

## Canada's Collaborative Modern Treaty Implementation Policy

This document is not the final version of the policy and is being provided as an advance copy. The Government of Canada will be finalizing and releasing an official version.

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## PURPOSE

The purpose of this public-facing Collaborative Modern Treaty Implementation Policy is to advance the implementation of modern treaties. This requires increased understanding and awareness of the importance of modern treaties, with the specific goal of advancing a systemic shift in the federal public service's institutional culture, reflected in behaviour, decision-making, and actions at every level of the federal government. This will support the full, effective, and timely implementation of all modern treaties in Canada.

Modern treaties articulate the relationships, overall objectives, and specific obligations and responsibilities that their signatories must achieve and execute. Canada is committed to meet its obligations under modern treaties and to fully embody true nation-to-nation, government-to-government, and Inuit-Crown relationships with Indigenous Modern Treaty Partners.

For Canada to fulfill its obligations under modern treaties, a whole-of-government approach is necessary. Federal public servants, including deputy heads, must understand and meet their obligations, roles, and responsibilities in fulfilling Canada's treaty obligations, advancing treaty objectives, and strengthening intergovernmental relationships. This policy provides direction to public servants in forging these relationships.

This policy will add new implementation tools to complement existing mechanisms and ensure oversight and accountability in carrying out Canada's modern treaty obligations. This will advance the evolution of a transformational shift towards genuine reconciliation.

## 1. CONTEXT

- 1.1. No relationship is more important to Canada than the one with Indigenous peoples. Canada is 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.
- 1.2. Treaties and treaty-making between Indigenous peoples and the Crown are foundational to the establishment of Canada. Treaties, historical<sup>1</sup> and modern, are constitutionally protected under section 35 of the *Constitution Act, 1982*, carry the force of law, and are fundamental elements of Canada's constitutional fabric.
- 1.3. Modern treaties establish a mutually agreed-upon and enduring framework for reconciliation and ongoing relationships between the Crown and Indigenous peoples. Each modern treaty establishes a unique relationship between Indigenous peoples and various levels of government. These relationships provide the foundation for just and ongoing reconciliation, founded in the honour of the Crown, with federal, provincial, and territorial governments. Implementing treaties is a shared responsibility among Canada, Indigenous peoples, provinces, and territories.
- 1.4. Modern treaties, entered into since 1975, are fundamental to advancing the reconciliation of pre-existing Indigenous sovereignty with Crown sovereignty. They promote strong Indigenous peoples, create enduring intergovernmental relationships, improve the lives and livelihoods of Indigenous peoples, and advance national socio-economic objectives that benefit all Canadians.

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<sup>1</sup> These treaties, signed before 1975, are sometimes referred to as "historic treaties".

- 1.5. Modern treaties, as constitutionally protected agreements, are part of the constitutional framework of Canada and represent a distinct expression of reconciliation. Modern treaties are unique agreements that cut across other existing distinctions-based categories (e.g. First Nations, Inuit, and Métis).
- 1.6. Canada enters into modern treaties on behalf of the federal Crown as a whole. Consequently, the implementation of modern treaties requires a whole-of-government approach.
- 1.7. In 2015, Canada attempted to improve the implementation of modern treaties through a Cabinet Directive on the Federal Approach to Modern Treaty Implementation ("*Cabinet Directive*") establishing an operational framework for a whole-of-government approach to implementing modern treaties. The *Cabinet Directive* established tools to enhance awareness, accountability, and oversight including: a Deputy Ministers' Oversight Committee; the Modern Treaty Implementation Office; Assessment of Modern Treaty Implications; and other tools. It was accompanied by a *Statement of Principles on the Federal Approach to Modern Treaty Implementation* ("*Statement of Principles*") to provide guidance to the federal public service on modern treaty implementation.
- 1.8. However, the *Cabinet Directive* does not contain the fulsome direction needed to support a true shift in the Crown-Indigenous Modern Treaty Partner relationship. Indigenous Modern Treaty Partners have not realized the promises in these agreements intended to support stable, thriving cultures and equitable levels of material well-being. These failures create ongoing legal, financial, and reputational risks and damages to Canada.
- 1.9. The institutional legacies of colonialism in Canada have perpetuated systemic racism against Indigenous peoples. Government culture must change on both an individual and systemic level to realize the promises of modern treaties.
- 1.10. It is essential that Canada keep the promises it has made in modern treaties. This commitment is fundamental to righting historical wrongs, rebuilding trust, and maintaining good relationships with Indigenous Modern Treaty Partners. In pursuit of fulfilling modern treaty promises, Canada will not take narrow, technical approaches to modern treaty interpretation and will instead take a broad, purposive approach to achieve the implementation of modern treaties in a way that fulfills the shared intention of the parties and upholds the honour of the Crown.
- 1.11. This policy supports the full, effective, and timely implementation of all modern treaties in Canada by working towards three fundamental pillars:
  - a) Supporting strong Indigenous-Crown intergovernmental relationships;
  - b) Achieving the objectives of modern treaties; and
  - c) Upholding the honour of the Crown through the effective implementation of modern treaties.
- 1.12. This policy, including its annexes, builds on and is supported by the *Cabinet Directive*, the *Statement of Principles*, and the experience gained through implementation of agreements to date by all parties, in order to provide additional direction to federal departments and agencies.

- 1.13. Canada and Indigenous Modern Treaty Partners are committed to working collaboratively to advance the areas for further work outlined within section 8.1 and others as identified by the parties in accordance with section 8.2, and to update this policy to achieve a comprehensive framework for modern treaty implementation. Canada commits to devoting the time, effort, and resources required for this purpose.
- 1.14. This policy is a continually-evolving document that will be updated as new annexes are collaboratively developed as required by section 8.

## 2. INTERPRETATION AND APPLICATION OF THIS POLICY

- 2.1. Throughout this policy, the term “**modern treaty**” refers to a constitutionally-protected agreement entered into between the Crown and an Indigenous people since 1975.
- 2.2. The term “**associated self-government arrangement**” refers to a separate negotiated self-government agreement required by a modern treaty.
- 2.3. The term “**Indigenous Modern Treaty Partner**” refers to an Indigenous people who has concluded a modern treaty.
- 2.4. The term “**deputy head**” has the same meaning as set out in section 2 of the [Public Service Employment Act](#).
- 2.5. This policy, unless otherwise noted, applies to the implementation of modern treaties, including associated self-government arrangements.
- 2.6. All annexes to this policy form and are an integral part of this policy as if they were set out in its body.
- 2.7. This policy applies to all federal government departments, agencies, and agents of the Crown, including Crown representatives, deputy heads, and other federal officials, in respect of the implementation of modern treaties.
- 2.8. This policy is not intended to modify, abrogate, or derogate from modern treaties, or to create legally binding responsibilities. Nothing in this policy should be viewed as a substitute for any existing process, plan, obligation, or objective for the implementation of an individual modern treaty that has been developed by the parties to that arrangement. This policy is meant to strengthen, and not to replace, existing arrangements in respect of the implementation of each modern treaty.
- 2.9. To the extent of any conflict or inconsistency between this policy and other federal policies, this policy will prevail.
- 2.10. Notwithstanding section 2.9, this policy complements, and does not detract from, the co-developed *Inuit Nunangat Policy (2022)*, which guides the design, development and delivery of all new or renewed federal policies, programs, services, and initiatives that apply to Inuit.
- 2.11. This policy will be applied and implemented in good faith by federal government departments, agencies, and agents of the Crown, including Crown representatives, deputy heads, and other federal officials.

### 3. PRINCIPLES GUIDING THE TIMELY, EFFECTIVE, AND FULL IMPLEMENTATION OF MODERN TREATIES

- 3.1. Canada is committed to fully meeting its obligations under modern treaties and to achieving their objectives. This will advance reconciliation with Indigenous peoples through renewed nation-to-nation, government-to-government, and Inuit-Crown relationships based on recognition of Indigenous rights, respect, co-operation, and partnership as the foundation for transformative change that moves away from colonial systems of administration and governance.
- 3.2. Indigenous Modern Treaty Partners have a unique relationship with Canada and hold an integral position within the constitutional framework of Canada.
- 3.3. Modern treaties contain solemn promises that embody a commitment to the ongoing process of reconciliation and are a key component of strengthening Indigenous peoples and Canada as a whole.
- 3.4. Modern treaties are living documents capable of evolving over time. There may be circumstances in which, upon the request of an Indigenous Modern Treaty Partner, the terms of a modern treaty should be amended to reflect advancements in the legal and policy contexts of reconciliation, and new approaches that are adopted in modern treaties.
- 3.5. Modern treaties provide an important framework for the revitalization of Indigenous laws and governance. This includes the ability of Indigenous Modern Treaty Partners to structure and govern themselves according to their culture, values, and heritage and to reflect their evolving needs and priorities.
- 3.6. Each modern treaty reflects the cultural uniqueness of the Indigenous Modern Treaty Partner, and the federal, provincial, and territorial socio-political and economic circumstances prevailing when it was negotiated.
- 3.7. Canada and Indigenous Modern Treaty Partners acknowledge that the *United Nations Declaration on the Rights of Indigenous Peoples* (“UNDRIP”), which the federal [UNDRIP Act](#) affirms as a universal international human rights instrument with application in Canadian law, is an authoritative interpretive source for Canadian law and informs the implementation of modern treaties. The rights and principles affirmed therein constitute minimum standards.
- 3.8. The implementation of modern treaties is embedded in the honour of the Crown, which demands a broad and purposive interpretation of the language of each modern treaty that reflects the commitments and shared intention of the parties.
- 3.9. The implementation of modern treaties must be an ongoing collaborative effort between federal, provincial, territorial, and Indigenous signatories, each of whom have implementation obligations.
- 3.10. Through the implementation of modern treaties, the parties take concrete steps to realize the commitments they have made to promote the social, economic, and cultural well-being of Indigenous Modern Treaty Partners.

- 3.11. Crown-Modern Treaty relationships are not with any single government department or agency, but with the Crown as a whole.
- 3.12. Indigenous Modern Treaty Partners require sufficient fiscal capacity to carry out their responsibilities; exercise their rights, authorities, and jurisdictions; engage with other levels of government; and provide programs and services to their citizens that are reasonably comparable to public services available to other Canadians . Canada is committed to achieving this through a renewed fiscal relationship that includes the implementation of collaboratively developed fiscal methodologies and processes, including Canada’s Collaborative Self-Government Fiscal Policy.

#### 4. ADVANCING OBJECTIVES OF MODERN TREATIES

- 4.1. Canada and Indigenous Modern Treaty Partners are committed to a future where Indigenous peoples have stable governance and social systems and strong economic foundations on which their unique identities and cultures can thrive as they grow and prosper.
- 4.2. The parties recognize that the objectives articulated in modern treaties will not be achieved unless the obligations in modern treaties are fully implemented consistent with their spirit and intent. Canada is committed to taking a broad and purposive approach to modern treaty implementation and working collaboratively with Indigenous Modern Treaty Partners to advance treaty objectives.
- 4.3. Modern treaty implementation requires a whole-of-government approach and the achievement of a number of shared broad objectives, including:
  - a) Strengthened **Indigenous Governance** by recognizing and supporting the role of intergovernmental relationships, jurisdictional responsibilities and authorities of Indigenous Modern Treaty Partners, and the development of Indigenous government institutions.
  - b) Improved management of **Lands and Resources** by recognizing the rights of Indigenous Modern Treaty Partners in the management of land, wildlife, and resources throughout their territories.
  - c) Support for **Culture, Language, and Heritage** by revitalizing, preserving, promoting, protecting, and enhancing Indigenous culture, traditional knowledge, language, identity, and oral history.
  - d) Fostering of **Economic Development Opportunities** to promote Indigenous participation in the broader Canadian and international economy, enhance the economy of Indigenous peoples, and achieve greater self-reliance.
  - e) Improved **Social Development** by achieving better outcomes in health, education, housing, and standards of living, and achieving growth and stability in Indigenous Modern Treaty Partners’ territories.
  - f) Respect for the **Environment** by collaboratively managing and protecting the land, air, water, and ice and responding to environmental emergencies.

- 4.4. Deputy heads will collaborate with Indigenous Modern Treaty Partners to advance these objectives. A measurement strategy, building off of existing efforts, will be developed that meaningfully and reliably tracks progress, and includes qualitative data instruments.

## 5. DIRECTION TO PUBLIC SERVANTS

- 5.1. In order to develop and maintain intergovernmental relationships with Indigenous Modern Treaty Partners in accordance with modern treaties, deputy heads are directed to:
- a) fulfill Canada's modern treaty obligations in a broad and purposive manner to uphold the honour of the Crown;
  - b) recognize Indigenous Modern Treaty Partners as a distinct element within distinctions-based approaches;
  - c) foster cultural competency and support education, knowledge, and understanding of modern treaties within their departments or agencies;
  - d) ensure legislative, policy, and program proposals are consistent with obligations and responsibilities under modern treaties;
  - e) ensure policy and procedural barriers that are inconsistent with modern treaty obligations and objectives are removed, including through amending laws, policies, and operational practices across government; and
  - f) where applicable, support or carry out the collaborative development work articulated in section 8 to build the tools that form essential components of this policy.

## 6. LEGISLATIVE, POLICY, AND PROGRAM DESIGN CONSIDERATIONS

- 6.1. Deputy heads must be aware of and fulfill their role in implementing modern treaties through the development and delivery of programs, services, policies, and legislation in a manner consistent with modern treaty relationships, obligations, and objectives, as well as the evolving legal framework.
- 6.2. To recognize and account for the unique position of Indigenous Modern Treaty Partners, deputy heads will take a considered approach in the design and renewal of proposed federal legislation, policies, and programs that apply to, are intended to benefit, or could otherwise affect Indigenous Modern Treaty Partners and their citizens, members, or beneficiaries. A considered approach means:
- a) Ensuring that federal program terms and conditions, including eligibility, reporting requirements, and funding types, reflect the terms and obligations of modern treaties and the unique circumstances of Indigenous Modern Treaty Partners.
  - b) Engaging relevant Indigenous Modern Treaty Partners in the early stages of legislative, policy, and program renewal or design to ensure that the unique circumstances and authorities of Indigenous Modern Treaty Partners are considered and respected.

- c) Modifying federal legislative, policy, and program design, delivery, and funding approaches to be inclusive of Indigenous Modern Treaty Partners if they have been excluded.

## 7. MONITORING, EVALUATION AND REVIEW

- 7.1. Canada and Indigenous Modern Treaty Partners will jointly and continually monitor and assess the effectiveness and implementation of this policy and ensure that problems and issues are addressed in a timely manner.
- 7.2. Canada and Indigenous Modern Treaty Partners will jointly evaluate this policy every five years.

## 8. COMMITMENTS TO FURTHER WORK ON ESSENTIAL COMPONENTS OF THIS POLICY

- 8.1. Canada and Indigenous Modern Treaty Partners will collaboratively develop additional annexes to set out key processes, tools, and mechanisms, which are critical to the meaningful implementation of modern treaties. These annexes will be essential components of this policy and will form an integral part of it as if they were set out in its body. This policy provides deputy heads with a mandate to work jointly with Indigenous Modern Treaty Partners to complete this work with respect to the following issues to support modern treaty implementation, including:
  - a) Establishing new implementation mechanisms and improving the effectiveness of existing ones. Existing implementation mechanisms, such as Implementation Panels, Committees, and other coordinating entities may not be adequately designed to support timely responses to new or emerging issues relating to modern treaty implementation. Canada will work with Indigenous Modern Treaty Partners to collaboratively strengthen the role and effectiveness of these structures and develop new structures in addition to those outlined in Annex A.
  - b) Developing a strategy for the comprehensive, meaningful, and reliable measurement of progress in the context of implementing the broad objectives individually outlined in each modern treaty. Quantitative indicators are insufficient to measure improvements in governance, restoration of culture, language, and heritage, and other key elements of modern treaty implementation. Canada and Indigenous Modern Treaty Partners will collaboratively develop a measurement strategy, building off of existing efforts, to define and measure progress against the broad objectives of modern treaties.
  - c) Ensuring that Indigenous Modern Treaty Partners are able to fully exercise their jurisdictional powers and manage and administer programs and services to their citizens, members, or beneficiaries as set out in their agreements. Crown-Indigenous Relations and Northern Affairs will ensure coordination among federal departments and agencies to develop clear and robust mechanisms with Indigenous Modern Treaty Partners and with provincial and territorial governments to ensure that barriers to Indigenous Modern Treaty Partners' exercise of jurisdiction and management and administration of programs and services are removed in a timely manner. These mechanisms will provide that Canada will use available levers, and where necessary, develop new mechanisms, to influence provinces or territories, or both, to act to overcome these barriers. A cooperative federal-provincial-territorial-Indigenous approach is necessary to ensure agreements are fully implemented.

- d) Ensuring that Indigenous Modern Treaty Partners without self-government are able to conclude self-government arrangements. Crown-Indigenous Relations and Northern Affairs will co-ordinate with departments to develop clear and robust mechanisms by which Canada will collaboratively work with Indigenous Modern Treaty Partners that do not yet have self-government and with the relevant province or territory, or both, to ensure that barriers to entry into self-government arrangements are resolved in a timely manner. The mechanisms developed will provide that Canada will use available levers, and where necessary, develop new mechanisms, to influence provinces and/or territories in this effort.
- e) Supporting the evolution of modern treaties. Modern treaties are living documents capable of evolving over time. Should an Indigenous Modern Treaty Partner so choose, Canada will support the evolution of modern treaties in various ways. This includes, but is not limited to, introducing robust periodic review and renewal processes designed to facilitate negotiated amendments to modern treaties to reflect advancements in the law, changes in federal policies, recommendations from review processes, and contemporary contexts. Canada will collaboratively work with Indigenous Modern Treaty Partners to develop approaches that support the evolution of agreements
- f) Improving dispute resolution processes. Canada's refusal to reasonably consent to arbitration has presented challenges in addressing disputes effectively, efficiently, and in good faith. Canada will re-examine its approach to dispute resolution and work with Indigenous Modern Treaty Partners to co-develop solutions.
- g) Addressing challenges that prevent boards established by modern treaties from recruiting and retaining qualified nominees to serve as members and chairpersons. These challenges, if not addressed, create significant risks to the ability of Indigenous Modern Treaty Partners to meaningfully participate in the co-management of lands, resources, waters, and wildlife within their territories. Canada will collaboratively work with Indigenous Modern Treaty Partners to identify issues and co-develop solutions in a timely manner.
- h) Establishing effective mechanisms to ensure that all federal departments and agencies are alive to implementation issues and that these issues receive the right level of attention. The tools created through the *Cabinet Directive* – the Deputy Ministers' Oversight Committee, the Modern Treaty Implementation Office, and Assessment of Modern Treaty Implications – need to be improved to ensure departments understand and coordinate their whole-of-government obligations. Canada will collaboratively work with Indigenous Modern Treaty Partners to implement, and where necessary, revise or replace the *Cabinet Directive* in accordance with this policy, evaluations, lessons learned, and the experience of all Modern Treaty Partners to date.
- i) Providing meaningful training to federal government officials to ensure modern treaties are respected and their promises upheld. Deputy heads will undertake further measures to enhance and expand training for all of their federal public servants.
- j) Improving information-sharing with Indigenous Modern Treaty Partners. Canada will collaboratively work with Indigenous Modern Treaty Partners to establish clear and efficient information-sharing mechanisms to improve transparency and minimize information asymmetry.

- k) Canada recognizes that many of the provisions found within this policy, and the mechanisms and tools still to be developed, may be applicable in the implementation context of stand-alone self-government agreements and other constructive arrangements. Canada will collaboratively work with Indigenous Partners to determine how this policy and ancillary mechanisms may apply to, or must be adapted for, self-government agreements and other constructive arrangements, while maintaining recognition of the distinct nature of relationships created by modern treaties.
- 8.2. Canada and Indigenous Modern Treaty Partners may agree to identify other issues to be addressed and develop corresponding tools to resolve them.
  - 8.3. This policy will be amended to incorporate new annexes, processes, tools, and mechanisms, once developed, subject to the internal approvals processes of Canada.

## ANNEX A: INTERGOVERNMENTAL RELATIONSHIPS

### Intergovernmental Leaders' Forum

- A.1. A permanent forum between the Prime Minister, as the head of the Government of Canada, the appropriate Ministers, and leaders of Indigenous Modern Treaty Partners and Self-Governing Indigenous Governments will be established and will meet at least once per year.
- A.2. The purpose of this Intergovernmental Leaders' Forum is to provide an opportunity for direct conversations between leadership on significant matters of concern that may arise in that relationship. Deputy heads will ensure policy support for areas of their responsibility.
- A.3. Canada, Indigenous Modern Treaty Partners, and Self-Governing Indigenous Governments will jointly develop a Terms of Reference for this forum.

### Intergovernmental Policy Circle

- A.4. An Intergovernmental Policy Circle with representatives of Indigenous Modern Treaty Partners and Government of Canada officials will be established.
- A.5. The Intergovernmental Policy Circle will be a senior level forum that provides a venue to work collaboratively on cross-cutting implementation issues, and to discuss federal legislative, policy, and program initiatives. Deputy heads will ensure representation and support for the Intergovernmental Policy Circle.
- A.6. Canada and Indigenous Modern Treaty Partners will jointly develop a Terms of Reference for the Intergovernmental Policy Circle.
- A.7. The Intergovernmental Policy Circle may include representatives of Self-Governing Indigenous Governments where appropriate, and in collaboration with those groups and Indigenous Modern Treaty Partners.
- A.8. Sub-working groups will be established as agreed to between the parties to advance priority areas, including ongoing collaborative development of this policy.
- A.9. For clarity, the Intergovernmental Policy Circle does not replace, nor impede, existing bilateral mechanisms and relationships as provided for in modern treaties.

## ANNEX B: ACCOUNTABILITY AND OVERSIGHT

### Commitment to Develop Independent Oversight Mechanisms

- B.1. Canada and Indigenous Modern Treaty Partners recognize that more work is required to ensure the federal government is held accountable to Parliament for its actions.
- B.2. Recognizing that this is a priority for both Canada and Indigenous Modern Treaty Partners, Canada and Indigenous Modern Treaty Partners will co-develop, within the next six months, recommendations to put in place credible, effective, sustainable, and independent oversight mechanisms to hold the federal government accountable to Parliament.
- B.3. For certainty, recommendations arising from this co-development process will explore a range of options, including the establishment of a Modern Treaty Implementation Review Commission within the Office of the Auditor General, as well as the creation of a separate Agent of Parliament, with the purpose of monitoring and reviewing the federal implementation of modern treaties.