greatly and, as a result, no two agreements are exactly the same.
- Modern treaties have been settled with First Nations, Inuit and Métis and differences exist between Agreements settled in the Northern territories and those settled in the provinces (jurisdictions differ, and different factors are at play, such as devolution in the Northwest Territories).
- In some cases, agreements are with individual Aboriginal organizations (e.g. the Nunatsiavut Government, formerly the Labrador Inuit Association), or aggregates, such as the Yukon Umbrella Agreement (which covers 11 First Nations).

### **Types of Agreements – Comprehensive Land Claims**

- Comprehensive Land Claims Agreements are negotiated in areas of the country where Aboriginal rights and title have not been addressed by treaty or through other legal means. These agreements are modern-day treaties between Aboriginal claimant groups, Canada and the relevant province or territory. While each one is unique, these agreements usually include matters such as:
  - Ownership and use of lands, waters and natural resources, including the subsurface
  - Management of land, waters, and natural resources, including fish and wildlife
  - Harvesting of fish and wildlife
  - Environmental protection and assessment
  - Economic development
  - Employment
  - Government contracting
  - Capital transfers
  - Royalties from resource development
  - Impact Benefit Agreements
  - Parks and conservation areas
  - Social and cultural enhancement
- In many cases, comprehensive land claims also include self-government and public government arrangements (e.g. Nunavut).
  - EXAMPLE – land claim: James Bay and Northern Québec Agreement, Northeastern Québec Agreement, Inuvait Final Agreement, Gwich'in Comprehensive Land Claim Agreement, Sahtu Dene Métis Comprehensive Land Claim, Nunavik Inuit Land Claims Agreement, Eeyou Marine Region Agreement
  - EXAMPLE – land claim with self-government: Yukon Umbrella Final Agreements, T'licho Final Agreement, Labrador Inuit Land Claims Agreement, Nisga'a Final Agreement, Tsawwassen First Nation Final Agreement, Maa-nulth Final Agreement

### **Self Government Agreements**

There are two types of self government agreements:

- **1. The Stand Alone Self Government Agreement:**
  - Sets out arrangements for Aboriginal Governments to:
    - ☞ Govern their internal affairs
    - ☞ Adopt greater responsibility and control over decision making
    - ☞ Assume law-making authority over a comprehensive range of jurisdictions (including governance, social and economic development, education, health, lands and more)
  - Include Fiscal Financing Agreements (FFA) or Financial Transfer Agreements (FTA) that state which areas the Aboriginal Government can draw down program and service delivery from either the federal and/or provincial/territorial governments
  - Example: Westbank First Nation Self-Government Agreement
- **2. The Sectoral Self-Government Agreement:**
  - Sectoral Self-Government Agreements allow Aboriginal groups to draw down on only one or two areas of jurisdiction from the provincial/territorial level, which provides them with greater autonomy over decision making
  - Example: An Agreement with Respect to Mi'kmaq Education in Nova Scotia

### **The Implementation Plan/Contract**

- The Implementation Plan/Contract is an accompanying document to the settlement agreement.
- It acts as a 'how to guide' for implementing treaty obligations, identifying activities, timeframes, responsible parties, and resources that were agreed upon to give effect to the agreement.
- Typically effective for a 10-year period, and in Year 8 of implementation the parties begin the process of renewing the Plan for the subsequent planning period.

- Examples of current and upcoming Implementation Plan/Contract renewal processes include Gwich'in, Sahtu and Dene Métis, Tli'cho, and Labrador Inuit Land Claims Agreement.
- The Inuvialuit Final Agreement does not have an Implementation Plan, but it is currently undergoing discussions to renew funding for the treaty partners and the Boards.

### **The Implementation Committee/Panel**

- The Implementation Committee/Panel is mandated in the Agreement and consists of representatives from each signatory party.
- It is used as a forum for relationship building, joint priority setting, overseeing the implementation of the treaty and is the first step in resolving disputes.
- Normally meet 2-4 times a year.
- Yukon Umbrella Agreements are an exception because they do not have an Implementation Committee organized by the signatory Parties; rather, there is an informal Implementation Working Group.
- The Inuvialuit Final Agreement is also an exception, as the land claim predates the legal requirement for an Implementation Plan.

### **Funding Modern Treaties**

- A key part of implementation, this provides grants and contribution funding to Aboriginal governments, treaty representatives, and implementing bodies. This varies according to the schedules negotiated in the Agreement and Implementation Plans.
- Some examples include:
  - Pre-Effective Date funding
  - The Anniversary Payment (Capital Transfer Payment)
  - One-Time Implementation Payments
  - Ongoing Implementation Payments
  - Fiscal Financing Agreement (FFA) or Fiscal Transfer Agreement (FTA)
  - Own Source Revenue (OSR)

### **Boards**

- Provide advice and recommendations and sometimes management of water, fisheries, wildlife/plants. Provide recommendations on environmental assessments and land use planning. Specific boards created under each treaty differ.
- The Nunavut Land Claims Agreement established five Institutions of Public Governance (IPGs) which oversee the management of lands, water, wildlife, and review, evaluate, and monitor development activities.
- The Nunavik Inuit Land Claims Agreement established three Institutions of Public Government which oversee management of lands, wildlife, as well as review, evaluate and monitor development activities in the Nunavik Marine Region.
- The Labrador Inuit Land Claims Agreement (LILCA) is unusual because the funding for the Boards comes from three parties: the Government of Canada, Government of Newfoundland and Labrador, and the Nunatsiavut Government each provide 1/3 of the implementation funding.
- For a variety of reasons, in British Columbia, there are no boards.

### **The Importance of Implementing Modern Treaties**

- Modern treaties are an embodiment of the unique historic relationship between the Crown and Aboriginal peoples. Providing the opportunity to fulfil the Honour of the Crown and the ultimate goal of reconciliation with Aboriginal peoples.
- Treaties fulfill an important role in the economic development of Canada, in terms of ownership over lands and resource development and promoting economic and socio-economic opportunities for Aboriginal communities.
- Modern treaties provide the legal basis for Aboriginal groups to have power over resources and assets and the ability to use the lands and assets as economic levers to respond to socio-economic circumstances within their communities.
- While AANDC is the primary interface, it is important for federal departments to understand their specific obligations in these agreements and ensure those obligations are met.
- One of the challenges of implementation is that the parties sometimes have differing interpretations of treaty provisions. Strengthening our relationships, improving our communications and keeping the dialogue open are critical to avoiding and/or resolving disputes that may arise.