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Développement du Nord Canada

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Reconciliation

- Canada's Constitution recognizes and affirms Aboriginal and treaty rights for Aboriginal peoples (First Nations, Inuit and Metis)
- The Supreme Court of Canada has stated that the underlying objective of the Constitutional provision (section 35) is one of reconciliation:
 - Reconciliation involves the balancing of Aboriginal and treaty rights with broader societal interests;
 - Reconciliation is not a one time event; it is an ongoing process that continues from first contact through the negotiation and implementation of agreements and treaties; and,
 - The honour of the Crown is at stake in all the Crown's dealings with Aboriginal people.

"The fundamental objective of the modern law of aboriginal and treaty rights [in Canada] is the reconciliation of aboriginal peoples and non-aboriginal peoples and their respective claims, interests and ambitions." (Supreme Court of Canada, *Mikisew Cree*, 2005)

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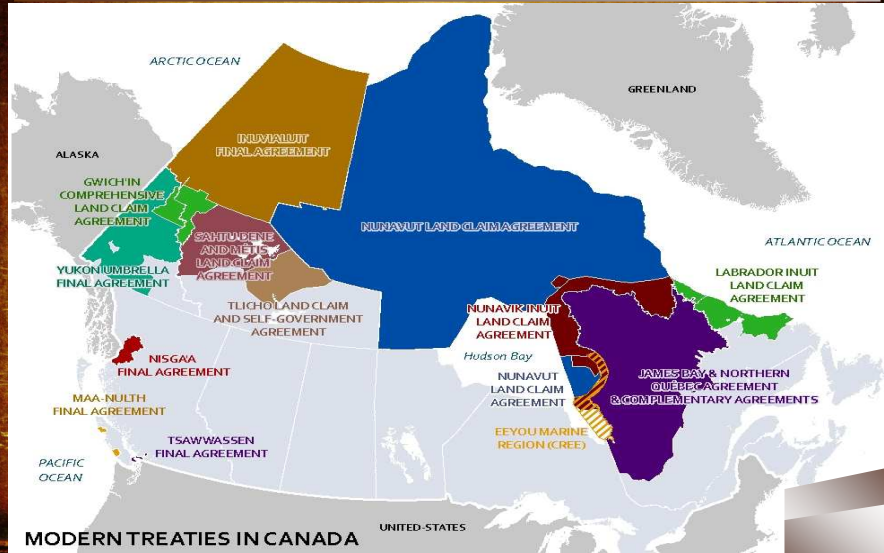
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Reconciliation (Con't)

- Canada seeks to advance reconciliation through:
 - Consultation with Aboriginal people;
 - Negotiation of claims/modern treaties and self-government agreements with Aboriginal peoples;
 - Addressing Aboriginal Peoples' historic grievances;
 - Implementing the Historic Treaty relationship;
 - Implementation of agreements.

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Modern Treaties in Canada



Negotiating Modern Treaties and Self-Government Agreements

- Canada's federal policy framework for comprehensive land claim agreements is intended to resolve and manage claims related to Aboriginal rights and title on lands and resources, by negotiating comprehensive land claim agreements.
- In 1995, Canada introduced a policy framework to negotiate Aboriginal self-government agreements. It provides for the negotiation of a variety of types of agreements, and is designed to meet the different circumstances of Aboriginal groups. The focus is on practical and workable arrangements to implement self-government within the Canadian constitutional framework.
- Since 1975, Canada and Aboriginal groups have signed 26 treaties, 18 of which include self-government provisions:
 - Ownership of over 600,000 square kilometres of land;
 - Capital transfers of \$3.2 billion (\$2012).

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Consultation and Accommodation

- The Government of Canada consults with Aboriginal groups for various reasons, including:
 - good public policy;
 - contractual obligations;
 - statutory requirements;
 - Constitutional requirements.
- Canada has a legal duty to consult and, if appropriate, accommodate when contemplating conduct that might adversely impact potential or established section 35 or Treaty rights.

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Consultation and Accommodation(Cont'd)

- Consultation with Aboriginal Peoples promotes:
 - increased Aboriginal participation in the broader Canadian economy ;
 - increased capacity and resources for Aboriginal communities.
- The expected outcomes are:
 - Reconciliation and upholding the honour of the Crown;
 - the establishment of viable Aboriginal businesses;
 - harnessing the potential of the Aboriginal workforce;
 - improved well-being and quality of life of Aboriginal people in Canada;
 - strengthened relationships with Aboriginal groups.

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Addressing Historic Grievances (Specific Claims)

- Specific Claims are claims made by a First Nation against the federal government which relate to the administration of land and other First Nation assets and to the fulfilment of Indian treaties.
- Since 1973, First Nations may, on a voluntary basis, submit such claims to a policy-based dispute resolution process created specifically to resolve them.
- In response to criticism, a fundamental reform of the process was launched in 2007:
 - An independent tribunal with authority to issue binding decisions was created;
 - Dedicated funding for settlements has been established;
 - Improvements to internal government procedures have resulted in the faster processing of claims;
 - Access to independent mediation services to help the parties reach negotiated settlements has been improved.

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Addressing Historic Grievances (Specific Claims)

- **The results, to date, of reforms to the process for the resolution of specific claims are notable. Since 2008:**
 - 541 “backlog” claims that were in the assessment stage of the specific claims process have been addressed and there is no longer a backlog in that stage of the process;
 - the number of claims in negotiation has more than doubled;
 - 60 negotiated settlement agreements have been reached;
 - \$1.261 billion has been paid out pursuant to settlement agreements (June 2012).

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Dealing with Historic Treaties

- Historic Treaties allowed for the peaceful development of Canada through the establishment of durable relationships with Aboriginal people.
- There are 70 Historic Treaties in Canada affecting 369 First Nations.
- Canada and Aboriginal groups acknowledge that, as a result of signing historic treaties, a relationship was established between the parties:
 - The treaty partners are seeking to work together to determine how this treaty relationship can best be expressed to ensure they can realize the mutual benefit foreseen by the treaty relationship.



Implementation of Modern Treaties And Self-Government Agreements

- Modern Treaties and self-government agreements are legally binding contracts and the rights set out in them are constitutionally protected.
- To honour the relationships that the parties enter into (and the obligations therein), Canada works with the other signatories to fulfill federal obligations and to make progress towards mutual goals.
- The relationship created by modern treaties requires attention to fulfilling the undertakings and obligations made in those agreements.

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Challenges in achieving Reconciliation

Progress is being made, but processes for reconciliation are facing significant challenges

➤ **Treaties and self-government agreements:**

- The significant amount of time needed to conclude agreements;
- Loan debt levels of Aboriginal parties for participation in negotiations;
- Overlapping shared territory issues among Aboriginal groups;
- Shared responsibility for financing self-government;
- Coordination between partners;
- Status of modern treaty settlement lands.

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Challenges (cont'd)

➤ **Specific Claims:**

- While initial indications are that process reforms are achieving desired results, longer term impacts will need to be reviewed;
- The high volume of claims in negotiation requires sustained commitment of resources.

➤ **Dealing with Historic Treaties:**

- Differing interpretations of historic treaty provisions and their spirit and intent.

➤ **Consultation:**

- Consultation fatigue – small communities dealing with numbers of consultation requests per year;
- Coordination lacking among federal and provincial/territorial governments;
- Who to consult and when?

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Challenges (cont'd)

➤ **Implementation of claims/modern treaties and self-government:**

- Complexity of the agreements;
- Coordination and information sharing;
- Differing interpretations of agreement provisions;
- Long term fiscal relations with Aboriginal governments.

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Conclusion

➤ **The relationship between Aboriginal and Non-Aboriginal Canadians has existed for over 400 years.**

➤ **This relationship has evolved over time and in the last ten years has been changed by the spirit of reconciliation. The relationship is managed through negotiation and consultation.**

➤ **Treaties signed by Aboriginal people and the Government of Canada over the last 30 years constitute a solid foundation upon which Aboriginal people can build on and contribute to Canada's future while continuing to foster their rich historical heritage.**

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ANNEXES

- Demography and socio-economic realities
- Legal context
- Brief overview of Aboriginal negotiation in Canada
 - Historic Treaties
 - Modern Treaties
 - Self-Government
 - Specific Claims

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Aboriginal People in Canada: Demography

- **There are over 600 Aboriginal communities;**
- **1,172,785 Aboriginal Canadians (3.8% of the Canadian population):**
 - **First Nations** (Status and Non-Status): **756,935 (65% of the Aboriginal population)**
 - **Inuit** (not registered): **49,115 (30%)**
 - **Métis** (not registered): **355,505 (5%)**
- **Aboriginal people have a different socio-economic reality :**
 - **44% have less than a high school degree** (23% for non-Aboriginal people);
 - **The unemployment rate is 15%** (6% in the rest of Canada);
 - **The average income is only 2/3 of non-Aboriginal income (\$23,872 vs \$35,872).**

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Legal Context

➤ **Canada’s legal evolution** also had an impact on Aboriginal rights historically:

- The British *Royal Proclamation* of 1763;
- The *Constitution Act* of 1867;
- The proclamation of the *Indian Act* in 1876; and,
- The creation of **Indian reserves**.

clarifying how Aboriginal groups and related lands were to be “**managed**”. More recently:

- The Supreme Court of Canada recognized the **concept of Aboriginal rights** (1973);
- The *Constitution Act* of 1982 “**recognized and affirmed**” Aboriginal and Treaty rights; and,
- The Supreme Court of Canada **has gradually defined** the nature and scope of those rights.

and this has led to the development of a “partnership” based relationship.

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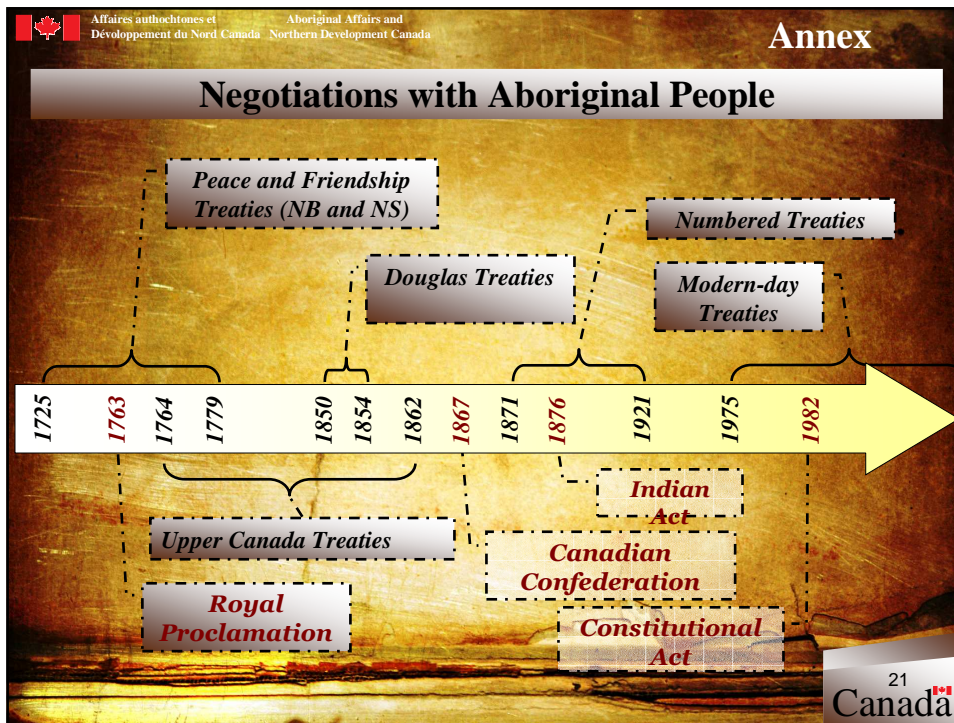
Annex

Historic Treaties in Canada

HISTORIC TREATIES IN CANADA

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Historic Treaties

- For nearly 300 years, Aboriginal people and the various governments in Canada have undertaken the negotiation of treaties to better define and clarify the rights and obligations of both parties.
- In these treaties, most of the First Nations cede their land to the Crown in exchange for specific rights and benefits, such as continued rights to hunt and fish, the setting aside of reserve lands, and educational and agrarian assistance.
- The amount of land transferred to the Crown also varied between the treaties. For example, the 1764 Treaty of Niagara (Ontario) ceded 6km on either side of the Niagara River, while Treaty no. 8 concluded in 1899, covers some 500,000 square kilometres of lands in 1 territory and 3 provinces. (NWT, SK, AB, BC)
- This phase of treaty-making ended in 1923. Since then, Canada and Aboriginal signatories have been trying to reconcile their different understandings of the terms and purpose of the 70 treaties negotiated between 1701 and 1923.

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Modern Treaties in Negotiations

MODERN TREATIES IN NEGOTIATION

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Modern Treaties

- Negotiations are a means of establishing the framework for reconciling Aboriginal rights with the sovereignty of the Crown leading to formal agreements between the Government of Canada, the Provinces/Territories and Aboriginal people.
- Active participation of Aboriginal people in land and resource management (e.g. environmental assessment, land use planning, national parks, conservation areas);
- Economic development measures such as harvesting rights/traditional economy; Impact & Benefit Agreements (e.g. employment, contracting opportunities concerning major projects);
- Revenue (resource revenue sharing and capital transfers); and,
- Governance structures, such as corporate structures to manage land claim benefits and, based on the federal self-government policy, Aboriginal Governments (structures and jurisdiction).

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Modern Treaties (Cont'd)

- Canada's Comprehensive Land Claims Policy was developed and has evolved over the decades in response to Supreme Court decisions. The Policy's goal is to settle land claims through negotiation, by resolving the legal ambiguities associated with Aboriginal rights and title. The objective is to negotiate treaties which provide certainty, clarity and predictability of rights to ownership, use and management of lands and resources for all parties.
- These agreements are an effective alternative dispute resolution process for Aboriginal people to find resolution to their land claims in a practical manner. They bring recognition of the Aboriginal group's rights while creating a more stable environment for all Canadians. This approach promotes the development of partnerships between Aboriginal people and all levels of government based upon a new relationship of mutual respect and confidence.
- The settlement of land claims also encourages economic growth, giving certainty and clarity to investors and the general public. The aim is to support Aboriginal self-reliance and provide an alternative to expensive lawsuits while at the same time promoting investment, employment and negotiated benefits of interest to the group.

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Aboriginal Self-Government

- The focus is on the negotiation of **practical and workable arrangements to implement self-government** within the Canadian constitutional framework.
- For over a century, the Indian Act had imposed a system of community governance on First Nations which stripped them of local control over their affairs and placed it in the hands of AANDC. Between the 1940s and the 1980s, Aboriginal leadership pushed ever more strongly to regain control over their own affairs.
- ☞ Canada's Policy puts in place a policy framework to negotiate agreements that will give Aboriginal groups the right to govern themselves in relation to matters that are internal to their communities, integral to their unique cultures, identities, traditions, languages, and institutions, and with respect to their special relationship to their lands and resources. Canada's Policy provides for a variety of types of agreements:
 - Agreements can cover a single jurisdiction or a broad range.

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Aboriginal Self-Government (cont'd)

- There have been 18 Self-Government agreements concluded since the introduction of the Policy, many of which form part of modern treaties.
- Agreements include many detailed provisions, including provisions covering:
 - New Aboriginal government structures;
 - Jurisdiction or law-making powers; and,
 - Financial arrangements.

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Addressing Historic Grievances (Specific Claims)

- Specific Claims arise from the non-fulfillment of Canada's obligations for the administration of lands and other First Nations assets as well as the non-fulfilment of historic Treaty obligations.
- These are addressed by an alternative dispute resolution process to resolve outstanding grievances related to the non-fulfilment of obligations arising from Historic Treaties or other assets.
- Following recent important changes, claims are now being resolved in a more timely way.

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