Consolidated Guide to the Government of Canada's Approach to Modern Treaty Negotiations

November, 2013
Reflects status of Canada's Comprehensive Land Claims Policy as of Spring 2013

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Introduction

1. Purpose of the Consolidated Guide

This document represents the Government of Canada's approach to the negotiation of comprehensive land claim agreements (modern treaties) as of Spring 2013. The Guide is meant to inform Canada's approach to the work of the Senior Oversight Committee for Comprehensive Claims (SOC), as well as First Nations that may pursue engagement with Canada. The Guide is not a product of the SOC nor does it reflect any of the work of the SOC.

In 1973, the first federal comprehensive land claim policy was announced with the intention of negotiating the settlement of Aboriginal land claims with Aboriginal people who continue to use and occupy traditional lands, and whose Aboriginal rights and title have not been dealt with by treaty or other lawful means. The policy was reaffirmed with the publication of *In All Fairness: A Native Claims Policy – Comprehensive Claims* (1981).

In 1986, Canada revised the comprehensive land claims policy to provide for a broader scope of negotiable subject matters and presented alternatives to the practice of requiring blanket extinguishment of Aboriginal rights. The revised policy is set out in a publication entitled *Comprehensive Land Claims Policy*.

In 1993, the *Federal Policy for the Settlement of Native Claims* was published which further described the origins of Canada's comprehensive land claims policy, how the policy was being applied, the status of negotiations, and progress on the establishment of a British Columbia treaty process.

Since that time, Canada's policy approach to modern treaty negotiations has undergone significant evolution in response to jurisprudence and through the various negotiation mandates that have been designed to adapt the policy to different circumstances across the country.

This document comprehensively outlines Canada's current approach to the negotiation of modern treaties, reflecting the significant changes that have occurred since publication of the *Comprehensive Land Claims Policy* (1986).

This document recognizes that Canada's policy approach is continuing to evolve as the federal government works with Aboriginal people and provincial and territorial governments in different regions of Canada.

Since 1995, modern treaties may also incorporate self-government arrangements. Consequently, Canada's approach to modern treaty negotiations is grounded in two separate policy documents:

- *Comprehensive Land Claims Policy* (1986); *and*

- *The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government* (1995) (the "Inherent Right Policy").

Consequently, the term "modern treaties" refers both to comprehensive land claim agreements that include self-government as well as to those that do not. (This document does not address agreements that deal solely with self-government.)

It should be noted that this document focuses on the broad policy framework for modern treaty negotiations. It is not intended to encapsulate all the specific issues and the many variations in policy applications that have been incorporated in the more than 25 modern treaties concluded to date. These agreements provide a wide range of precedents which further illustrate flexibility and evolution in Canada's policy approach to comprehensive land claim negotiations.

2. Format of the Consolidated Guide

The Consolidated Guide has three sections:

Section 1 – The Evolving Context for Modern Treaty Negotiations outlines the origin of modern treaty negotiations and the changing legal, constitutional, and operational environment for treaty negotiations.

Section 2 – Canada's Policy Approach to Modern Treaty Negotiations sets out the key elements of Canada's policy framework for participating in modern treaty negotiations. This section follows the format of the *Comprehensive Land Claims Policy* (1986) publication which contains five main sections:

1. Objectives;
2. Scope of Negotiations;
3. Self-Government;
4. Involvement of Provincial and Territorial Governments;
5. Protection of Aboriginal and non-Aboriginal Interests; and

An additional section (6) has been added in this document, entitled Implementation, Amendment and Dispute Resolution.

This document indicates how Canada's policy approach has evolved in relation to each of these elements. All new narrative text is printed in regular font, and text retained from the *Comprehensive Land Claims Policy* (1986) and the *Inherent Right Policy* (1995) is printed in italics with quotation marks.

Section 3 – Modern Treaty Negotiation Processes and Procedures describes the British Columbia Treaty process and the process for modern treaty negotiations in other parts of Canada. It also sets out various procedural matters relating to

modern treaty negotiations. Again, all new narrative is printed in regular font and text retained from the *Comprehensive Land Claims Policy* (1986) and the *Inherent Right Policy* (1995) is printed in italics with quotation marks.

SECTION 1 – The Evolving Context for Modern Treaty Negotiations

1. Canada's Tradition of Treaty Making

The relationships between the Aboriginal people of Canada, the Crown (federal, provincial and territorial governments) and non-Aboriginal Canadians have been and continue to be a significant facet of the history and evolution of Canada. Treaty making has been a key process through which Aboriginal people and the Crown have shaped and managed those relationships.

Treaties of peace and friendship and economic and military alliances with Aboriginal people were critical elements of early colonial settlement in what is now Canada, establishing a framework for coexistence.

In 1763, the British Crown issued a Royal Proclamation prohibiting settlers from purchasing lands which were reserved for First Nations peoples and which had not been acquired by the Crown. The Royal Proclamation provided the foundation for the negotiation of pre-Confederation treaties in Ontario addressing Aboriginal land-related rights and the ongoing relationship between the Crown and Aboriginal people. Following Confederation, the Government of Canada continued the treaty-making process across the Prairies, in northwestern Ontario, and in parts of British Columbia and the present-day Northwest Territories.

Although this historic treaty-making process largely drew to a close in the 1920s, Aboriginal land-related rights remained unaddressed in extensive parts of Canada.

2. Canada's Comprehensive Land Claims Policy

In 1973, in response the Supreme Court of Canada's decision in *Calder et al. v. Attorney-General of British Columbia*, [1973] S.C.R. 313, the Government of Canada resumed the tradition of treaty making with the adoption of a comprehensive land claims policy.

The 1973 comprehensive land claims policy indicated that Canada was prepared to negotiate comprehensive land claims with Aboriginal groups where their traditional and continuing interests in the lands could be established and where their rights and interests had not been addressed by treaty or through other legal means.

South of the 60th parallel, most of the land and resources subject to modern treaty negotiations are under provincial jurisdiction, requiring the participation of provincial governments. North of the 60th parallel, territorial governments also participate in modern treaty negotiations.

From the Government of Canada's perspective, the primary objective of modern treaty negotiations is to achieve certainty of rights to ownership, use and management of lands and resources. Through the negotiation of modern treaties, governments and Aboriginal parties resolve legal uncertainty over Aboriginal land-related rights and claims by clearly and exhaustively setting out the land-related rights and benefits that the Aboriginal party will possess following the coming into effect of the agreement.

In so doing, modern treaties provide certainty of rights, certainty for government management and disposition of lands and resources, certainty for the rights of non-Aboriginal Canadians within the settlement area, as well the potential for greater economic opportunities for Aboriginal people. Modern treaties benefit all Canadians by providing a secure climate for economic and resource development and land use.

Since 1973, Canada and Aboriginal people, with the participation of appropriate provincial and territorial governments, have concluded over 25 comprehensive land claim agreements. These modern treaties include over 90 First Nation and Inuit communities with over 70,000 members. Geographically, they cover over 40% of Canada's land mass, including: northern Québec, Nunavut, most of Yukon and the Northwest Territories, the northern portion of Labrador, and portions of British Columbia.

Presently, comprehensive land claims remain outstanding in approximately 20% of Canada, including most of British Columbia, portions of Yukon and the Northwest Territories, the Ottawa Valley in Ontario, significant portions of Québec, the Maritimes and southern Labrador. The majority of unresolved claims are south of the 60th parallel in provinces.

3. Constitutional and Legal Context

Modern treaty negotiations are informed by the recognition and affirmation of Aboriginal and treaty rights as set out in section 35 of the *Constitution Act, 1982*, as well as by court decisions that have interpreted section 35.

Section 35 (1) of the *Constitution Act, 1982* states: "The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed." In 1983, section 35 was amended to confirm that the treaty rights encompassed by subsection (1) include rights that exist by way of land claims agreements or may be so acquired.

Section 35 (1) provides the constitutional framework acknowledging that, before the arrival of Europeans, Aboriginal people lived on the land in distinctive societies, with their own practices, traditions and cultures.

The inclusion of Section 35(1) in the *Constitution Act, 1982* means that after 1982 the Crown can no longer extinguish Aboriginal or treaty rights unilaterally.

The Supreme Court of Canada has affirmed that the fundamental objective of section 35 is the "reconciliation of Aboriginal peoples and non-Aboriginal peoples and their respective claims, interests and ambitions." Reconciliation is an ongoing process through which Aboriginal people and the Crown establish and maintain a framework for living together.

Since the advent of section 35 in 1982, the Supreme Court of Canada has provided direction on the nature, content and legal tests for Aboriginal rights, including Aboriginal title. Aboriginal rights are collective rights, and they are based on continuity with pre-contact practices, customs and traditions that are integral to the distinctive culture of the group. There is a spectrum of Aboriginal rights and they encompass cultural rights, site-specific rights, such as hunting or fishing rights, and Aboriginal title.

Aboriginal title requires continuity with the exclusive physical occupation of land prior to sovereignty. Aboriginal title is a right to the land itself, including the right to use the lands for non-traditional purposes, although Aboriginal title also entails certain limitations on the use and disposition of the lands.

Which Aboriginal rights are held by a particular Aboriginal group in relation to particular lands depends upon the nature, extent and continuity of that group's presence on those lands, and upon the group's history of traditional practices there.

The courts have also provided guidance on the nature and content of government duties in relation to s.35 rights.

Aboriginal and treaty rights are not absolute and government may infringe these rights. However, the infringement must be justified, which means that it must have a valid legislative objective that is attained in a manner consistent with the honour of the Crown.

As well, government has a duty to consult, and if appropriate, accommodate, when it has knowledge of established or asserted Aboriginal or treaty rights and contemplates conduct which might adversely affect those rights. The specific nature of this duty depends on the circumstances. The duty is grounded in the honour of the Crown.

In making treaties and in interpreting and implementing them, the Crown must act with honour and integrity. Negotiations must be guided by compromise, reasonableness and good faith on all sides. Reconciliation implies adjustment and accommodation by all parties and a balancing of interests.

The Supreme Court has played a major role in clarifying the content and nature of Aboriginal and treaty rights, and it has also provided significant guidance for balancing and reconciling the section 35 rights of Aboriginal groups with the rights and interests of non-Aboriginals and of Canadian society as a whole. However, the Court has indicated that reconciliation in respect to s.35 rights should take place largely outside the courts through essentially political processes of negotiations, guided by the judicial principles that the Court has enunciated. In particular, the Supreme Court has encouraged treaty negotiation as the means of achieving the constitutional objective of reconciliation.

All of this provides an important legal context for modern treaty negotiations and for the implementation of the resulting agreements. Much room remains for policy choices about the relationships between the Crown and Aboriginal people and between Aboriginal people and other Canadians. Parties to negotiations can set aside differing views on the nature scope and location of Aboriginal rights in a particular context and can define the modern expression of s. 35 rights in a treaty.

4. The Inherent Right of Self-Government in Modern Treaty Negotiations

In 1995, the Government of Canada recognized the inherent right of self-government as an existing Aboriginal right within section 35 of the *Constitution Act, 1982*. In so doing, it established a policy framework for the negotiation of practical arrangements for the implementation of self-government within the Canadian constitutional framework.

The *Inherent Right Policy* (1995) provides that self-government arrangements can be negotiated as part of a modern treaty or in other agreements linked to or separate from modern treaties.

The *Inherent Right Policy* (1995) has considerably expanded the scope of modern treaty negotiations to include provision for new Aboriginal government structures, jurisdiction over lands and a wide range of other issues. It has also expanded financial relationships to allow for the provision of programs and services in Aboriginal communities.

The *Inherent Right Policy* (1995) has reinforced the political nature of modern treaty negotiations, with negotiations aimed at providing predictability and clarity for ongoing intergovernmental relationships and the application of laws.

5. Approaches Other Than Modern Treaties for Addressing Section 35 Rights

Modern treaty negotiations have increasingly become one in a continuum of approaches for addressing Aboriginal land-related rights and claims. Canada's

approach to modern treaty negotiations is currently adjusting to the changing legal and operational environment.

5.1 Consultation and Accommodation

The 2004 Supreme Court of Canada decisions in *Haida Nation v. British Columbia (Minister of Forests)* and *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)* determined that the Crown has a duty to consult and, where appropriate, accommodate when contemplating actions which might adversely impact established or asserted Aboriginal rights. This duty may be triggered whether or not modern treaty negotiations are in progress.

Canada has developed guidelines and processes to fulfill the duty to consult [see *Aboriginal Consultation and Accommodation: Updated Guidelines for Federal Officials to Fulfill the Duty to Consult*, March 2011].

http://www.aadnc-aandc.gc.ca/eng/1100100014664/1100100014675

Provincial and territorial governments have also been active in developing processes and measures to address their duties to consult and accommodate in managing lands and resources subject to Aboriginal claims.

Where treaty negotiations are in progress, federal negotiators may work with Aboriginal parties and provincial/territorial governments to develop consultation protocols to coordinate and facilitate other consultations in the future.

5.2 Operational Certainty through Non-Treaty Agreements

Given the length of time required to negotiate modern treaties and the fact that many Aboriginal groups with outstanding land claims are not currently participating in modern treaty negotiations, there has been increasing focus on the use of non-treaty agreements as a means of achieving operational certainty for land and resource management and for development projects during the course of, or in the absence of, treaty negotiations.

Non-treaty agreements usually take the form of a contract providing a predictable environment for resource management or specific development projects. The agreements are concluded without comprehensively addressing the existing or asserted Aboriginal rights or claims.

Current examples of non-treaty agreements include agreements between Aboriginal parties and governments providing for Aboriginal participation in land-use planning and regulatory processes or sharing of revenues from resource development. They also include impact and benefits agreements with resource development companies relating to specific development projects. Canada

and/or the relevant provincial/territorial government may or may not be a party to these agreements.

Consultation processes and accommodation measures with governments, and impact and benefit agreements with private sector developers, provide the opportunity for Aboriginal parties to secure participation in resource management and economic benefits from development projects separate from comprehensive land claim negotiations.

6. Continuing Role of Canada's Policy Frameworks for Modern Treaty Negotiations

Through its comprehensive land claims policies and its *Inherent Right Policy* (1995), Canada has secured the participation of provincial and territorial governments and concluded over 25 modern treaties with Aboriginal people.

Canada remains committed to maintaining effective processes for the negotiation of modern treaties as a means of achieving a just settlement of Aboriginal land claims and an enduring reconciliation of rights.

In participating in modern treaty negotiations, all parties come to the negotiation table with their respective interests, claims, and legal rights. Negotiation toward modern treaties proceeds without prejudice to the legal rights of the parties. Modern treaty negotiations do not focus on defining the legal content or extent of existing Aboriginal rights; rather, they focus on reconciliation of rights and interests by clearly setting out a full range of modern rights and benefits that the Aboriginal party will exercise and enjoy and the obligations that governments will assume when a comprehensive land claims agreement comes into effect.

In addition to being guided by Canada's policy framework, federal negotiators receive mandates from Cabinet providing more specific direction for applying these policies in particular negotiations, having regard to a variety of factors such as the location and size of the claim, the objectives of the Aboriginal party and the relevant provincial and/or territorial governments, as well as the interests of other parties affected by the negotiations. All parties share responsibility for the success or failure of the negotiations.

Canada recognizes that one-size-fits-all approaches to modern treaty negotiations are not feasible. Canada's policy approaches and mandates have demonstrated flexibility in achieving modern treaties adapted to different regions of Canada, the circumstances of specific Aboriginal groups, the circumstances of individual provinces and territories, as well as developments in jurisprudence.

Canada continues to pursue the evolution and responsiveness of its comprehensive claims policies with its negotiation partners, and to recommend more effective policies and processes for addressing section 35 rights.

SECTION 2 – Canada's Policy Approach to Modern Treaty Negotiations

1. Objectives of Modern Treaty Negotiations

Canada remains committed to maintaining effective processes for the negotiation of modern treaties as a means of achieving fair and equitable agreements on Aboriginal land claims and an enduring reconciliation of rights and interests.

Modern treaties establish a mutually agreed-upon and enduring framework for reconciliation and ongoing relationships between the Crown and Aboriginal people. The rights set out in modern treaties are precise, exhaustive, and constitutionally protected. As a result:

- Modern treaties provide lasting certainty regarding the parties' respective rights to ownership, use and management of lands and resources through a fair and final settlement of Aboriginal land claims, and
- Self-government arrangements in modern treaties empower Aboriginal communities to govern their own affairs in a manner which provides predictability and clarity for intergovernmental relations and the application of laws.

"Such agreements must be equitable to Aboriginal people and other Canadians, and must represent final settlements of land claims.

The purpose of comprehensive land claim *agreements is to provide certainty and clarity of rights to ownership and use of land and resources in those areas of Canada where aboriginal title has not been dealt with by treaty or superseded by law. Final settlements must therefore result in certainty and predictability with respect to the use and disposition of lands affected by the settlements. When the agreement comes into effect, certainty will be established as to ownership rights and the application of laws. Predictability will be established for the future as to how the applicable provisions may be changed and in what circumstances.*

However, it is recognized that land claims negotiations are more than real estate transactions. In defining their relationships, aboriginal people and the Government of Canada will want to ensure that the continuing interests of claimants in settlement areas are recognized. This will encourage self-reliance and economic development as well as cultural and social well-being. Land claims negotiations should look to the future and should provide a means whereby Aboriginal groups and the federal government can pursue shared objectives such as self-government and economic development.

The federal government will also seek to ensure consistency between the comprehensive land claims policy and other federal policies for Aboriginal people, for the Northwest Territories, Nunavut *and Yukon and for Canada as a*

whole. In addition, an equitable application of the policy means that the overall fairness of settlements must be ensured."

2. Scope of Negotiations

"As the main purpose of comprehensive land claim negotiations is to clarify rights in relation to the lands and resources, land and resource related topics will provide the principal focus of negotiations. However, claim settlements are also a means whereby Aboriginal groups can obtain some of the tools to capture economic opportunities and establish the means whereby they can make decisions about future renewable resource use. Other issues related to land and renewable resource management, as well as the interests of other affected parties, will also be an integral part of negotiations.

The Government of Canada is therefore prepared to address a range of issues within the framework of the policy. These can include land selection, self-government, environmental management, resource revenue sharing, hunting, fishing and trapping rights, and other topics. The precise choice of topics that the parties agree to discuss in negotiations, and the parameters of these negotiations, will be identified in individual cases in framework agreements, which will be negotiated in the preliminary negotiations."

2.1 Certainty

The *Comprehensive Land Claims Policy* (1986) dealt with this subject under the heading of "Alternatives to Extinguishment", reflecting a major preoccupation of the 1986 policy review. This section has been rewritten to reflect the significant evolution that has occurred in approaches to achieving certainty in modern treaty negotiations.

A fundamental objective of modern treaties is to provide clear and lasting certainty with respect to the ownership, use and management of lands and resources. Where self-government provisions are included in modern treaties, certainty also encompasses requirements for predictability and clarity for ongoing intergovernmental relations and application of laws. "*Treaties are intended to be enduring arrangements; they create mutually binding obligations and commitments which are constitutionally protected."*

Certainty is achieved by ensuring that the provisions of the treaty clearly and exhaustively set out the respective rights and obligations of the treaty parties, and clearly address the rights and interests of other Aboriginal and non-Aboriginal people within the treaty settlement area.

Certainty also requires legal techniques for ensuring that the treaty is legally enforceable and that it can be relied on by all parties as an enduring reconciliation of rights with respect to lands and resources and any other subject

matters dealt with in the treaty and a final resolution of Aboriginal claims with respect to those rights.

Modern treaties include a number of provisions which provide certainty to the Aboriginal party that the agreement is legally enforceable and binding on the Crown and on third parties:

- It is specified that the agreement is a treaty within the meaning of section 35 of the *Constitution Act, 1982*, providing the Aboriginal party with constitutional protection of their rights as set out in the treaty.
- The Government accepts that the treaty is binding on the Crown and agrees that it will recommend to Parliament settlement legislation giving statutory effect to the treaty and making the treaty binding on all persons.
- Provisions of the treaty have priority over federal settlement legislation, and federal settlement legislation takes priority over all other federal legislation.

Similarly, modern treaties must include provisions binding the Aboriginal party to the treaty, confirming their agreement that the treaty constitutes:

- a full statement of the Aboriginal party's exercisable section 35 rights with respect to lands and resources;
- a final settlement of the Aboriginal party's claims regarding such rights, including claims for past infringement of Aboriginal land related rights; and
- a full settlement with respect to any non-land related rights addressed in the treaty.

The legal techniques for achieving this outcome have undergone significant evolution during the course of modern treaty making since 1973.

The legal technique initially used to achieve certainty under the comprehensive land claims policy was borrowed from the approach used in the negotiation and conclusion of historic treaties dealing with Aboriginal land-related rights. In exchange for the rights and benefits set out in the comprehensive land claim agreement, the Aboriginal party agreed to "cede, release and surrender" its Aboriginal rights in and to lands and resources.

In the first modern treaties concluded [The *James Bay and Northern Québec Agreement* of 1975, the *Northeastern Quebec Agreement* of 1978 and the *Inuvialuit Final Agreement* of 1984], the cede, release and surrender provisions were reinforced by a legislative extinguishment of Aboriginal rights. Legislative extinguishment of rights has not been used with any subsequent modern treaty.

The *Comprehensive Land Claims Policy* (1986) identified two legal techniques for achieving certainty:

- the cession and surrender of Aboriginal title throughout the settlement area, or

- the cession and surrender of Aboriginal title in non-reserved areas while allowing any Aboriginal title that exists to continue in specified or reserved areas.

The latter technique was used in comprehensive land claim agreements in Yukon, where First Nations retained any existing Aboriginal title on the treaty settlement lands selected by First Nations.

Since 2000, Canada, in cooperation with Aboriginal parties and participating provincial and territorial governments, has developed and approved alternate legal techniques for achieving certainty that modern treaties constitute full and final resolution of Aboriginal land claims.

These new legal certainty techniques abandon approaches involving the extinguishment or surrender of rights in favor of approaches involving continuation and reconciliation of rights. These new approaches include:

- A modification of rights technique: Continuation of Aboriginal rights as modified in the treaty. This technique was first developed for use in the *Nisga'a Final Agreement* concluded in 2000.

- A non-assertion technique: Commitment that the Aboriginal party will not assert or exercise any Aboriginal rights not set out in the Treaty. This technique was first used in the *Tlicho Agreement* concluded in 2003.

- A variation of the modification of rights technique: The *Eeyou Marine Regional Land Claim Agreement* concluded in 2010 provides that Aboriginal rights are continued to the extent that they are identical to the rights set out in the Agreement or continued as modified to the extent that they differ from the rights set out in the Agreement.

The "modification of rights technique" and the "non-assertion technique" have been used with some refinement in other modern treaty agreements. Exploratory discussions continue on other potential certainty models.

2.2 Certainty With Respect to Non Land-Related Rights

In addition to provisions dealing with lands and resources, modern treaties can also include self-government provisions, which may cover many non land-related rights, such as jurisdiction over education and social and cultural matters.

Two options have been approved for achieving certainty with respect to non land-related Aboriginal rights:

- The treaty can constitute a full settlement with respect to all non land-related rights using one of the certainty techniques described above, or

- The treaty can constitute a full settlement with respect to those non land-related rights addressed in the treaty, with an orderly process for bringing additional non land-related rights into the treaty. Additional non land-related rights may be brought into the treaty by agreement of the parties or in response to a court decision recognizing an additional Aboriginal non land-related right. No additional non land-related right can be exercised until it is incorporated into the treaty, providing a consistent framework for the exercise of rights.

2.3 Incremental Approaches to Achieving Certainty During Treaty Negotiations

Interim Measures

"Appropriate interim measures may be established to protect Aboriginal interests while the claim is being negotiated. These measures will be identified in initial negotiating mandates in specific cases."

Treaty-Related Measures

Canada has established authorities enabling federal negotiators to negotiate certain types of treaty-related measures to promote cooperative relations during treaty negotiations, to remove barriers to progress in negotiations, and to prepare Aboriginal parties to eventually implement treaties.

These measures can encompass funding for Aboriginal participation in land and resource management processes, economic development studies, development of community plans and governance models, and interim protection or acquisition of lands for eventual treaty settlement.

Incremental Treaty Agreements

Incremental treaty agreements can provide for the implementation of certain negotiated elements of a treaty in advance of a final, comprehensive treaty agreement. Such agreements would provide stability for the management of certain lands or resources pending the conclusion of a modern treaty.

Incremental treaty agreements could be implemented as contractual agreements for a specified period or, in some circumstances, as a treaty "installment", which will later be integrated into a modern treaty. While the federal government is supportive of the approach, incremental treaty agreements have typically been led by provincial governments. To date, incremental treaty agreements in British Columbia have been negotiated bilaterally between the province and First Nations. Canada is not a signatory to these agreements and does not contribute direct benefits to the incremental treaty agreements. At the province's request,

Canada has evaluated provincial proposals to cost-share land transfers on a case-by-case basis. Canada may agree to cost-share the land transfers subject to a treaty coming into effect, but will not if the land transfer serves a different purpose. In general, since most incremental treaty agreements are in regards to lands and resources that are within provincial jurisdictions, Canada has not been the lead government in negotiating incremental treaty agreements regarding these matters.

2.4 Non-Treaty Processes for Achieving Operational Certainty

Consultation and accommodation processes and non-treaty agreements can provide "operational" certainty or predictability related to land and resource management and development during the course of modern treaty negotiations or in the absence of treaty negotiations.

Canada is examining linkages between modern treaty negotiations and other processes for addressing Aboriginal land-related rights and claims, with a view to ensuring appropriate coordination and overall equity in its approaches.

2.5 Lands

"The land area claimed by an Aboriginal group will be a key subject for the negotiations." Agreements will clearly identify the geographic area to which the land claim agreement applies.

2.6 Treaty Settlement Lands

Treaty settlement lands selected by Aboriginal parties *"for their continuing use should be traditional terrestrial lands that are currently used and occupied."* Treaties may recognize that the ownership of treaty settlement lands is linked to the Aboriginal party's historic presence within their asserted traditional territory.

Treaties will provide Aboriginal parties with secure title to treaty settlement lands. Treaties will include protections limiting expropriation or seizure of treaty settlement lands.

Self-government treaty provisions set out the jurisdiction of Aboriginal governments over treaty settlement lands and provide clarity with respect to the application of Aboriginal, federal and provincial or territorial laws on the settlement lands.

2.7 Shared Territories/Overlapping Claims

Where more than one Aboriginal group utilizes common areas of lands and resources, Canada expects Aboriginal groups to make all reasonable efforts to

agree on boundaries, resource access and land sharing arrangements to address their respective rights and claims.

Where possible and practical, Canada will provide reasonable assistance to Aboriginal groups to assist them in achieving a resolution of their overlapping claims. Such assistance may include help in obtaining mediation or arbitration services. In British Columbia, the British Columbia Treaty Commission may also have a role in facilitating the resolution of overlapping claims.

While Canada encourages Aboriginal groups to try and resolve their overlapping claims issues, of equal importance is the requirement that Canada and participating provincial or territorial governments concurrently ensure that they fulfill their duty to consult and, where appropriate, accommodate when decisions being made in treaty negotiations with one Aboriginal group may adversely impact the asserted or established Aboriginal or treaty rights of another Aboriginal group. Canada will take appropriate measures to ensure that its consultations are coordinated, timely and meaningful and are conducted in good faith with the intention of substantially addressing the concerns of the Aboriginal groups involved.

2.8 Trans-Boundary Claims

"In cases where a claimant group currently utilizes resources in a province or territory, other than that in which its communities are located, the range of benefits available to the group outside the province or territory of residence will be determined by negotiation with the province or territory involved and with any other Aboriginal groups which can establish competing claims to the land.

The content of such negotiations will be identified in framework agreements."

2.9 Offshore Areas

"In many cases, the areas traditionally used by Aboriginal groups to pursue their way of life include offshore areas. In such cases, negotiations concerning harvesting rights in offshore areas will be conducted, to the extent possible, in accordance with the same principles as those which apply to terrestrial areas. Participation in environmental management regimes and resource revenue-sharing arrangements may also be negotiated with respect to offshore areas."

2.10 Wildlife

"The continuing economic, social and cultural importance of hunting, fishing and trapping for many Aboriginal communities is recognized by the federal government." Accordingly, modern treaties may provide for participation of Aboriginal parties in wildlife management processes.

"Settlements may provide preferential wildlife harvesting rights for beneficiaries on unoccupied Crown lands. There may be exclusive harvesting rights exercised by settlement beneficiaries on selected lands, or preferential rights for particular species throughout the settlement area or within specified parts of the settlement area. In all cases, settlements will clearly define the terms by which beneficiaries will have access to wildlife resources.

Unless otherwise provided for in terms of settlements, laws of general application respecting hunting, fishing and trapping activities, including public safety and conservation measures, will apply to beneficiaries."

2.11 Subsurface Rights

"Subsurface resources fall within either federal or provincial jurisdiction. In areas of federal jurisdiction, subsurface rights on some federal Crown lands and on settlement lands held by beneficiaries may be provided through claim settlements."

Aboriginal ownership of *"subsurface rights close to communities, or in critical wildlife habitat areas, may serve as a way to avoid land-use conflict in key areas. Such subsurface rights may also, in appropriate circumstances, provide beneficiaries with the opportunity and incentives to participate in and benefit from resource development."*

2.12 Resource Revenue Sharing

"Many claimants live in areas of Canada where the development of non-renewable resources is and will remain a major economic activity. In order that beneficiaries may share in the revenues from such developments," where the federal government has responsibility with respect to natural resources it *"is prepared to negotiate resource revenue-sharing arrangements with claimant groups. Such arrangements would provide a percentage of federal royalties derived from the extraction of resources in a settlement area, including offshore areas.*

Resource revenue-sharing arrangements will not imply resource ownership rights, and will not result in the establishment of joint management boards to manage the subsurface and subsea resources. In addition, the federal government will maintain responsibility for resource revenue instruments and must maintain its ability to adjust the fiscal regime.

Resource revenue sharing may be subject to limitations either by:

- *an absolute dollar; or*
- *a time cap of not less than 50 years from the first payment of the royalty share (which arrangement will be renegotiable); or*
- *a reducing percentage of* federal *royalties generated*, if any.

Any negotiations or arrangements between the federal and territorial governments regarding possible resource revenue sharing must respect any arrangements made in this regard through claim settlements. The federal government will consult affected claimant groups regarding the implications for unresolved claims of any proposed federal – territorial arrangements on resource revenues."

2.13 Environmental Management

"Settlements are expected to recognize particular Aboriginal interests in relation to environmental concerns particularly as these concerns relate to wildlife management and the use of water and land. Provision for the exercise of such interests may be afforded through membership on advisory committees, boards and similar bodies or through participation in government bodies that have decision-making powers. Such arrangements must recognize that the government has an overriding obligation to protect the interests of all users, to ensure resource conservation, to respect international agreements, and to manage renewable resources within its jurisdiction."

2.14 Compensation

"Monetary compensation may comprise various forms of capital transfers, including cash, resource revenue sharing, or government bonds.

Where applicable, the amount will be clearly defined in the agreement, and no advance on the monetary compensation components of settlements will be provided before final settlement is reached. The amount of compensation may be adjusted depending upon the other arrangements negotiated in settlement agreements. For example, the amount of cash compensation may be reduced in accordance with arrangements concerning resource revenue sharing. Outstanding debts owed by the claimant group to the federal Crown will be deducted from final settlements."

2.15 Management of Settlement Assets

Aboriginal governments and "*corporate structures provided for in settlements must be designed by claimant groups to provide for the protection and enhancement of settlement assets based on sound management practices and democratic control by the beneficiaries.*"

2.16 Programs

"*Beneficiaries of land claims settlements will retain their eligibility for government programs,* except where an Aboriginal government creates a program which will replace a particular federal government program. *Benefits received under such*

programs will be determined by general program criteria established from time to time."

2.17 Taxation

"Cash compensation payable under a settlement will be regarded as a capital transfer and will be exempt from taxation. However, any income derived from such compensation will be subject to provisions of the Income Tax Act. Other elements of compensation, such as a share of resource revenues, will be subject to prevailing taxation legislation and practices.

Unimproved lands may be exempted from property taxation except in relation to municipal services."

Harmonization of an Aboriginal government's taxation powers under self-government includes the federal and provincial/territorial powers' tax systems. These will be addressed through an intergovernmental tax collection agreement negotiated with the Department of Finance.

2.18 Beneficiaries

"Those who benefit from settlements must be Canadian citizens of Aboriginal ancestry from the settlement area, or their descendents, or other persons as defined by mutually-agreed criteria." During negotiations, individuals may shift their connection from one negotiation process to another. Ultimately, however, beneficiaries cannot participate in or benefit from more than one comprehensive land claims settlement. Final agreements may provide for beneficiaries to transfer between comprehensive land claim agreements after agreements come into effect.

"The definition of beneficiaries will not affect the status of persons pursuant to the Indian Act."

3. Self-Government

3.1 Canada's 1986 Policy Approach to Self-Government

The *Comprehensive Land Claims Policy* (1986) allowed for the negotiation of community-based self-government agreements in conjunction with modern treaty negotiations. However, most aspects of such self-government arrangements were to be set out in separate self-government agreements, rather than being incorporated directly into modern treaties.

The 1986 policy provided that: *"The precise nature of self-government matters to be negotiated will need to be set out in framework agreements. [...] The actual negotiation of self-government institutions will occur pursuant to the agreement.*

Legislation will be required to establish the scope of law-making authority granted to any new institutions and bodies. Finally, as a matter of policy, most aspects of such arrangements will not receive constitutional protection unless a constitutional amendment to this effect is in force."

The approach set out in the 1986 policy document was used as the basis for concluding comprehensive land claim agreements and companion self-government agreements in Yukon.

The1986 policy approach reflected the fact that there were ongoing constitutional discussions considering a specific amendment to the Canadian Constitution to recognize the inherent right of Aboriginal self-government.

3.2 Recognition of the Inherent Right of Self-Government 1995

In 1995, the Government of Canada recognized the inherent right of self-government as an existing right within section 35 of the *Constitution Act, 1982.* Acknowledging that more than a decade of efforts had failed to achieve explicit recognition of self-government through a constitutional amendment, Canada set out an approach to implementation of the inherent right that focused on reaching practical and workable agreements on how self-government will be exercised, rather than trying to define it in abstract terms.

Canada's policy framework for the implementation of the inherent right of self-government is set out in the 1995 publication entitled *Federal Policy Guide: Aboriginal Self-Government; The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government.* The document is commonly referred to as the *Inherent Right Policy* (1995).

The *Inherent Right Policy* (1995) sets out an approach for negotiation of practical self-government arrangements that operate within the framework of the Canadian Constitution. The scope of negotiations under the policy encompasses the acknowledgment of: Aboriginal government structures; jurisdiction or lawmaking powers; provision of programs and services; and fiscal relations and implementation processes.

The *Inherent Right Policy* (1995) allows for a wide range of approaches to self-government adapted to differing circumstances of Aboriginal people throughout Canada. Self-government agreements can focus on the exercise of a single jurisdiction or a comprehensive range of jurisdictions. Agreements on self-government can be given effect through a variety of mechanisms including treaties, legislation, contracts and non-binding memoranda of understanding.

3.3 Inclusion of Self-Government in Comprehensive Land Claim Agreements

The *Inherent Right Policy* (1995) provides for the negotiation of self-government arrangements as part of a modern treaty:

'The Government of Canada is prepared, where other parties agree, to constitutionally protect rights set out in negotiated self-government agreements as treaty rights within the meaning of section 35 of the Constitution Act, 1982. Implementation of the inherent right in this fashion would be a continuation of the historic relationship between Aboriginal peoples and the Crown. Self-government rights could be protected under section 35:

- *in new treaties;*
- *as part of comprehensive land claim agreements; or*
- *as additions to existing treaties.*

Treaties create mutually binding obligations and commitments which are constitutionally protected. Recognizing the solemn and enduring nature of treaty rights, the government believes that the primary criterion for determining whether or not a matter should receive constitutional protection is whether it is a fundamental element of self-government that should bind future generations.

Under this approach, suitable matters for constitutional protection would include:

- *a listing of jurisdictions or authorities by subject matter and related arrangements;*
- *the relationship of Aboriginal laws to federal and provincial laws;*
- *the geographic area within which the Aboriginal government or institution will exercise its jurisdiction or authority, and the people to be affected thereby; and*
- *matters relating to the accountability of the Aboriginal government to its members, in order to establish its legitimacy and the legitimacy of its laws within the Constitution of Canada.*

It follows from this approach that matters in agreements of a technical or temporary nature would not be appropriate matters for constitutional protection as treaty rights. Arrangements that must be adaptable to changing circumstances, such as program and service delivery arrangements, and funding agreements, would therefore not be appropriate subjects for constitutional protection as treaty rights."

The *Inherent Right Policy* (1995) has significantly expanded the scope of negotiations for modern treaties. The policy has demonstrated itself to be a workable framework for the achievement of self-government arrangements in modern treaty negotiations. Most modern treaties concluded since 1995 include self-government arrangements. The policy continues to evolve based on

experience in implementing self-government agreements, including examination of approaches for harmonization of fiscal arrangements.

4. Involvement of Provincial and Territorial Governments

The recognition and affirmation of Aboriginal and Treaty rights in section 35 of the *Constitution Act, 1982* commits federal, provincial and territorial governments to the constitutional objective of reconciliation.

The Government of Canada has a special relationship with Aboriginal people flowing from its constitutional jurisdiction in relation to Indians and lands reserved for Indians. It is a prerogative of the federal Crown to negotiate treaties with Aboriginal people.

The successful negotiation of modern treaties, however, also requires the appropriate participation of affected provincial and territorial governments. The *Comprehensive Land Claims Policy* (1986) states:

"The federal government has jurisdiction in relation to Indians and Indian lands. Most other lands and resources, except in the territories, fall under provincial jurisdiction. For this reason, the participation of provincial governments in the negotiation of claims within their jurisdiction will be strongly encouraged and is essential to any negotiation of settlements involving areas of provincial jurisdiction or provincial lands and resources. Consistent with this approach, the federal government maintains the position that provincial governments should contribute to claim settlements in exchange for the certainty of title they receive through them."

In the territories, where lands and resources were under federal jurisdiction, the 1986 policy provided that: *"Negotiations in these areas will be bilateral in nature leading to federally legislated settlements complemented by territorial legislation as required. Territorial governments will participate fully in the application of land claims policy and in negotiations, under the leadership of the federal government."* Territorial governments have since that time assumed an increasingly independent role in relation to the land and resource components of modern treaty negotiations, particularly where devolution agreements have transferred administration and control of lands and resources to territorial governments.

The *Inherent Right Policy* (1995) reiterates requirements for provincial and territorial government participation where the scope of negotiations could affect matters under their jurisdiction. Constitutional protection of self-government arrangements can only occur with the agreement of affected provincial governments. The *Inherent Right Policy* (1995) addresses requirements for provincial and territorial government participation as follows:

"In light of the wide array of Aboriginal jurisdictions or authorities that may be the subject of negotiations, provincial governments are necessary parties to negotiations and agreements where subject matters being negotiated normally fall within provincial jurisdiction or may have impacts beyond the Aboriginal group or Aboriginal lands in question. Territorial governments should be party to any negotiations and related agreements on implementation of self-government north of the sixtieth parallel."

In British Columbia, modern treaty negotiations are conducted through a tripartite British Columbia Treaty Process established in 1993 by agreement of Canada, the Government of British Columbia and First Nations represented by the First Nations Summit. The treaty process includes an independent British Columbia Treaty Commission to oversee the conduct of negotiations.

In other provinces and in the territories, modern treaty negotiations proceed pursuant to framework agreements approved by Canada, Aboriginal parties and relevant provincial or territorial governments for conduct of particular negotiations.

5. Protection of Aboriginal and Non-Aboriginal Interests

"Settlements must respect the rights and interests of Aboriginal and non-Aboriginal people alike. Through the negotiating process, claimants will have an opportunity to participate actively in the equitable reconciliation of these interests."

5.1 Aboriginal Rights and Interests

The *Comprehensive Land Claims Policy* (1986) was designed to address only those Aboriginal rights that were land-related. At that time, the Policy provided that *"any other [Aboriginal] rights which may exist will remain unaffected by comprehensive land claim agreements".*

With the Government of Canada's recognition of the inherent right of self-government in 1995, the scope of comprehensive land claim negotiations was expanded to include non land-related rights, including jurisdiction over social and cultural matters.

As outlined in the section of this paper dealing with certainty, modern treaties must achieve certainty with respect to all land-related rights, including rights relating to use, ownership, management and jurisdiction over lands. Where modern treaties include self-government and non land-related rights, the agreement must achieve either:

- a full settlement with respect to all non land-related Aboriginal rights, or

- a full settlement with respect to those non land-related rights addressed in the treaty, with an orderly process for bringing additional non land-related rights into the treaty.

5.2 Protection for Rights and Interests of Aboriginal Groups During Negotiations

"Appropriate interim measures may be established to protect Aboriginal interests, while the claim is being negotiated. These measures will be identified in initial negotiating mandates in specific cases."

During the course of modern treaty negotiations, the Crown may also have a duty to consult and, where appropriate, accommodate when the Crown contemplates conduct that might adversely impact potential or established Aboriginal or treaty rights. The Government of Canada's approach to fulfilling its duties to consult and accommodate is set out in its March 2011 publication: *Aboriginal Consultation and Accommodation – Updated Guidelines for Federal Officials to Fulfill the Duty to Consult.*

http://www.aadnc-aandc.gc.ca/eng/1100100014664/1100100014675

5.3 Gender Equality

Section 35 (4) of the *Constitution Act, 1982* provides that Aboriginal and treaty rights recognized and affirmed in section 35 "are guaranteed equally to male and female persons". This guarantee is respected by Canada in both the negotiation and implementation of modern treaties.

5.4 Public and Third-Party Interests

"In attempting to define the rights of Aboriginal people, the Government of Canada does not intend to prejudice the existing rights of others. The general public interest and third-party interests will be respected in the negotiation of claims settlements and, if affected, will be dealt with equitably. Provision must be made for protecting the current interests of non-Aboriginal subsistence users and for the right of the general public to enjoy recreational activities, hunting and fishing on Crown lands, subject to laws of general application.

Information about the general status and progress of negotiations will be made available to the public. In addition, part of the mandate of federal negotiators will be to maintain appropriate and effective communication with those third parties whose interests are directly connected to issues under negotiation."

5.5 Public Access

"Settlements will provide for innocent public access to selected or retained Aboriginal lands and for right-of-way for necessary public purposes. Access rights pertaining to transportation routes in and through the settlement area must also be provided for.

Holders of subsurface rights must have access to settlement lands, where necessary, for the exploration, development and production of resources. The exercise of such rights will be subject to fair compensation as determined through timely negotiations or by arbitration."

6. Implementation, Amendment and Dispute Resolution

6.1 Implementation

The constitutional objective of reconciliation applies both to the negotiation and implementation of modern treaties.

Modern treaties are more than a one-time contractual resolution of Aboriginal claims; they establish the foundation for ongoing relationships between the Crown and Aboriginal parties, creating treaty rights which are constitutionally protected.

Modern treaties are to be interpreted in a reasonable and purposive manner in order to find the common intention of the parties, and with due regard for the terms negotiated by the parties.

The federal government as a whole is responsible for fulfillment of Canada's obligations under modern treaties. All affected government departments and agencies are to carry out treaty obligations in a timely, diligent and coordinated manner, consistent with the honour of the Crown.

6.2 Amendment

Modern treaties will include clear processes for the amendment of these agreements, providing:

"predictability... for the future as to how the applicable provisions may be changed and in what circumstances."

6.3 Dispute Resolution

Modern treaties will include processes for the resolution of conflicts or disputes respecting the interpretation, application or implementation of the agreement. Dispute resolution will normally follow a staged approach encompassing

collaborative negotiations, facilitation or mediation, and arbitration. Use of arbitration should require the consent of all parties to the dispute on matters beyond determination of fact or on technical issues, unless otherwise specified in the treaty.

SECTION 3 – Modern Treaty Negotiation Processes and Procedures

1. Modern Treaty Negotiation Process

1.1 The British Columbia Treaty Process

In 1990, the Governments of Canada and British Columbia, together with the First Nations of British Columbia, established a Claims Task Force to investigate how treaty negotiations might begin in British Columbia and what they should cover. The Claims Task Force made 19 recommendations and suggested a six-stage process for negotiating modern treaties with an independent British Columbia Treaty Commission to oversee and facilitate the process. A tripartite agreement was concluded in 1992; treaty commissioners were first appointed in April 1993; and the treaty process officially began in December 1993.

The treaty process is a six-stage negotiation between the federal government, the provincial government and participating First Nations:

- Stage 1: Statement of intent to negotiate
- Stage 2: Readiness to negotiate
- Stage 3: Negotiation of a framework agreement
- Stage 4: Negotiation of an agreement in principle
- Stage 5: Negotiation to finalize a treaty
- Stage 6: Implementation of the treaty

The treaty negotiation process is open to all First Nations in British Columbia without requirements for submission of statements of claim and supporting materials or for government review and acceptance of claims. The British Columbia Treaty Commission accepts First Nations into the treaty process on the basis of their unresolved claims to section 35 rights, allocates negotiation support funding and monitors the progress of negotiations.

1.2 Process for Modern Treaty Negotiations Outside of British Columbia

The following section sets out general procedures for the initiation and conduct of comprehensive land claim negotiations **outside** of British Columbia.

a. Statement of Claim

"The claims process begins with the preparation of the statement of claim and appropriate supporting materials by the claimant group. A statement of claim should contain the following elements:

- *A statement that the claimant group has not previously adhered to treaty;*

- *A documented statement from the claimant group that it has traditionally used and occupied the territory in question and that this use and occupation continues;*
- *A description of the extent and location of such land use and occupancy, together with a map outlining the approximate boundaries;*
- *Identification of the claimant group including the names of the bands, tribes and communities on whose behalf the claim is being made, the claimant's linguistic and cultural affiliation, and approximate population figures for the claimant group."*

b. Acceptance of Claims

"Upon receipt of a statement of claim, the Minister of Aboriginal Affairs and Northern Development *will review the submission and accompanying documentation and seek advice of the Minister of Justice as to its acceptability according to legal criteria. The claimant group will be advised by the Minister of Aboriginal Affairs and Northern Development, within twelve months, as to whether the claim is accepted or rejected. In the event that a claim is rejected, reasons will be provided in writing to the claimant group."*

c. Preliminary Negotiations

"Negotiations toward the development of a framework agreement will be initiated when the *Minister of Aboriginal Affairs and Northern Development judges the likelihood of successful negotiations to be high, the settlement of claims in the area to be a priority, and where active provincial and territorial involvement may be obtained as necessary. Negotiations will be conducted only with groups duly mandated by the claimants they represent, to the satisfaction of the Minister.*

Senior federal negotiators will be appointed by the Minister from within or outside the public service, as appropriate, and will receive initial negotiating mandates from the federal government.

Bilateral discussions will be held with the provincial or territorial governments concerned regarding their participation in the negotiations."

d. Framework Agreements

"Framework agreements will be negotiated and will determine the scope, process, topics and parameters for negotiation. Approaches to obtaining certainty with respect to lands and resources, self-government, *and the order and timeframe of negotiations will also be provided for in the framework agreements.*

Framework agreements, and substantial changes to them, will be considered and approved by the federal government."

e. Agreements-in-Principle

"Agreements-in-principle will require endorsement by the claimant group. This may be provided by resolutions of assemblies or by band council resolutions.

Agreements-in-principle will also be considered and approved by the federal government."

f. Final Agreements

"Final agreements will require the approval of the federal government and must be formally ratified by the aboriginal claimants."

Settlement legislation will be passed to give effect to the agreements reached."

As set out in the *Inherent Right Policy* (1995):

"The Government of Canada will require evidence that negotiated agreements have been ratified by the Aboriginal group concerned in a way that demonstrates clearly the group's consent. While the specific ratification mechanism can be negotiated, it will have to ensure that all members have an opportunity to participate, that they have all relevant information available, and that the procedures for ratification are transparent and recognized as binding. The ratification mechanism will also have to comply with legal requirements respecting the transfer of assets."

g. Implementation

"Final agreements must be accompanied by implementation plans" to be approved by all parties in conjunction with approval of final agreements. Implementation plans must identify the activities, time frames and resources that have been agreed upon to give effect to the agreement.

All elements of agreements related to land, title, quantum of resources (where applicable) and financial compensation *will be final.*

Provisions relating to management and decision-making agencies will be subject to review from time to time, as agreed, and subject to legislative amendment, where the parties agree that the specific provisions are unworkable, obsolete or no longer desirable.

The negotiating process will take account of the federal regulatory reform policy and Citizens Code of regulatory fairness, and the final agreements and implementation plans will provide for regulatory impact assessments."

The *Inherent Right Policy* (1995) addresses requirements for implementation plans and financial arrangements where self-government is included in comprehensive land claim agreements.

h. Modern Treaties Steering Committee

"A committee composed of Assistant Deputy Ministers from government agencies and departments most involved in claims negotiations will be established. The committee will review and provide advice to Ministers on negotiating mandates, the negotiating process, framework agreements, agreements-in- principal and final agreements." The committee will also review and provide advice to Ministers on modern treaty implementation.

The committee will provide a regular ongoing review, at a senior level, of modern treaty priorities, negotiating strategies, and operational and policy issues that relate to negotiations and implementation, while maintaining an overview of activities across the federal government related to negotiations and implementation. Finally, the committee will provide policy elaboration and advice, monitor progress, and facilitate the participation of all federal departments and agencies as required in negotiation and implementation processes.