

# THE TREATY BASICS

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## LEARN

### BEFORE YOU WATCH THIS SERIES....



**What do I already know about treaties, treaty history, or other treaty events?**

Maybe you something about historic or modern treaties in general, or maybe you know something about your own treaty.

# UNDERSTANDING OUR TREATIES

# TREATY 101

*Treaties have a long history in the land now known as Canada. Many types of treaties were made between Indigenous peoples before settlers arrived. Today, modern treaties are being negotiated across Canada between Indigenous peoples and federal, provincial, and territorial governments.*



## BUT WHAT IS A TREATY? AND WHAT IS THE DIFFERENCE BETWEEN HISTORIC AND MODERN TREATIES?

*In Treaty 101, we will explore these questions and investigate events that led to the first modern treaty in Canada. The Gordon Foundation's Treaty Simulation focuses on modern treaties with First Nations, Inuit and Métis, but we will also look at historic treaties made with First Nations.*

### Let's start with some basics about historic treaties.

Historic treaties were first made between settlers and First Nations to support peace, provide access to resources and to develop economic and military relations. They were then used to define the rights of Indigenous peoples and European newcomers and the use of lands. They were signed from early contact, which was around the 16th century, until 1923 – just over 300 years.

### And what about modern treaties?

Modern treaties are agreements between the Government of Canada, Indigenous peoples and provincial and/or territorial governments. Unlike historic treaties, modern treaties are comprehensive and detailed, covering:

- *Lands*
- *Environmental and social protections*
- *Economic development and financial compensation*
- *Education*
- *Local government*
- *Health and social services*

Modern treaties are negotiated over a period of years rather than days, and all parties are represented by lawyers and professional negotiators. They define rights and obligations on all sides that create long-term, mutually binding commitments.



*There was a plan to get us to where we are, but we changed that plan. We came back and said: 'No, you're not going to do this to us anymore. We're going to get our rights back, we're going to get our ability to think for ourselves again, we're going to create our own opportunities, we're going to create our own jobs.'*

**DANNY GAUDET**

Citizen of Délı̨nę First Nation, Northwest Territories  
Negotiator, Délı̨nę Agreement

*At the end of the day, these agreements came at a high price, but I believe that they provide us with the foundation we need to build a successful future for our citizens and to allow us to take an equal role in Canadian society and a meaningful one in the governance of Canada. This overall is a good thing for all Canadians.*

**ROBIN BRADASCH**

Citizen of Kluane First Nation, Yukon  
Negotiator, Kluane First Nation Final Agreement, Yukon  
Director of Governance, Crown-Indigenous Relations and Northern Affairs

## THE FIRST MODERN TREATY WAS SIGNED IN 1975. LET'S GO BACK A COUPLE HUNDRED YEARS AND INVESTIGATE A TIMELINE OF EVENTS AND ACTIONS THAT LED UP TO THE FIRST MODERN TREATY.

**1763**

In 1763, when Britain became the main European power, King George III put in place the **Royal Proclamation**.

This proclamation laid out protocols for British North America's relations with Indigenous peoples. It was the first public recognition by the Crown of Aboriginal rights to lands and title, acknowledging Aboriginal possession of lands not surrendered to or purchased by the Crown.

The Royal Proclamation of 1763 became the basis for the historical treaty making process. But, the British Government still claimed control over the land, and more than 78,000 settlers had already taken legal possession of land previously occupied by Indigenous peoples.



## STARTING IN THE MID 1800s, A NUMBER OF EVENTS IMPACTED THE GOVERNMENT'S RELATIONSHIP WITH INDIGENOUS PEOPLES.

**1867**

The **Constitution Act of 1867** gave Canada exclusive legislative authority over Indigenous peoples and the land on which they lived.

Also in 1867, the Canadian government put the Indian Act in place. This act only focuses on First Nations in Canada, not Inuit or Métis. It gave the government power over First Nations' identity, politics, education, cultural practices, and other areas. It also codified the 'surrender of Aboriginal title of land' in its treaties.



**1923**

By 1923, 70 historical treaties had been signed between the Crown and 364 First Nations. These treaties were mainly designed to secure land for European settlement.

## BUT, IN 1923, CANADA STOPPED TREATY NEGOTIATIONS...

## 1927

In 1927, Canada passed section 141 of the **Indian Act**, banning Indigenous peoples from pursuing land claims and hiring lawyers. It was now illegal to pursue land claims, and all activity stopped. It was not until 1951 that this section of the Indian Act was removed.

## 1969

In 1969, the federal government attempted to pass the **Statement of the Government of Canada on Indian Policy**, also known as the **White Paper**. This policy was created to eliminate the special status of Indigenous peoples in Canada and assimilate them within the Euro-Canadian society. The White Paper was withdrawn due to massive criticism.

## 1973

In 1973, the Supreme Court of Canada made a decision in the Calder case that would help usher in the era of modern treaties a couple of years later. This case had begun with legal action in the late 1960s by members of the Nisga'a Nation to prove their Aboriginal title had never been lawfully extinguished.

After the initial action was dismissed at trial, an appeal was made to the Supreme Court of Canada. While they did not win the appeal, the Supreme court acknowledged the existence of Aboriginal title – an important step that led to Canada beginning to address land claims.

Later in 1973, the **Comprehensive Land Claims Policy** was introduced. This policy guides the Government of Canada in the negotiation of modern treaties.

### WE WILL LEAVE OUR TREATY JOURNEY IN 1973 FOR NOW...

Tune in to **Treaty 102**, when we will jump back in at 1975, the year the first Modern Treaty was signed. Then, we will look at the events and actions shaping the negotiations and implementation of modern treaties up to today.

*When I was born, I was born into an era in which Indians couldn't vote, Indians couldn't go into bars, Indians could not own real property, Indians were forbidden to advance the land claim agreement, Indians were forbidden by the law to retain legal counsel for the purpose of advancing a land interest.*

**DAVE JOE**

Citizen of Champagne Aishihik First Nations, Yukon  
Negotiator, Yukon Umbrella Final Agreement



# TREATY 102

Welcome to Treaty 102. We are picking up where Treaty 101 left off in the 1970s, then we will jump ahead to what is happening with Modern Treaties today.



**LET'S RECAP. WHAT HAPPENED IN 1973 THAT HELPED USHER IN THE MODERN TREATY ERA?**

**NOW THAT WE ARE ALL CAUGHT UP, WELCOME TO THE MODERN TREATY ERA!**

## 1975

The first modern treaty, the *James Bay and Northern Québec Agreement*, was signed in 1975.

Why did this treaty come about? In the early 1970s, the Government of Québec had begun constructing hydro-electric megaprojects in northern Québec without consulting the Naskapi, Cree and Inuit peoples, whose land was profoundly affected. In 1973, the Cree and Inuit won an injunction to stop construction, which started negotiations. This pattern would be repeated many times in subsequent decades: treaty negotiations triggered by development pressures.

**WHAT DO YOU FIND MOST EXCITING ABOUT MODERN TREATIES? KEEP THOSE IDEAS IN MIND AS WE CONTINUE LEARNING ABOUT MODERN TREATY HISTORY. THERE'S LOTS TO COVER, SO, LET'S JUMP AHEAD TO THE 80s.**

## 1982

In 1982, the *Constitution Act* was passed. This Act moved constitutional authority from British Parliament to Canadian federal and provincial legislatures. Section 35 of the Act also provided important legal protection to treaty and Aboriginal rights.

The Supreme Court of Canada, in the Calder decision, acknowledged the existence of Aboriginal title. After that event, Canada began to address land claims, leading to the development of the *Comprehensive Land Claims Policy*.



*I think for the youth, for them it's about tomorrow. The past is important, of course, and certainly their traditional past is really important. All of that history is necessary to learn, only so we can learn from it to make sure we don't repeat the mistakes of the past. But going forward, the legacy, the constitutional legacy, the cultural ones, that we are leaving for our children and our grandchildren are broad, diverse, comprehensive and innovative. It's never been done before. Even our treaties and agreements on self-government are unique and have never been tested in a constitutional context in Canada. To me that's exciting, and it should be exciting for the*

**DAVE JOE**

Citizen of Champagne Aishihik First Nations, Yukon  
Negotiator, Yukon Umbrella Final Agreement



## JUMPING AHEAD ANOTHER DECADE, AND WE'RE IN THE 90s NOW.

**1995**

In 1995, the *Inherent Right Policy* recognized the right of Indigenous groups to self-govern. It opened conversations on self-government within treaty negotiations. But, the policy was problematic because it said that Canada would not negotiate jurisdiction over some key issues and that inherent rights depended on negotiations with Canada.

## LEAPING AHEAD TO THE 21<sup>ST</sup> CENTURY, A LOT HAS BEEN HAPPENING IN THE 2000s TO SHAPE THE WAY MODERN TREATIES ARE NEGOTIATED AND IMPLEMENTED.

**2013**

In 2013, the *Interim Policy* was formed. It contained new principles regarding modern treaties that were jointly developed by Canada and First Nations, Métis and Inuit leaders. These principles sought to renew Canada's approach to negotiating and implementing modern treaties. This policy has not been finalized yet.



**2015**

In 2015, the Government of Canada adopted the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*.

**2019**

The Government of Canada is also exploring new ways of working with Indigenous peoples towards Indigenous self-determination and the recognition of Indigenous rights. For example, *Recognition of Indigenous Rights and Self-Determination* discussion tables took place in 2019.

OUR TIMELINE HAS CAUGHT UP TO PRESENT DAY. SO, LET'S TALK ABOUT MODERN TREATIES TODAY.

HOW WOULD YOU DEFINE MODERN TREATIES FOR SOMEONE WHO HAS NEVER HEARD OF THEM BEFORE?



A modern treaty is a comprehensive legal document that defines rights and obligations on all sides for various areas. It's organized into chapters such as land and resource management, wildlife, parks and marine areas, and includes a chapter about its implementation.

Modern treaties are also called comprehensive land claims agreements. They are usually signed where Aboriginal title and rights have not been dealt with yet. Modern treaties have been signed by Inuit, First Nations and some Métis. They are negotiated individually and differ from region to region. Each modern treaty represents a people with unique cultural, political and economic priorities.



**ANOTHER QUESTION TO THINK ABOUT: WHY ARE MODERN TREATIES IMPORTANT?**

*For modern treaties, we set our own priorities, we determine what our goals are, we work toward those goals, we have the authority to pass legislation, people have to abide by that legislation. We determine our own destiny. We have the ability to control our own lives every day, as well as our future.*

**KIM SMARCH**

Citizen of Teslin Tlingit, Yukon  
Director of Negotiations and Implementation, Teslin Tlingit Council, Yukon

A modern treaty eliminates the application of the **Indian Act**, replacing it with provisions for governance, taxation and government-to-government relations.



*Modern treaties displaced the Indian Act. It displaced it and said, 'Ok, that doesn't apply here anymore, and we now have self-government here.' And our self-government was designed by our local communities. Our local communities developed their own local constitutions. They ratified those constitutions in a manner that said they would displace the Indian Act and this is our new system of governance that reflects our values, our beliefs, our customs and the way we have always done things. The land claims and self-government agreement, which can be coined as a modern treaty, was far superior, far, far more superior than the Indian Act and its limitations and its inconsistency in law and so forth.*

**ED SCHULTZ**

Citizen of Little Salmon Carmacks First Nation, Yukon  
Senior Analyst, Natural Resources and Environment, Council of Yukon First Nations

*(Involved in implementing the Yukon Umbrella Final Agreement)*

Since 2000, all modern treaties have included self-government provisions. The right of Indigenous peoples to govern themselves is protected by Section 35 of the **Constitution Act, 1982**. Self-government agreements enable modern treaty holders to levy taxes and take responsibility for delivering programs and services, such as health, education, law enforcement and child welfare, in accordance with their culture and values.

Today over 120 comprehensive land claims have been accepted for negotiation. 26 First Nations and Inuit governments and organizations have signed modern treaties with the government of Canada and are now implementing those agreements. Currently, there are 22 self-governing Indigenous groups and two stand-alone self-government agreements on education.



**NOW THAT WE ARE CLEAR ON THE "WHAT IS A MODERN TREATY?" THING, TUNE IN TO TREATY 103, AND WE WILL LOOK AT HOW MODERN TREATIES GET NEGOTIATED AND IMPLEMENTED.**

# UNDERSTANDING OUR TREATIES

## TREATY 103

*Welcome to Treaty 103. We are here to find out how modern treaties are negotiated and implemented. Okay now, where were we? We jumped out of our historical timeline and got into what is happening with modern treaties today. And there is a lot happening, including those 120 comprehensive claims accepted for negotiation to date.*



### But how do these really important modern treaties get negotiated?

Negotiating a modern treaty involves the Government of Canada, the Territorial or Provincial Government, and one or more Indigenous groups. It takes about 15 years on average to negotiate, but there have been improvements to shorten this timeframe.

Let's do a quick throwback to the 70s. Can you name the policy introduced in 1973 that guides the Government of Canada's negotiation of modern treaties? Yep, we are talking about the **Comprehensive Land Claims Policy**. It has been updated several times since 1973, and in 1993, British Columbia created its own treaty process.

The Canadian government currently settles two types of land claims. There are specific claims, which address past issues related to historic treaties not being fulfilled. Then, we have comprehensive land claims. These claims deal with Aboriginal title that has not been addressed by treaty or other legal means.

*A big purpose of a comprehensive land claim agreement is to clarify the land ownership, but also to clarify land use and land access and how resources can be developed.*

**DANIEL T'SELEIE**

Negotiator, K'ahsho Got'ine Self-Government Negotiations,  
Fort Good Hope, Northwest Territories

*Modern treaties are intended to empower First Nations to take their rightful place in Canada. The treaties should provide tools, resources, authorities and recognition that support First Nations to make their own decisions and decide their own fate. I don't think we can ever really be compensated for what we've lost, but I do think that the only people that can determine what our future should be, is our own citizens.*

**ROBIN BRADASCH**

Citizen of Kluane First Nation, Yukon

Negotiator, Kluane First Nation Final Agreement, Yukon

Director of Governance, Crown-Indigenous Relations and Northern Affairs



### Negotiating a modern treaty is a big task with many pieces. Various questions are asked to guide the process:

- What self-government powers will the Indigenous group have and how will those powers fit with the powers of other governments?
- What rights and duties to lands, resources and other areas will the Indigenous group and other governments have?
- What rights and duties will other Canadians have on land the Indigenous group owns?
- How will lands and resources be managed, and by whom?

Modern treaties are negotiated over a period of years rather than days, and all parties are represented by lawyers and professional negotiators. They define rights and obligations on all sides that create long-term, mutually binding commitments.



# WHILE IT IS A BIG TASK, THE MODERN TREATY NEGOTIATION PROCESS IS ALSO VERY SPECIFIC. WE BROKE IT DOWN INTO SEVEN STEPS...

*(Keep in mind that British Columbia has their own process).*

1

**The first step is the Submission of the Claim.** An Indigenous group prepares a description of the land claim, identifying the general geographic area of their traditional territory. In British Columbia, the First Nation submits a statement of intent to negotiate a treaty.

2

**Step two is the Acceptance of the Claim.** The Government of Canada reviews the claim and informs the Indigenous group if it will open negotiations. Note that this step does not occur in BC.

3

**The Framework Agreement happens at step three.** This is the first stage of the actual negotiations, when parties agree on issues to discuss and how to go about that discussion. The parties also set a timeline for reaching an Agreement-in-Principle.

4

**Step 4, the Interim Measures Agreement.** At this stage, parties may agree to temporary measures for the territory while the negotiations are happening. These measures could include interim land withdrawals, pre-screening processes for land, and water and resource management decisions.

5

**On to step 5, the Agreement-in-Principle (AIP).** During this step, parties negotiate all the items in the Framework Agreement from step 3. The negotiations lead to the completion of the Agreement-in-Principle. Completing the AIP is usually the longest part of the negotiation process. The AIP will contain major elements of the Final Agreement, but that's step 6.

6

**Here we are at step 6: The Final Agreement!** The Final Agreement is the outcome of land claim and/or self-government negotiations. At this point, negotiators will resolve any final legal and technical details in the agreement. The Final Agreement must be ratified (approved) by all parties.

7

**Okay, the Final Agreement has been ratified! Now what? Well, we need an Implementation Plan – that is step 7.** Implementation is the process that makes sure the details of the Final Agreement are carried out. An Implementation plan is prepared by the negotiating parties to help guide this process.

*To me, implementation is simply about making the agreements work. It's about the relationship that the parties have, using the agreement as a foundation to do our best to realize and put into place the things that were negotiated. We need to understand it was not possible to get it all right – we did not know everything, so some things worked great and others did not. Implementation is about the parties getting into a room and making sure the things that can happen, do happen, and that the things that are problematic, are worked out.*

**ROBIN BRADASCH**

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**NEGOTIATION ESTABLISHES THE TERMS OF THE RELATIONSHIPS BETWEEN MODERN TREATY PARTIES, AND AFTER A MODERN TREATY IS SIGNED, IMPLEMENTATION MANAGES THOSE RELATIONSHIPS FOREVER.**



## DO YOU KNOW ANYONE WORKING IN IMPLEMENTATION? WHAT IS IMPLEMENTATION ALL ABOUT?

*At the end of the day, implementation is about solutions. It's not about more process, it's not about dragging stuff out. It's the same thing with the treaty – it was about creating solutions that helped your communities. That's the whole reason why any of us are in this, to see real solutions on the ground that improve the lives of our people.*

**BRIAN MACDONALD**

Citizen of Champagne and Aishihik First Nations, Yukon  
Assistant Deputy Minister of Aboriginal Relations, Government of Yukon

**An Implementation Committee is usually in charge of the work.**

They will meet three to four times each year. The committee discusses issues, monitors progress and develops communications and implementation reporting.

*The beginning of implementation, for us, was moving from an Indian Act Band, where we had very few people working, who were just delivering Indian Act Band programs and services to a self-governing First Nation. So, as part of that implementation, all of a sudden you went from five people working as an Indian Act Band to maybe 20 people setting up a Lands and Resources Department, or a Health and Social Department, and even our area of governance for the First Nation. We went from not a lot of government jobs to all of a sudden, our little town was booming with government jobs. So, as part of implementation, there was that setting up of the government, building the government, just to get the people and the positions in place.*

**KIM SMARCH**

Citizen of Teslin Tlingit, Yukon  
Director of Negotiations and Implementation, Teslin Tlingit Council, Yukon

**While implementation work has its high points, it is often said that it is the hardest part of the modern treaty process. There are many challenges involved, and often adjustments must be made.**

When a modern treaty enters the implementation phase, the treaty government begins the long process of merging the obligations from the treaty with the reality on the ground – in the communities. One of the most common implementation problems is lack of resources to implement the obligations progress, and develops communications and implementation reporting. One of the most common implementation problems is lack of resources to implement the obligations.



*This is not a fast process, it takes time, it takes a lot of patience. Quite often, you'll start at one path and you'll have to go over here, then you'll have to go back over there, and you'll have to try something different or take a different approach. Sometimes you have to wait until somebody gets out of a job, so you can figure out to how to solve the problem with a different perspective. There's a lot of different starting and stopping in implementation.*

**BRIAN MACDONALD**

Citizen of Champagne and Aishihik First Nations, Yukon  
Assistant Deputy Minister of Aboriginal Relations, Government of Yukon

*Implementation is ongoing. It doesn't end. They're still implementing confederation, and they will not stop implementing confederation. And for those of us in our communities who by majority decided to go with this framework, we will be implementing our relationship within that confederation perpetually.*

**ED SCHULTZ**

Citizen of Little Salmon Carmacks First Nation, Yukon  
Senior Analyst, Natural Resources and Environment, Council of Yukon First Nations  
*(Involved in implementing the Yukon Umbrella Final Agreement)*

**Implementation is kind of tricky. Since each treaty is different, it is important that the ongoing implementation of modern treaties is done with the "spirit and intent" of the agreement in mind, not just the legal obligation of the parties.**

Unfortunately, information about the intent behind an agreement can be lost over time. Everyone may have different interpretations of the original obligations in the agreement. Ongoing discussion and relationship-building are necessary to ensure proper implementation.

With the challenges of implementation in mind, the Federal Framework for the Management of Modern Treaties, known as the Implementation Management Framework, was created in 2011. This framework helps ensure that Canada fulfills its treaty obligations in a timely manner.

**While Implementation is an ongoing process, this document is not! We are at the end of Treaty 103, which closes our three-part series.**

We took a journey from historical treaties to modern treaties, and now we have completed our quest to learn about the negotiation and implementation of those modern treaties. What happens next in the journey is up to you.

**YOU CAN START BY LEARNING ABOUT YOUR MODERN TREATY AND EVEN GET INVOLVED IN NEGOTIATION OR IMPLEMENTATION WORK YOURSELF!**

