LCAC Modern Treaty Implementation Research Project
Law Theme Overview

Strengthening Our Shared Future – November 2017

LAND CLAIMS **AGREEMENTS COALITION**

Council of Yukon First Nations
Grand Council of the Crees
Gwich'in Tribal Council
Inuvialuit Regional Corp
Kwanlin Dun First Nation
Maa-nulth First Nations
Makivik Corporation
Naskapi Nation
Nisga'a Nation
Nunavut Tunngavik Inc
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The Sahtu Secretariat Incorporated
Tlicho Government
Tsawwassen First Nation
Vuntut Gwitchin

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Project Overview

Modern Treaties Implementation Research:

Strengthening Our Shared Future

There are problems with Modern Treaty implementation. The impacts of these problems are significant and wide-ranging for Indigenous governments and Indigenous communities.

Since 2014, the LCAC Research Group has worked to determine an approach to gathering evidence that will assist policy makers in improving Modern Treaty implementation. During a conference in Ottawa in 2015, representatives of LCAC members; federal, territorial and provincial governments; and academics gathered to identify needs for implementation research. Five theme areas were identified: financing, law, intergovernmental relations, lands, and wellbeing.

This national, five-year, $2.5M project will fund high-quality scholarly research examining how Treaties are implemented in Canada. The project is guided by academics and Indigenous governments, who share co-leadership of research themes.

Carleton University is the academic host organization for the project. Dr. Stephanie Irlbacher-Fox is the Principal Investigator and Project Director.

ABOUT THE CO-LEADS

- Janna Promislow is an Associate Professor in the Faculty of Law, Thompson Rivers University. Her teaching experience and research interests encompass constitutional and administrative law, Aboriginal rights, colonial legal history, indigenous-settler relations, natural resources law and legal pluralism.

- Jessica Orkin is legal counsel to the Grand Council of the Crees (Eeyou Istchee), and a partner at Goldblatt Partners LLP in Toronto. She has a broad litigation practice including criminal, civil and administrative law matters, with an emphasis on Aboriginal rights, constitutional, and access to information matters, and represents the Grand Council of the Crees (Eeyou Istchee) within the Land Claims Agreements Coalition.

THEME OVERVIEW

- There is a deep asymmetry between Indigenous and state laws in Canada that modern treaties have not remedied. This asymmetry does not allow for treaties to fulfil their promise of renewing or implementing an equality between nations, nor does it permit the vision of Canada as a legally pluralistic state to be properly achieved.
- The objective of this research theme is to foster research that improves this state of affairs by helping to dislodge the domination of state law over treaty jurisdictions and Indigenous legal systems.

THEME OVERVIEW (cont'd)

To begin our work, we have defined 3 areas of inquiry:

1) **Indigenous law in modern treaty contexts**

- While there are many projects across the country aimed at developing frameworks and substantive articulations of Indigenous laws, to our knowledge this work has not yet been tackled in relation to modern treaty and self-government frameworks.

2) **Land Claims Agreements Coalition priorities**

- We will work with LCAC members to gather baseline information about LCAC member laws and the current state of law-making by legislative and judicial bodies constituted through land claim agreements, and toidentify Indigenous law research priorities.

3) **Persistent and significant questions of state law**

- In general, Land Claims Agreements are not an easy fit within state public law. We will pursue research on novel questions of state law that modern treaty implementation raises, particularly those identified to us as priorities by LCAC members.

SAMPLE RESEARCH QUESTIONS

Different sample research questions might arise in each of these 3 areas of inquiry:

1) **Indigenous law in modern treaty contexts**

- What are the forms and content of Indigenous law in the context of modern treaties? Is a hybrid of state and Indigenous law inevitable?
- How does jurisdiction confirmed through treaty relate to the exercise and articulation of Indigenous law?
- Should Indigenous law be pursued and implemented through institutions established by Land Claim Agreements? To what extent are such approaches already in place?

2) **Land Claims Agreements Coalition priorities**

- How do LCAC members understand the need for Indigenous law research?
- How do LCAC members understand Indigenous law?
- What do LCAC members expect the articulation and implementation of Indigenous law approaches to achieve?

SAMPLE RESEARCH QUESTIONS (cont'd)

3) **Persistent and significant questions of state law**

- What are critical questions of state law that LCAC members encounter in implementing their agreements?
- For example, what does a treaty commitment to "comparable services" mean? How does this language relate to and draw upon s. 36 of the *Constitution Act, 1982*? The meaning of "comparability" is of critical interest to many LCAC members in relation to fiscal financing negotiations and associated state policy.

PARTICIPATION OF LCAC MEMBERS?

- LCAC Members who have research questions related to this theme in their implementation work can expect to:
  - Contact a Co-Lead to discuss your research interest;
  - Develop a research proposal to describe your project and how it relates to Treaty implementation;
  - Describe in-kind support that your organization could provide;
  - Describe what resources would be needed to undertake the project;
  - Be willing to work with an academic, students and possibly a community based researcher :
  - Be willing to apply for additional funding from other sources;
  - Be willing to share all or some results of the project publicly, including participating in workshops or conferences.

PARTICIPATION OF ACADEMICS AND STUDENTS?

- Academics and students interested in researching questions in this theme can expect to:
  - Contact a Co-Lead to discuss the question and project and/or respond to a call for proposals or studentships;
  - Develop a research proposal and how it relates to Treaty implementation;
  - Describe resources needed to undertake the project;
  - Must work with a community or Indigenous organization and a community based researcher;
  - Be willing to adjust research questions to meaningfully address priorities of the community or organization partner, and develop a research proposal in partnership with the community/organizaiton;
  - Be willing to apply for additional funding from other sources;
  - Be willing to share all or some results of the project publicly, including participating in workshops or conferences;
  - Ensure Indigenous community research protocols are followed and the project is governed by a research agreement with the partner organization.

FOR MORE INFORMATION

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THANK YOU
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THE LAND CLAIM AGREEMENT COALITION (LCAC)

MODERN TREATY IMPLEMENTATION RESEARCH PROJECT

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