



Land Claims Agreements Coalition 2020 Conference:
Making Modern Treaties Work

***Modern Treaty Implementation Review
Commission; where we're at...***

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*Panel on A Modern Treaty
Implementation Review Commission:
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Presentation outline...



- Why?
- The journey...
- The proposal...
- Recent history...

Why?



- 4-10 Declaration (December 2006)

- LCAC 4 Points:

- “4. There must be an independent implementation and review body, separate from the Department of Indian Affairs and Northern Development. This could be the Auditor General's department, or a similar office reporting directly to Parliament. Annual reports will be prepared by this office, in consultation with Groups with land claims agreements.”

The journey...



- May 2016 Proposal: Establishing a “Modern Treaty Implementation Review Commission”
- June 2016 draft of “A Modern Treaties Implementation Review Commission: a proposal to the Government of Canada” reviewed by LCAC Officials
- November 2017 following LCAC Leadership approval, proposal “rolled out” at LCAC Conference

The proposal (1)



Formal proposal
published November
2017

Submitted to the Crown
through the Prime
Minister December 4,
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
Tla'amin Nation
The Sahtu Secretariat Incorporated

Tlcho Government
Tsaawwassen First Nation
Vuntut Gwitchin

c/o NVision Insight Group Inc., 488 Gladstone Ave., Ottawa, ON, K1R 3N8
Tel: (613) 237-3613 Fax: (613) 237-3845 www.landclaimscoalition.ca

The proposal (2)



- 2016 “Proposal” based on review of a number of existing bodies:
 - National Defence & Canadian Forces Ombudsman;
 - Yukon Ombudsman;
 - Office of the Correctional Investigator;
 - Parliamentary Budget Officer;
 - Cree-Naskapi Commission;
 - Commissioner of Official Languages;
 - Office of the Auditor General; and
 - Commissioner of the Environment and Sustainable Development.

The proposal (3)



- Assessment variables:
 - Reporting Relationship
 - Extent of Authority
 - Capacity to Initiate
 - Capacity to Direct
 - Ability to Acquire Requisite Information
 - Source of Creation, Mandate & Authority

The proposal (4)



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- LCAC calls upon Canada to establish an independent Modern Treaties Implementation Review Commission (MTIRC)
 - Primary objectives of MTIRC
 - credibility
 - effectiveness
 - independence

The proposal (5)



- Purpose:
 - Monitor and report to Parliament on the progress of Modern Treaty implementation matters
 - Examine Government actions required by, relating to, or in any way affecting, the implementation of Modern Treaties

The proposal (6)



- **Structure & Reporting:**
 - adjunct Office within the Office of the Auditor General of Canada (OAG)
 - Reporting directly to Parliament
 - Budgetary and administrative support, & expert advice, provided to the Commission through the OAG

The proposal (7)



- Appointments:
 - MTIRC appointments to be consistent with procedures for appointment of other Parliamentary officers in consultation with LCAC members
 - Appointment process must be seen as fair, credible and independent by Modern Treaty citizens, Parliament and Canada
 - MTIRC's mandating legislation to set deadlines for appointments

The proposal (8)



- **Mandate & Authority:**
 - Initiate & conduct reviews on implementation matters
 - Foundation documents for all MIRTC's reviews - the Modern Treaties
 - Reports to Parliament without interference
 - Capacity to initiate a review of any implementation matter
 - Legislation requires federal departments/agencies to provide information (OAG example)
 - Mandating legislation allows for agreements respecting information protocols between Canada and provinces and territories.

The proposal (9)



- Mandate & Authority (continued):
 - MTIRC can report to the Legislative Assembly of a province or territory
 - MTIRC's legislation provides for citizens, members of First Nations or other Aboriginal parties to Modern Treaties to call upon the MTIRC to look into specific implementation issues affecting them

The proposal (10)



- Source of Authority:
 - MTIRC established through separate federal legislation, similarly to the CESD. This legislation to be developed in close collaboration with the LCAC members
 - LCAC members to be consulted prior to making any changes to the mandating legislation

The proposal (11)



- Why tie to OAG?
 - It meets the three primary objectives of MTIRC: credibility, effectiveness, independence
 - It has deep-rooted, long-established relationships & procedures in relation to the Government & Parliament
 - It gets a lot of attention publicly/media
 - Federal DM comparison: “relationship is like that of the dentist and patient; it is not pleasant but it is essential!”

Recent history (1)



- Liberal Platform, 2019

“To ensure that Canada implements the spirit and intent of Treaties, agreements, and other constructive arrangements, we will move forward with a new co-developed distinctions-based process for the ongoing review, maintenance, and enforcement of Canada’s treaty obligations between the Crown and Indigenous communities...”

Recent history (2)



- Liberal Platform, 2019 (continued)...
“This work will be supported by a new National Treaty Commissioner’s Office which will be designed and established with Indigenous partners.”

Recent history (3)



- Since the 2019 election conversations have been worrisome.
- The notion of a Modern Treaty-focused body focussed on the unique issues faced by Modern Treaty holders appears to have been coopted by this “all things to all people” National Commissioner.
- Indeed the December 13, 2019 mandate letter to the Minister of CIRNA confirms this approach.

Last thought ...



- The challenge is now to determine if Canada's mind can be changed to respect the unique relationship between the Crown and Modern Treaty holders!