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A photograph of the Aurora Borealis (Northern Lights) in shades of green and purple, reflected in a calm lake at night. The sky is dark with stars, and the foreground shows silhouettes of trees and bushes.

GUIDE for Federal Implementers of Comprehensive Land Claims and Self-Government Agreements

May 2011

Canada

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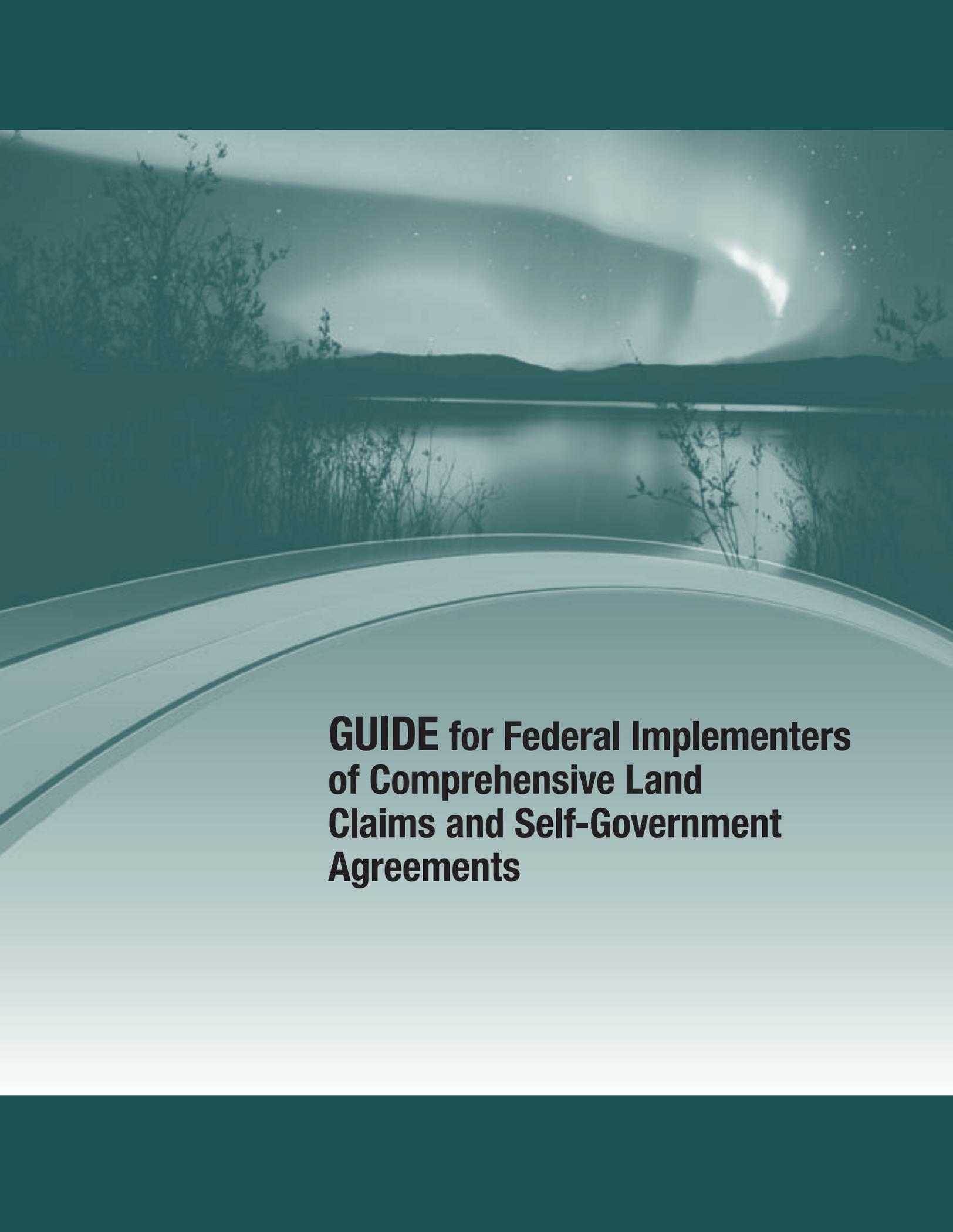
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PART 1

Executive Summary

This guide compiles the most up-to-date lessons and information available on the key principles, policies and processes that inform the implementation of agreements. Its primary purpose is to guide federal officials in fulfilling departments' responsibilities under comprehensive land claims agreements (CLCAs) and self-government agreements (SGAs).¹

CLCAs and SGAs are complex documents. They contain objectives and obligations touching on many different jurisdictions. The signatories work together in good faith during the negotiations phase to design an agreement that is clear, reflects mutual objectives and respects obligations, and is practical in the current legislative and political landscape. On behalf of the Crown, representatives from all implicated federal departments and agencies are involved throughout the negotiations process.

The parties' relationship does not end when the ink dries on the signing page. When the signatories and other stakeholders start to *do* what the agreements call for, a new phase of substantial work begins. This guide will help federal officials do this work: fulfilling their legally binding commitments under these agreements. This document, although not intended to be prescriptive, has been designed to address issues that arise consistently across CLCAs and SGAs. However, the intricacies and specifics of each agreement exceed the scope of this document and obviously cannot all be addressed. Federal officials should

learn the specifics of the agreements themselves to ensure that their obligations are met. In other words, this guide is intended to *assist* with the implementation of the agreements. Included in this document is information on:

- ❖ implementation planning;
- ❖ implementation committees;
- ❖ roles and responsibilities of federal implementers; and
- ❖ federal processes and structures, among others.

This guide is meant as an introduction and a roadmap to achieve further clarity, consistency, and collaboration across federal departments and agencies. The scope of this document is broad² – it will pave the way for other subject-specific guides that will address key implementation issues in more detail. These will include pieces on alternate dispute resolution, annual reports, reviews and commemoration, among others.

The information and guidance provided in this document is derived from more than three decades of experience in implementing agreements. Because the agreements and the relationships they represent will continue to evolve, this guide will also evolve and be revised periodically to incorporate lessons learned, as well as new policies and processes.

1 This document deals specifically with modern treaty implementation. For information on historic treaties, please consult INAC's Historic Treaties **web page**.

2 Because of the broad scope of this guide, the specific context of each region/agreement cannot be fully addressed. Please refer to the appropriate agreements and contact the appropriate regional office for region-specific policies, processes and agreement context.

PART 2

Background of Comprehensive Land Claims and Self-Government Agreements

The significance of CLCAs and SGAs to Canada’s political, cultural and socio-economic landscape cannot be overstated. CLCAs and SGAs are legally binding agreements. The rights and obligations of the signatories to the agreements – Canada, Aboriginal signatories and provincial-territorial governments – are given important legislative recognition and are legally enforceable. The agreements³ are given further legal effect through implementing legislation and many are also constitutionally protected under section 35 of the *Constitution Act, 1982*.

CLCAs and SGAs are complex documents. CLCAs describe the rights of Aboriginal people with regard to ownership of lands and natural resources in areas where treaties did not previously exist. They also serve to explain the nature of these rights to Canadians and others. SGAs provide arrangements for Aboriginal groups to govern their internal affairs, and assume greater responsibility and control over decision-making affecting their communities. Self-government agreements address the structure and accountability of Aboriginal governments, their law-making

powers, financial arrangements, and provision of programs and services. As indicated in the *Government of Canada’s Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government*,⁴ broadly stated, the government views the scope of Aboriginal jurisdiction or authority as extending for the most part to matters that are internal to the group, integral to its distinct Aboriginal culture and essential to its operation as a government or institution.⁵ Self-government also reconciles the law-making jurisdictions among the federal, provincial/territorial and Aboriginal governments.

The other significant feature of these agreements is that they change the relationship between Aboriginal signatories, the federal government and the provincial/territorial governments concerned. According to CLCAs and SGAs, Aboriginal signatories constitute governments in their own right and, as a result, the parties to the agreements form groundbreaking government-to-government relationships that transform how they relate to and collaborate with one another.

3 The term “agreement” is used throughout this document as a descriptor for all negotiated agreements, arrangements and contracts resulting in new land claims and self-government arrangements between the federal government, Aboriginal signatories and provincial/territorial signatories.

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

5 The means through which the Inherent Right Policy (IRP) and the jurisdictions therein are interpreted and operationalized in each individual agreement are unique and context-dependent. For example, the jurisdictions adopted by the First Nations signatories to the Yukon First Nations Self-Government Agreements are characterized as province-like.

PROGRESS AND ACCOMPLISHMENTS TO DATE

CLCAs and SGAs in Canada have been successful in promoting strong and self-reliant Aboriginal communities. A 2009 evaluation of four of the more mature CLCAs⁶ indicated that the agreements have brought clarity and certainty to settlement lands, enabling Aboriginal groups to benefit from resource development and helping to create a positive environment for investment. CLCAs have also had a positive impact on the role of Aboriginal people in their settlement area's economy and their relations with industry, as well as ensuring that they have a meaningful and effective voice in land and resource management decision-making. Furthermore, these agreements help protect Aboriginal signatories' traditional way of life. The federal government benefits as well by moving closer to achieving its broad priorities for Canadians.

By entering into CLCAs and SGAs, the signatories commit to a series of obligations that further the goals of all parties – to improve the social well-being and economic

prosperity of Aboriginal people; to develop healthier, more sustainable communities; and to promote the participation of Aboriginal Canadians in Canada's political, social and economic environment to the benefit of all Canadians. These goals are reflected in Canada's Aboriginal agenda, in INAC's **vision and mandate**, and in the Aboriginal programs and policies of other federal departments.

However, CLCAs and SGAs are not, nor were they intended to be, the only means of achieving these goals. There are a number of other federal initiatives that influence and support these objectives. While the federal government makes significant investments in the implementation of CLCAs and in support of Aboriginal self-government, these efforts are only a part of the federal government's overall strategy to improve the social and economic well-being of Aboriginal peoples. This is achieved not only directly, through CLCAs and SGAs, but also indirectly, through other collaborative measures that improve the lives of Aboriginal people in Canada.

6 *Impact Evaluation of Comprehensive Land Claims Agreements*, 2009.

THE NEW RELATIONSHIP

One of the key outcomes of CLCAs and SGAs is the creation of new government-to-government relationships. CLCAs and SGAs fundamentally change the relationship between the Crown, provincial/territorial governments and Aboriginal signatories. (Please see Annex 2 for examples of these new relationships/jurisdictions).

CLCAs and SGAs are legally binding contracts for signatories. Furthermore, the rights set out in CLCAs are constitutionally protected under section 35. To honour the relationships that the parties enter into (and the obligations therein), Canada, writ large, must work with the other signatories to fulfill federal obligations and make progress toward mutual goals. The interpretation and implementation of the agreements is based on recognition of the fundamental principles that guide the management of rights protected under section 35 of the *Constitution Act, 1982*.⁷ The honour of the Crown is at stake in the federal government's management of its relations with Aboriginal signatories to the agreements. Moreover, there is a potential cost to the federal government, including litigation and the potential for significant additional liability, if it does not implement its obligations.

The role of Indian and Northern Affairs Canada (INAC) is to coordinate these relationships on behalf of Canada and to be accountable for its performance in doing so. However, it must be stressed that the agreements are entered into on behalf of the Government of Canada writ large. While INAC plays an important coordination and accountability role, many other federal departments contribute to the implementation of CLCAs and SGAs.

It is critical that each federal department enter into the implementation relationship with a solid understanding of the new political and socio-economic regime created by CLCAs and SGAs. This includes direct obligations and more indirect obligations (Annex 3), such as the need to take the provisions of the agreements into account when designing new departmental programs and services. As such, it is imperative that federal departments remain aware of the provisions of CLCAs and SGAs to ensure they are meeting their legal obligations in a manner consistent with the new government-to-government relationships created by the agreements.

⁷ <http://www.justice.gc.ca/eng/pi/const/lawreg-loireg/intro.html>

GUIDING THE FEDERAL GOVERNMENT'S MANAGEMENT OF AGREEMENTS – THE WAY FORWARD

After more than 30 years of implementation experience, the importance of the agreements to the signatories and to the country as a whole is evident, as are the benefits to the signatories and the implicated communities.

Areas for improvement have also been identified through the experience of the signatories, as well as through internal and external evaluation processes. Consequently, INAC and the federal government as a whole are now taking the opportunity to build on these lessons learned in collaboration with their signatory partners. This guide is one step in a comprehensive strategy to strengthen federal implementation policies and processes. This strategy will be discussed in more detail in this document.

The task for Canada is to implement agreements in a way that respects the overall goals and special nature of these agreements. This means finding an approach to fulfilling Crown obligations that goes beyond doing the minimum

required – one that reflects the federal government's view of what was agreed to by the parties at the time the agreement was negotiated.

The challenges faced in implementing treaties in no way outweigh the benefits they provide. The federal government believes that CLCAs and SGAs are significant achievements and that much progress has already been made.

That said, we must continue to challenge ourselves to face and resolve difficult issues, and constantly consider how we might improve our approach to implementing these agreements and ensuring mutually respectful relationships that acknowledge these new governments.

This guide intends to raise awareness within the federal system of what CLCAs and SGAs mean to Canada, to discuss roles and responsibilities, and to provide guidance to help ensure that Canada's obligations are met.

PART 3

Implementation

3-1 HOW ARE AGREEMENTS IMPLEMENTED?

The process of negotiating a CLCA or SGA, or some combination of the two, is a major undertaking. Once an agreement is signed and brought into effect, a new phase begins for the signatories.

Agreements significantly change the relationships between the signatories and other stakeholders. To make these new relationships work in the long term, the parties must continue to communicate and work together.

In the case of a CLCA, each party must maintain the new relationship by fulfilling the many legal obligations it has assumed and by creating mutually supportive partnerships. SGAs involve similar obligations and promote new relationships between the signatories as well. Such new relationships change the political and socio-economic landscape markedly.

3-2 PHASES OF IMPLEMENTATION

The implementation of CLCAs and SGAs can be divided into four distinct phases. There is no set timeframe for these phases, but they give an indication of how the relationships developed by the agreements evolve.

Planning Phase

- ❖ This phase includes the development and adoption of implementation chapters, implementation plans and associated documents such as the Financial Transfer Agreement/Fiscal Financing Agreement (FTA/FFA). Each signatory is deeply involved in these activities through tripartite negotiations based on research, analysis and policy direction.
- ❖ INAC plays the lead role on behalf of the Crown during the planning phase. All implicated federal departments are consulted by federal negotiators when implementation chapters or financial agreements relate to their mandates. Implementation chapters are presented for consultation and approval at Federal Caucus and the Federal Steering Committee.

Set-up Phase

- ❖ The set-up phase starts on the date the agreement goes into effect and involves the establishment of key governance, financial, policy and program management structures for Aboriginal signatory groups, as well as key adjustments to pre-existing structures for provincial/territorial and federal signatories. During this phase, the parties work to define and strengthen the tripartite government-to-government relationships established by the agreement.

- ❖ During set-up, the Crown is responsible for a number of initial obligations, including land survey, transfer and registry; the transfer of information and resources to other signatories; and the establishment of financial transfers.
- ❖ The signatories must develop monitoring and reporting regimes during this phase to ensure that obstacles to implementation are identified and addressed appropriately.
- ❖ During the set-up phase, the signatories will establish implementation committees (ICs) to manage on-the-ground implementation activities, provide a venue for the signatories to discuss implementation and resolve issues as they arise.

Adjustment Phase

- ❖ The adjustment phase generally dovetails with mandated review and renewal exercises laid out in the agreements, often 10 years after the effective date.
- ❖ These reviews and renewals allow the signatories to reflect on implementation experience to date, and to rethink and realign approaches and resources if necessary.
- ❖ All implicated federal departments participate in mandated reviews when subject matter relates to their mandate; this happens by means of bilateral discussions with INAC and, at times, the Implementation Committee; through Federal Caucus and the Federal Steering Committee; and through the Central Agencies Review Working Group. INAC is responsible for briefing Federal Caucus on any results or recommendations that stem from reviews.

Mature Phase

- ❖ This phase involves the stable, consistent implementation of the agreement, in terms of resources, structures, program delivery and government-to-government relationships. During this phase, signatory groups often establish long-term visions and new priorities.
- ❖ Federal departments continue to fulfill their ongoing implementation obligations, in areas such as contracting, land and resource co-management, and land access notification. Federal departments also continue to participate, when appropriate, in IC proceedings and in government-wide (and inter-governmental) implementation policy discussions via Federal Caucus and the Federal Steering Committee (FSC).

Although this guide largely focuses on the phases of treaty implementation after an agreement goes into effect, the roles of all federal departments and agencies in the preparatory and negotiations phases are equally important. Negotiating workable and realistic agreements provides the foundation for productive post-treaty relations. Further information on federal departmental roles throughout the implementation phases can be found in the **Implementation Handbook**.

The Implementation Handbook was developed to guide federal implementers at various stages, whether preparing for negotiations, developing implementation plans or managing implementation after the effective date. Together with this guide, the Handbook offers practical advice and resources to help implementers from federal departments fulfill their legal obligations under CLCAs and SGAs.

3-3 IMPLEMENTATION PLANNING

The Implementation Plan is one of the key tools that facilitate the transition to the new relationship created by CLCAs and SGAs. While the CLCA or SGA defines the new relationship and lays out signatories' obligations, the implementation plan and other associated documents (e.g., financial agreements) create a roadmap to guide signatories toward fulfilling their individual and mutual obligations. Although implementation plans are generally not legally binding documents, they are of key importance to an orderly implementation process.

Implementation plans operationalize the obligations of the signatories. Although implementation plans vary by agreement, they generally contain the following:

- ❖ concrete activities required to fulfill obligations laid out in the agreement;
- ❖ parties' respective roles and responsibilities in carrying out the activities;
- ❖ timeframe for completion of the activities;
- ❖ parties' mutual understanding about resource allocation to carry out activities; and
- ❖ any planning assumptions that provide additional context for the parties' interpretation of the implementation plan in the future.

An example of a typical activity sheet from an implementation plan is included in Annex 4.

The implementation plan is provided with the CLCA or SGA to all stakeholders. It is an important reference and

management tool for the signatories after the effective date. They use it in a number of ways as set out below.

- ❖ The Implementation Plan is an important long-term planning tool. As the signatories work toward fulfilling specific obligations, they refer to the implementation plan to help them lay out a tangible workplan and timeframe.
- ❖ The signatories refer to the implementation plan to assist with a number of ongoing monitoring and reporting processes. For example, during periodic implementation reviews, the parties often use implementation plans as benchmarks to measure their success in fulfilling the clauses of the agreement.
- ❖ When the signatories encounter a disagreement or a difference of interpretation in the source CLCA or SGA, the implementation plan may provide guidance.
- ❖ The implementation plan may also lay out the specifics of financial arrangements, including amounts and timeframes for payment.
- ❖ Additionally, the implementation plan serves as an educational tool for federal departments and external stakeholders, helping to clarify their responsibilities and how those responsibilities fit into the broader context of agreements.

Traditionally, implementation plans have focused on the formal obligations of the signatories, breaking these down into activities and schedules. While this is important, the implementation management stage of a CLCA or SGA is much more than a collection of activities. The new relationship created by CLCAs and SGAs must evolve to reflect the new realities of the agreements.

3-4 IMPLEMENTATION COMMITTEES

Implementation committees (ICs), sometimes referred to as implementation working groups, are bodies mandated by the agreements or created as a practical arrangement between the signatories. ICs are mandated to operate throughout the existence of the agreement. After the effective date, they are the key implementation management bodies, consisting of members from each signatory group. Generally, committee mandates call for members from all signatory groups to meet at regular intervals throughout the year and to remain in regular contact.

The responsibilities of these committees generally include, but are not limited to:

- ❖ addressing implementation issues at periodic meetings and through communication networks;
- ❖ liaising with external stakeholders such as boards and committees;
- ❖ coordinating the production of Annual Reports;
- ❖ conducting mandated reviews of the agreements;
- ❖ acting as a first line of dispute resolution between signatories; and
- ❖ providing a line of communication between forum members and senior-level decision-makers in each party.

Canada's designated representative on ICs is often at the Director General or Director level, and is usually a member of the INAC Implementation Branch (IB) in the Treaties and Aboriginal Government Sector (Annex 5). As Canada's representative, the federal IC member is responsible for coordinating and participating in IC business on behalf of all federal departments.

The IC representative will also work to maintain awareness of IC business and decision-making throughout all federal departments. Every implicated federal department receives information about IC business and meeting schedules from the IC representative. Regional caucus meetings are often the venue for the IC representative to inform federal departments of IC issues. As a result, regional caucus meetings are often scheduled directly before IC meetings. The IC representative will ask federal departments to get involved in committee work-planning, agenda-making, meetings, reviews and activities when their departmental mandate is involved. Officials from departments' regional offices will often play this role through the regional caucus.

3-5 IMPLEMENTING BODIES

Implementing bodies (institutes of public government, boards and committees) are arm's-length bodies created as part of CLCAs and SGAs to serve as forums to address and promote specific sections of the agreements.

These boards and committees play an important advisory role for the agreements' signatories in areas such as joint or cooperative land use planning, fish and wildlife management, human resources development, training, and environmental assessment.

Generally, boards and committees consist of members nominated by each of the agreements' signatory groups at the political level. Members may be government employees, members of the private sector or any other appropriate delegate. Members must possess relevant knowledge and experience. The Minister for INAC plays an integral role in appointing federal members to these bodies. In some cases, other federal departments are responsible for appointing members as well.

3-6 OBLIGATIONS

The concept of obligations is a central element of both CLCAs and SGAs. This is how the federal government views obligations:

How are the signatories *obligated*?

CLCAs and SGAs, and the rights contained therein, are legislated – all agreements consist of legally binding contracts between the parties. Some are protected under section 35 of the *Constitution Act, 1982*. Those that are not have legal weight via statutory obligations. As such, each signatory is legally obligated to fulfill its responsibilities as laid out in the agreements.

Who is obligated?

All signatories to CLCAs or SGAs are obligated to fulfill the obligations laid out in the agreements. In Canada's case, the agreements are signed *on behalf of the Crown* by the Minister for INAC. All implicated federal departments and agencies must ensure that implementation obligations that fall under their mandate are fulfilled appropriately and in a timely manner.

What is the relationship between obligations and objectives?

By entering into CLCAs and SGAs, the signatories commit to a series of legally binding obligations. These obligations are considered concrete steps the signatories can take to achieve broader objectives, which are often included in the agreements as “vision statements.” The objectives found in CLCAs and SGAs often echo Canada's Aboriginal agenda (as reflected in INAC's **departmental mandate**), which is to improve the social well-being and economic prosperity of Aboriginal people; to develop healthier, more sustainable communities; and to promote the participation of Aboriginal Canadians in Canada's political, social and economic development to the benefit of all Canadians. Essentially, the obligations, as they are laid out in implementation plans, provide a concrete and measurable “roadmap” the parties can use to navigate toward the achievement of their broader collective goals.

Canada does not consider the fulfillment of obligations within the agreements and implementation plans to be the only means of achieving the broad objectives reflected in CLCAs and SGAs. Other federal, provincial/territorial,

Aboriginal and private sector initiatives and resources (financial and otherwise) outside of the agreements play an important role in doing so. Furthermore, like any government, Canada must make decisions and develop priorities based on available resources and other principles such as affordability, efficiency, feasibility and capacity.

What types of obligations are found in the agreements?

1. **One-time obligations:** These are obligations that usually take place early in the post-effective date period. They include activities like payment of capital transfers, survey of settlement lands, and the establishment of mandated boards and committees. Each federal department is responsible for obligations that fall under its mandate.
2. **Contingent obligations:** Contingent obligations are triggered by a future event and require one or more parties to fulfill them. For example, the establishment of a new national park may trigger an obligation to negotiate an impact and benefits agreement; wildlife harvesting opportunities might trigger a right of first refusal; and government accessing of settlement lands may trigger notification obligations.
3. **Ongoing obligations:** These types of obligations require regular or periodic action on the parts of one or more parties. Examples include ongoing participation on committees; preparation of reviews and periodic public reports; ongoing operation of boards and committees; and issuing of fishing licences.
4. **Permissive provisions:** Permissive provisions are things that the parties, collectively or individually, may choose to do. They are not considered “obligations” in the commonly understood sense, although they are goals set together by the parties. Generally, signatories do not receive funds to undertake permissive provisions.

The Relationship Between Common Law and Obligations

It is important to note that Canadian common law and the results of ongoing court decisions may result in new federal obligations that are associated with, but not explicitly part of, CLCAs and SGAs.

3-7 FUNDING CONSIDERATIONS

Implementation plans are used by the signatories to establish budgets for any implementing bodies created through the agreement and to identify activities and/or projects that will generate incremental costs for federal departments. Funding commitments made during implementation planning or fiscal agreement negotiations are limited to the financial mandate approved by Cabinet. Implementation negotiators plan for the implementation of the agreement within this financial mandate and design implementation activities with considerations such as cost effectiveness, economies of scale, efficiency and capacity in mind. Federal departments with mandates/obligations within a CLCA or SGA are consulted both on a bilateral basis throughout the negotiations stage, and at Federal Caucus and the Federal Steering Committee to identify costs and approve financial arrangements in implementation plans.

Federal ratification of the final agreement requires both Cabinet and Treasury Board approval of the funds to implement the agreement. Cabinet approves access to new funding, as required, and Treasury Board approves adjustments to the various departmental spending authorities required to implement the agreement. Depending on the type of implementation activity, funding may either be time-limited or ongoing.

When Canada enters into CLCAs and SGAs with Aboriginal groups, funding is approved by the federal government for:

- ❖ settlement benefits,⁸ such as financial transfers, resource revenue-sharing arrangements and other financial benefits; and

- ❖ incremental costs for Canada (federal departments with implementation obligations) and Aboriginal signatories to implement the new agreement.

Contingent obligations, triggered by certain events that require a future activity and, potentially, a further cost, are difficult to predict. It may be possible to access additional funding when such activities and projects are triggered to ensure Canada's obligations are fulfilled. However, careful planning is required to ensure timely access to funding. With the concurrence of central agencies, Treasury Board submissions can be prepared to make adjustments to departmental spending authorities to access funds to fulfill these contingent obligations.

The ongoing implementation of CLCA and SGA obligations requires periodic review of implementation progress and renewal of funding commitments. INAC's Implementation Branch plays a lead role in conducting reviews and negotiating the renewal of funding agreements with the other parties. When renewal negotiations require increased funding, management frameworks exist to provide guidance on how new funding can be accessed, including the process for obtaining financial mandates. Each federal department is responsible for assessing its incremental funding requirements for implementing CLCA and SGA obligations, and for using the Treasury Board submission process to request/access additional funds.

⁸ Settlement benefits are set out in the treaty and create statutory funding obligations (legislative requirements) for Canada.

PART 4

Roles and Responsibilities of Federal Implementers

4-1 PRINCIPLES OF FEDERAL COLLABORATION

Federal departments have ultimate responsibility to conduct their implementation activities according to the “three Cs”: clarity, consistency and coordination. INAC takes a lead role, however, in strengthening and maintaining these principles with its federal colleagues.

Clarity

- ❖ Because all federal departments either play an active role in, or may be impacted by, the implementation of CLCAs and SGAs, they must fully understand their responsibilities as laid out in the provisions of the agreement(s) and in the implementation plans. Each department must ensure that it includes appropriate, knowledgeable representatives in implementation management discussions (IC meetings, working groups, caucus meetings, reviews and renewals, etc.)

Consistency

- ❖ Federal departments must ensure that their policies and programs are implemented in a manner that is consistent with the understandings in CLCAs and SGAs, whether they are directly related to implementation of specific obligations or not. Please see Annex 3 for examples of federal obligations pursuant to CLCAs and SGAs.

Coordination

- ❖ Federal departments have a number of tools at their disposal to help ensure the federal family coordinates its approach to the Crown’s implementation responsibilities, including:
 - the implementation management framework, which includes the Federal Steering Committee, Federal Caucus and regional caucuses;
 - contracting obligation coordination, including **Aboriginal Considerations in Procurement**, CLCA.net (see page 23), and the *Comprehensive Land Claims Agreements Contracting Obligations User Guide*;
 - the Treaty Obligation Monitoring System (TOMS) (see page 23); and
 - participation in ICs and implementing bodies when appropriate. (INAC generally plays the lead role as Canada’s representative in ICs. However, INAC may ask other federal departments to participate when issues arise that have a direct bearing on their jurisdictions or that require a broad federal perspective, or when reviews relating to their jurisdictions are undertaken.)
- ❖ It is also in each department’s best interest to cultivate close working relationships and information networks with fellow federal implementers.

4-2 FEDERAL GOVERNMENT DEPARTMENTS AND AGENCIES

4-2.1 Indian and Northern Affairs Canada

INAC's Treaties and Aboriginal Government (TAG) Sector is responsible for the department's role in negotiating, bringing into effect and implementing CLCAs and SGAs. TAG's Implementation Branch (IB) plays the lead role in coordinating and overseeing federal implementation of agreements after their effective date.

4-2.1.1 INAC Implementation Branch

INAC IB oversees and coordinates the cross-departmental federal role in the implementation of CLCAs and SGAs.

Oversight and Coordination

- ❖ Working with federal negotiators to recommend that the obligations of the CLCA or SGA are effectively operationalized and clarified in the implementation plan, and that lessons learned in implementing other treaties are reflected in the federal position during negotiations.
- ❖ Coordinating federal departments' participation in drafting the implementation plan when appropriate.
- ❖ Acting as a central point of contact for other federal departments with questions about their direct and indirect responsibilities under CLCAs and SGAs.
- ❖ Coordinating and administering, in partnership with TAG's Mandating Coordination and Liaison Unit, the implementation management framework, which includes Federal Caucus and the Federal Steering Committee (consisting of senior-level officials from all federal departments with implementation responsibilities).
- ❖ Coordinating federal input into monitoring and reporting processes, such as annual reports, TOMS, CLCA.net (see p. 32-33).

Coordination of Government of Canada Obligations

- ❖ Administering funding for agreement signatories, some boards and committees.
- ❖ Providing federal input, in collaboration with other federal departments and agencies, in mandated reviews.

- ❖ Negotiating financial agreement renewals, in consultation with other federal departments and agencies.
- ❖ Representing Canada on ICs, with participation by other federal departments and agencies when appropriate.
- ❖ Participating in dispute resolution processes with other signatories.

Ongoing Implementation Activities

- ❖ Reviewing annual audits of Aboriginal signatories, boards and committees.
- ❖ Managing, in conjunction with INAC regional offices, Order-in-Council and Ministerial appointments to boards and committees. (Some board/committee appointments are the responsibility of other federal departments.).
- ❖ Acting as a point of contact for agreement signatories, INAC and other line departments' regional staff, and others with responsibilities and concerns with regard to treaty implementation.

4-2.1.2 INAC Regional Offices

INAC regional offices play implementation roles specific to their regional and treaty contexts. Their mandates tend to encompass a series of common responsibilities.

- ❖ Implementing INAC's obligations in partnership with affected departments.
- ❖ Acting as a key point of contact for other government departments' regional staff.
- ❖ Leading INAC's role in regional caucuses.
- ❖ Advising headquarters of actual or potential issues that cannot be resolved at the regional level or that may have broad implications for federal departments.
- ❖ Administering fiscal arrangements (in certain cases).
- ❖ Addressing other federal departments' regional implementation questions and concerns.

- ❖ Liaising with provincial/territorial governments, implementing bodies, and Aboriginal signatories on implementation issues and day-to-day implementation responsibilities.
- ❖ Collaborating with INAC IB in representing Canada on ICs;
- ❖ Participating in periodic reviews.
- ❖ Collaborating with INAC IB on the production and dissemination of annual reports.

Both headquarters and regional offices play key roles in federal departments' collaboration with INAC on CLCA and SGA implementation. Generally, federal departments' regional personnel can liaise with their INAC regional office counterparts, both bilaterally and via regional caucuses, to discuss and resolve issues of concern in a specific region or agreement. When items are of broader, overarching concern, federal departments are encouraged to contact INAC IB to discuss how they can be resolved. INAC IB is normally a first point of contact when federal departments need guidance or resources related to their implementation responsibilities and will direct them to the appropriate place. Please consult Annex 5 for contact information for INAC IB and INAC regional offices.

4-2.2 Central Agencies

The central agencies (Treasury Board Secretariat; Privy Council Office; Department of Finance; Department of Justice) are key to the implementation of CLCAs and SGAs.

- ❖ **The Treasury Board Secretariat (TBS):** TBS supports the Treasury Board in ensuring that government is well managed and accountable, and that its resources are allocated to achieve results. TBS makes recommendations and provides advice to the Treasury Board on policies, directives, regulations and program expenditure proposals with respect to the management of the government's resources.
- ❖ **The Privy Council Office (PCO):** PCO provides impartial advice and support to the Prime Minister and Cabinet. PCO functions as both the Cabinet's secretariat and the Prime Minister's source of public service advice on policy questions and operational issues facing the Government, including on questions and issues related to modern treaty implementation.
- ❖ **The Department of Finance (DoF):** DoF provides advice, consistent with government policies, on financial aspects of agreements, including fiscal implications of treaty financing.
- ❖ **The Department of Justice (DoJ):** DoJ provides legal advice across government on treaty interpretation and implementation issues with a view to ensuring a coordinated and consistent approach to the government's legal obligations under CLCAs and SGAs. It is considered a central agency

4-2.3 Other Federal Departments and Agencies

Many other federal departments and agencies play important roles in the implementation of CLCAs and SGAs. Although INAC coordinates the implementation of agreements and the central agencies have their role, it needs to be underscored that agreements are entered into *on behalf of the Crown*, implicating all federal departments and agencies.

All federal departments have a role to play in fulfilling the obligations of CLCAs and SGAs. Specific departments may be responsible for actively implementing obligations in the agreements; however, *all* departments must remain aware of agreement provisions, such as contracting obligations, to ensure that their departmental business is conducted in a manner consistent with the constitutionally protected clauses therein.

Federal departments that generally play a direct role in implementation planning and activities include:

- ❖ **Natural Resources Canada**
- ❖ **Parks Canada**
- ❖ **Human Resources and Skills Development Canada**
- ❖ **Canadian Heritage**
- ❖ **Fisheries and Oceans Canada**
- ❖ **Public Works and Government Services Canada**
- ❖ **Environment Canada**
- ❖ **Health Canada**
- ❖ **Transport Canada**

Often, both the headquarters and regional offices of these departments work to implement agreements. In general, headquarters representatives participate in Federal Caucus and the Federal Steering Committee, and provide policy guidance. Federal departments' headquarters staff also need to liaise with the other sectors of their departments to ensure their implementation obligations are fulfilled.

Regional staff often lead implementation of many of the day-to-day provisions of the agreements. However, this depends on the internal organization of each federal department; the respective roles and responsibilities of headquarters and regions can vary.

4-3 OTHER SIGNATORIES

For a brief summary of both Aboriginal and provincial/territorial signatories' roles and responsibilities pursuant to CLCAs and SGAs, please consult Annex 6.

PART 5

Federal Structures and Processes

Canada has put a framework in place to help ensure that federal implementers have the structures, tools and information required to successfully fulfill their implementation obligations *The Federal Framework for the Management of Modern Treaties* (implementation

management framework – Annex 7). The implementation framework supports:

- ❖ coordination and decision-making;
- ❖ information sharing; and
- ❖ monitoring and reporting.

5-1 FEDERAL COORDINATION AND DECISION-MAKING

5-1.1 Regional Caucuses

Regional caucuses provide structured interdepartmental forums to help ensure collaborative, consistent and effective fulfillment of implementation activities undertaken in the regions. Generally, regional caucuses hold regular meetings, which often coincide with upcoming IC meetings (between the three signatory groups). These meetings allow members of federal departments with implementation responsibilities to discuss implementation-related matters; to propose that certain issues be raised at Federal Caucus; and to consult with Canada's representative on the IC about committee business before IC meetings. Essentially, regional caucuses link regional federal representatives: to one another, to agreement signatories, and to members of Federal Caucus and the Federal Steering Committee. These caucuses will address issues that are specific to a particular region or treaty, and those that can be addressed through existing departmental mandates, programs and authorities.

Federal implementers from implicated departments working in regional offices can bring issues to this forum for discussion and resolution.

5-1.2 Federal Caucus

Federal Caucus provides guidance and makes recommendations to the Federal Steering Committee (and to federal implementers) during both the negotiation and implementation stages of CLCAs and SGAs. Issues that may be brought to Federal Caucus include those that touch

on one or more regions or agreements; that may be related to existing federal mandates or program authorities; or that may require a financial decision by departments. Membership in Federal Caucus includes representatives from federal departments' and agencies' headquarters (in the National Capital Region) with substantial roles in implementing modern treaties, including central agencies. Regional office representatives may participate in Federal Caucus as appropriate.

Federal officials facing issues with broad implications for implementation across the country can bring these issues forward to Federal Caucus. Generally, INAC IB is responsible for tabling issues in Federal Caucus. Regional caucuses forward and vet issues through INAC IB as a first step.

5-1.3 Federal Steering Committee on Self-government and Comprehensive Claims

The Federal Steering Committee (FSC) is responsible for providing direction to federal departments and agencies on implementation issues. A committee executive provides direction on strategic and fiscal issues. As appropriate, the FSC makes decisions or recommendations with respect to implementation mandates, and fiscal and policy issues.

INAC IB collaborates with the TAG's Mandating Coordination and Liaison Unit to coordinate the FSC's agenda, concerning IB issues.

5-2 INFORMATION SHARING

The exchange of information and the cultivation of networks of federal implementers ensures successful federal collaboration. The implementation management framework includes a number of tools to achieve this.

Resources

An online resource centre will be made available that contains documentation and learning tools. Implementers from all federal departments and agencies are encouraged to post material to the resource centre to share programs, policies and departmental issues, and ideas about implementation. The resource centre will include a federal contact list of officials across government who are involved in various aspects of implementation.

Training Materials

A series of training tools are currently being developed by INAC and will be available to all federal officials. These include an **online course** on meeting federal departments' contracting obligations under the agreements, and a series of guides for federal implementers on both general and specific implementation issues.

Some federal departments have prepared their employees to fulfill their implementation obligations by means of internal guidelines, training sessions and other initiatives. Where this has not already occurred, federal departments are encouraged to develop training materials in collaboration with INAC IB and other federal colleagues to ensure that departmental implementation policies and procedures are transmitted fully and accurately to all relevant employees.

5-3 MONITORING AND REPORTING

Monitoring and reporting are essential in overseeing implementation progress, for addressing issues that arise during signatories' implementation work, and for incorporating lessons learned into implementation and negotiation policies and processes.

Monitoring and reporting mechanisms also keep federal implementers accountable to senior management, Parliament, the Canadian public and their fellow signatories for compliance with agreement obligations. Existing monitoring and reporting tools include:

- ❖ collaborative review processes mandated in the agreements themselves;
- ❖ INAC-led federal initiatives; and
- ❖ evaluations by outside parties.

Ongoing Processes

- ❖ **Periodic Reviews:** The signatories to the agreements are required to periodically review their progress toward achieving their agreements' provisions. The IC usually conducts these reviews. If other federal departments' responsibilities are discussed in these reviews, the reviewers must ensure that the appropriate departmental representatives are kept fully involved and informed. Periodic reviews are often a precursor to renewal of fiscal arrangements.
- ❖ **Annual Reports:** CLCA and SGA signatories and implementing bodies generally provide input into an annual report that is tabled in Parliament, and disseminated to treaty stakeholders and the public as an accountability and educational tool. The annual report gives signatories and implementing bodies an important opportunity to reflect on both individual and collective progress in fulfilling treaty obligations and meeting the annual priorities of the implementation

committee. Each federal department may be required to provide information on their implementation activities as they relate to their agreement obligations. INAC IB is responsible for contacting other federal departments, generally by means of a call letter, to solicit their material for annual reports.

Federal Initiatives

- ❖ **Treaty Obligation Monitoring System (TOMS):** TOMS is a system that is administered by INAC IB. It tracks information on all federal obligations and progress in implementing these obligations. TOMS also has a reporting function to help analyze federal obligations. TOMS acts as a statistical database of federal obligation fulfillment over the long term, providing an empirical reporting tool that complements the collaborative, more qualitative annual reports. All federal departments will be required to review and verify their obligations as set out in TOMS for completeness and accuracy, and required to provide updates on the status of their obligations once or twice annually. INAC IB will contact departments to coordinate their input into the TOMS system.
- ❖ **CLCA.net:** In June 2008, Treasury Board approved a policy requirement to clarify monitoring and reporting obligations for Crown procurement contracts subject to CLCAs. Contracting Policy Notice 2008-04 details the policy requirement for all departments and agencies to collect information on federal contracting activity in CLCA areas. This includes contracts related to supply arrangements, standing offers, acquisition cards (credit cards) and cash expenditures where the final good or service is delivered in CLCA areas. This policy requirement will ensure consistency in reporting and increased monitoring and compliance.

CLCA.net was launched in 2009 with the intention of providing the Government of Canada with a single reporting system to collect and report contracts under CLCAs. INAC is responsible for compiling the information on federal contracting activity submitted by departments and agencies into quarterly reports, and for posting these reports and a consolidated annual report on INAC's website. INAC is also responsible for reporting on its own contracting activity in CLCA areas.

- ❖ **Treaty Impact Evaluations:** These evaluations use both quantitative and qualitative research to measure progress on the implementation of specific CLCAs and SGAs, and the impacts agreements have on Aboriginal communities.

External Evaluations

Canada and the other signatories to CLCAs and SGAs must remain aware of the results and recommendations that emerge from external evaluations of agreements. These evaluations include assessments by Senate and parliamentary committees, as well as those by Aboriginal organizations such as the Land Claims Agreement Coalition (Annex 8). They often provide practical advice on improving the implementation of agreements and strengthening the relationships therein. As such, INAC IB, in collaboration with its federal colleagues, where appropriate, creates and implements action plans to address these external evaluations.

PART 6

Implementation Checklist

This section is designed to address some of the most common questions raised by federal departments about their implementation responsibilities. This checklist of possible next steps is not comprehensive, but rather provides a series of options and contact points for federal implementers to address specific questions or concerns.

1. Do you require further information on your departmental obligations under CLCAs or SGAs?

- ❖ Consult the relevant **agreements and implementation plans**.
- ❖ Consult the *Guide for Federal Implementers of Comprehensive Land Claims and Self-Government Agreements*, available on the **Collaboration website**. I'm not sure what your comment means
- ❖ Contact the appropriate treaty manager at INAC IB or within the regional office for specific guidance (contact list available on **Collaboration website**).
- ❖ Contact INAC IB to request training or advice related to your departmental needs.
- ❖ Contact appropriate Department of Justice (DoJ) legal counsel if legal issues arise.

2. Do you wish to receive copies of agreements, annual reports, or other implementation materials?

- ❖ The majority of agreements and annual reports are public documents. They can be found online in a variety of places, including First Nation government websites, board and committee websites, provincial/territorial websites, and the **INAC website**.
- ❖ If you cannot locate a document, contact the appropriate INAC IB treaty manager (see Annex 5).

3. Are you having problems implementing an obligation within an agreement?

- ❖ If the matter is specific to an agreement or region, contact the relevant regional office manager (INAC or other) for discussion.
- ❖ If appropriate, contact the regional caucus chair to table the item for discussion at a caucus meeting.
- ❖ Contact the relevant INAC IB treaty managers for discussion.

- ❖ Contact the appropriate INAC IB treaty managers to discuss raising the issue at a regular implementation committee meeting.
- ❖ Consult with the appropriate DoJ legal counsel if legal issues arise.

4. Are you planning on drafting a Memorandum to Cabinet or Treasury Board submission that would affect agreements and their implementation?

- ❖ Contact the appropriate INAC IB treaty manager (Annex 5) to discuss repercussions for implementation and to ensure that content of the MC/TB Submission is compliant with policies and mandates, specific agreements, and departmental obligations.
- ❖ Include discussion of potential repercussions for existing CLCAs/SGAs in the MC/TB Submission.
- ❖ Consult with the appropriate DoJ legal counsel if legal issues arise.

5. Are you designing, revising and/or delivering programs and services to Aboriginal CLCA or SGA signatories and need advice on how to proceed?

- ❖ Determine the geographic scope of the initiative and what CLCAs or SGAs are implicated; for guidance contact INAC IB treaty managers (Annex 5).
- ❖ Consult relevant agreement(s) (including the Financial Transfer Agreement) to determine if provisions touch on the same topic as proposed program/policy – for guidance contact relevant INAC IB treaty manager (Annex 5).
- ❖ Many agreements specify that Aboriginal groups will continue to be eligible for Government of Canada programs and funding. Determine if the terms of relevant agreements require that the proposed program or policy include Aboriginal CLCA/SGA signatories.
- ❖ Consult the appropriate DoJ legal counsel to discuss whether the proposed program or policy is consistent with the provisions of relevant CLCAs or SGAs, and their affiliated FTAs and implementation plans, or to discuss other potential legal issues.

6. Do you wish to brief other federal departments about short-term implementation issues?

- ❖ For regional, agreement-specific issues, consult with the appropriate INAC IB treaty manager (Annex 5) or regional caucus chair.
- ❖ For issues of broad, inter-agreement scale, the INAC IB treaty manager will consult with INAC IB Implementation Planning, Policy and Promotion (IP3) (Annex 5).
- ❖ If appropriate, the treaty manager or IP3 will table a discussion item for scheduled regional/federal caucus meetings.

7. Do you wish to contact or share information with Aboriginal signatories and need guidance on how to proceed?

- ❖ Contact the appropriate INAC IB treaty manager (Annex 5).
- ❖ If you wish to present an item to the relevant Aboriginal signatory group, contact INAC IB treaty manager to add item to implementation committee business agenda.
- ❖ This can be done by a specific federal department on a separate, bilateral basis.

8. Do you want to notify Aboriginal signatories of consultation, research, access to information, access to settlement land, collaboration on program design, etc.?

- ❖ Consult agreement and associated implementation plan to determine what departmental responsibilities are with regards to notification of access/land use.
- ❖ Contact appropriate INAC IB treaty manager (Annex 5) to discuss what departmental requirements are, for clarification, for contact information and for guidance on how to proceed.
- ❖ Contact the Aboriginal signatory as soon as possible *and* prior to access/land use.

9. Do you need guidance on contracting in treaty areas, or on how to inform Aboriginal signatories of contracting opportunities?

- ❖ Consult INAC's quarterly reports on federal departments' and agencies' **federal contracting activity in comprehensive land claim areas**.
- ❖ Consult the *Aboriginal Considerations in Procurement* e-course on CSPS.
- ❖ Contact CLCA.Net@ainc-inac.gc.ca.
- ❖ Consult the CLCA Contracting Compliance Checklist (C5) Expert system.⁹
- ❖ Consult the *Comprehensive Land Claims Agreements Contracting Obligations User Guide*.

9 The CLCA Contracting Compliance Checklist (C5) Expert system is a forward-chaining inference engine that asks users a number of non-expert questions related to a possible upcoming CLCA contract requirement. Based on existing/published CLCA contracting policies and business rules approved by INAC, PWGSC, TBS and the Department of Justice, the C5 Expert system produces a detailed CLCA Contracting Compliance Checklist document specific to the upcoming CLCA contract requirement, which can then be electronically returned to the user that requested it.

PART 7

Closing Remarks

All parties to CLCAs and SGAs – federal, provincial/territorial and Aboriginal – will benefit most with the active involvement of federal departments and agencies with responsibilities under these agreements. However, since the agreements have been entered into over a 35-year period and vary considerably in context and complexity, and in terms of mechanisms included over time, departments are sometimes hard pressed to meet their commitments.

This guide intends to provide not only an implementation management roadmap for the federal government but also a comprehensive outline of the various systems, processes and tools that have been put in place to manage implementation more effectively.

CLCAs and SGAs establish ongoing and evolving relationships in which reconciliation between Aboriginal peoples and the Crown is an important aim. The successful implementation of agreements is not only a critical step toward this reconciliation but also fundamental to developing and maintaining the new relationship anticipated by these historic agreements.

PART 8

Annexes

ANNEX 1 – LEXICON

Aboriginal government: The governing body of a land-based Aboriginal group that may have jurisdiction and may exercise authority on Aboriginal lands.

Aboriginal institution: An institution serving Aboriginal people that may exercise authority with respect to an Aboriginal group.

Aboriginal lands:

- ❖ Reserved lands within the meaning of the *Indian Act*;
- ❖ Land claim settlement lands over which Aboriginal governments may exercise jurisdiction;
- ❖ Métis settlement areas, as defined in section 1(p) of the *Métis Settlements Act*, S.A. 1990, c. M-14.3, and any other lands that may be provided by the provinces and are subject to similar regimes;
- ❖ Lands held by, or on behalf of, an Aboriginal group under conditions where they would constitute “lands reserved for the Indians” under section 91(24) of the *Constitution Act, 1867*; and
- ❖ Any other land that is designated Aboriginal land by agreement of the Aboriginal group, Canada and, where affected, the relevant province or territory.

Aboriginal peoples: The Indian, Inuit and Métis peoples of Canada.

Agreement: A negotiated agreement dealing with any aspect of land claims or self-government as provided for under this approach.

Agreement-in-Principle (AIP): An agreement preliminary to a final agreement that addresses, in some degree of detail, the full range of issues to be covered by the final agreement.

Authority: Any authority other than a law-making authority, such as the authority to deliver or administer programs or services, or to enforce the laws of other governments.

Comprehensive Land Claim Agreement (CLCA) (also Modern Treaty): Comprehensive land claims are based on the assertion of continuing Aboriginal rights and title that were not resolved by pre-1970 treaties or other legal means. CLCAs (also known as modern treaties) cover a wide range of issues such as: jurisdiction over lands and resources, harvesting rights, subsurface rights, resource revenue-sharing, land and resource management, environmental management, and harvesting rights in offshore areas. The rights under these agreements are protected under section 35 of the *Constitution Act, 1982* (<http://www.ainc-inac.gc.ca/al/ldc/ccl/index-eng.asp>).

Fiscal Financing Arrangements (FFAs): A financial arrangement put in place for a purpose set out in CLCAs or SGAs, as laid out in the associated implementation plan.

Final Agreement: The final version of a CLCA or SGA.

Implementing Bodies: Also known as institutions of public government, implementing bodies are established to manage and implement sectoral elements of CLCAs, such as resource management, environmental impact assessment, human resources development and economic development. These bodies generally consist of appointed officials from each signatory body (Aboriginal, federal, provincial/territorial). Generally, implementing bodies’ annual operations are funded by Canada.

Implementation Plan: A jointly developed document that accompanies CLCAs and SGAs. The purpose of the implementation plan is to clarify the roles, responsibilities, activities and timeframes that the signatories and other implementing bodies must consider when implementing the obligations and broader objectives of agreements. Implementation plans also lay out associated funding arrangements (subject to appropriation by Parliament). Unlike the agreements themselves, implementation plans are not constitutionally protected – instead, they provide the signatories with an important “roadmap” for treaty implementation.

Jurisdiction: Law-making authority.

Renewals: Several elements of CLCAs and SGAs are renewed at regular intervals (usually 5- to 10-year increments). These include implementation plans and financial arrangements. Renewals often follow a review process and entail a negotiations process between the signatories to the agreements. Mandated renewals are important because they give the signatories an opportunity to make adjustments to treaty arrangements according to changing circumstances and lessons learned.

Review: Several types of reviews are mandated by CLCAs and SGAs. These include periodic general reviews of implementation progress; reviews of funding levels; reviews of economic provisions; and comparative reviews. Reviews provide an opportunity for the parties to identify weak points and to make recommendations on how to address them.

Self-Government Agreement (SGA): Self-government agreements, sometimes associated with CLCAs, set out arrangements for Aboriginal groups to govern their internal affairs and assume greater responsibility and control over the decision-making that affects their communities. SGAs address the structure and accountability of Aboriginal governments, their law-making powers, financial arrangements, and provision of programs and services.

ANNEX 2 – THE NEW RELATIONSHIP

Below are some of the differences between pre-effective date and post-effective date relationships between the signatories.

PRE-EFFECTIVE DATE	POST-EFFECTIVE DATE
Lands owned by federal government.	Lands owned by Aboriginal signatory.
Lands managed by federal government.	The Aboriginal signatory, as land owner, is largely responsible for land management and resource development on identified settlement land. The signatories may work together on the co-management of lands and resources.
Bands reside on a <i>reserve</i> or land base owned by the federal government.	Self-governing Aboriginal groups reside on settlement lands owned and controlled by the Aboriginal signatories; self-government may also be negotiated with Aboriginal groups without a land base.
Aboriginal community is subject to federal and provincial/territorial law.	Aboriginal governments have the ability to develop and implement legislation in a number of jurisdictions, as per their agreements. This legislation may take precedence over federal and provincial/territorial laws.
Programs and services administered by Canada; or delegated to Band.	Negotiated programs and services (e.g., health, education, heritage) designed and administered by Aboriginal signatory.
Band Government organization/election procedures laid out by <i>Indian Act</i> .	Government organization/election procedures controlled by Aboriginal government.
Band Council resolutions must be approved by Minister of INAC.	Autonomy to design and enact legislation and policies.
Funding provided by federal government to Band Council to administer programs and services.	Funding is provided by federal government via funding agreements. Funding level is initially determined by parties' assessment of financial requirements to achieve the agreements' goals and a collaborative negotiation process. Once funding is provided, the Aboriginal signatory government bears full responsibility for allocating it to fulfill its identified priorities.
Accountability to INAC on spending, legislation, elections, etc.	Accountability to Aboriginal community members on spending, legislation, elections, etc.; reporting relationship to federal government is diminished.

ANNEX 3 – EXAMPLES: FEDERAL DEPARTMENTAL IMPLEMENTATION OBLIGATIONS

It is important to note that federal departments have direct obligations stemming from the provisions of CLCAs and SGAs that generally consist of carrying out concrete activities. It is equally important to stress that many federal departments have “indirect” obligations under CLCAs and SGAs. These obligations may not involve the active fulfillment of discrete implementation

activities like those in the left column. “Indirect” obligations may, for example, be contingent on a federal department’s own activities; require departmental representatives to be aware of how agreements impact their own mandates/jurisdictions; or require departments to inform Aboriginal signatories of departmental actions.

DIRECT OBLIGATIONS	“INDIRECT” OBLIGATIONS
Key role in implementation planning, including review and approval of implementation plan provisions related to their mandate.	Providing advice to signatories on matters that affect their jurisdictions/areas of expertise.
Ensuring that departmental obligations as laid out in agreements and implementation plans are fulfilled in a timely manner.	Engaging with Aboriginal signatories when programs/activities affect their jurisdictions.
Fulfilling implementation activities as laid out in implementation plans.	Providing advice and information to implementation committees/working groups, boards, committees.
Participating in tripartite implementation committees/working groups, boards and committees.	Ensuring that new programs are designed and implemented in alignment with the provisions of CLCAs and SGAs.
Implementing existing departmental programs in alignment with the provisions of CLCAs and SGAs.	Maintaining communication and a close working relationship with members of all signatory parties with respect to departmental obligations and mandates.
Monitoring and reporting on implementation-related activities (e.g.: tripartite annual reports).	Staying informed of new agreements, policies and processes.
Ensuring departmental officials are educated about existing implementation obligations and other implementation matters.	Departments holding or administering federal real property must maintain awareness of provisions that may impact that property, including protection of heritage sites, consultation regarding surplus federal land disposal, land access considerations and economic development provisions.

ANNEX 4 – IMPLEMENTATION PLAN: EXAMPLE OF IP ACTIVITY SHEET¹⁰

ABORIGINAL CLCA/SGA IMPLEMENTATION PLAN – ANNEX A	
PROJECT:	Brief description of project
RESPONSIBLE PARTY:	List of responsible signatories/implementing bodies
PARTICIPANT/LIAISON:	List of bodies that play a supporting role in implementing the project
REFERENCED CLAUSES:	List of numbered clauses from the source CLCA or SGA referring to the relevant project
CROSS REFERENCES:	List of cross-referenced clauses from the source CLCA or SGA

RESPONSIBILITY	ACTIVITIES	TIMING
Responsible party (e.g.: relevant federal department; for example, Fisheries and Oceans Canada)	Activity necessary to fulfill obligation	Timeframe
Responsible party (e.g.: Aboriginal signatory)	Activity necessary to fulfill obligation	Timeframe

¹⁰ Please note that the format of this activity sheet is general and does not apply to all existing implementation plans. BC agreements, for example, include implementation plans with activity sheets that are structured differently. This annex is meant as a general example. For further information on the structure of BC implementation plans, contact INAC Implementation Branch's BC Treaty Manager (consult the **Collaboration website** for the list of contacts).

ANNEX 5 – CONTACTS

INAC IMPLEMENTATION BRANCH CONTACTS

Please consult the **Collaboration website** for a list of INAC Implementation Branch contacts.

INAC REGIONAL OFFICE CONTACTS

Please consult the **Collaboration website** for a list of INAC regional office contacts.

OTHER FEDERAL DEPARTMENT CONTACTS

Please consult the **Collaboration website** for a list of Federal Caucus members from relevant federal departments and agencies.

Note: These lists will be periodically reviewed and revised to ensure accuracy.

ANNEX 6 – OTHER SIGNATORIES' ROLES

Aboriginal Signatories

Aboriginal signatories play a key role in the implementation of modern treaties. The agreements are designed and implemented to benefit Aboriginal peoples, and to recognize and protect Aboriginal rights and title. Aboriginal communities and Canada are the target beneficiaries of both CLCAs and SGAs. As such, officials designated by the Aboriginal government are vital to the successful negotiation, ratification and implementation of modern treaties. They are equally responsible for implementing the CLCA and SGA obligations laid out in the agreements.

Aboriginal signatories' roles in the implementation of CLCAs and SGAs include managing, monitoring, and reporting on ownership and administration of lands and resources; developing policies and laws in relevant jurisdictions; administering and delivering programs and services to stakeholder communities; managing and allocating implementation-related funding; developing and managing government structures; liaising with other signatories on a government-to-government basis; participating in tripartite implementation committees; participating in periodic reviews and renewals; participating in the drafting of annual reports; monitoring and reporting on the effects of the agreements on their communities; and developing collaborative strategies in partnership with other signatories to improve agreement implementation.

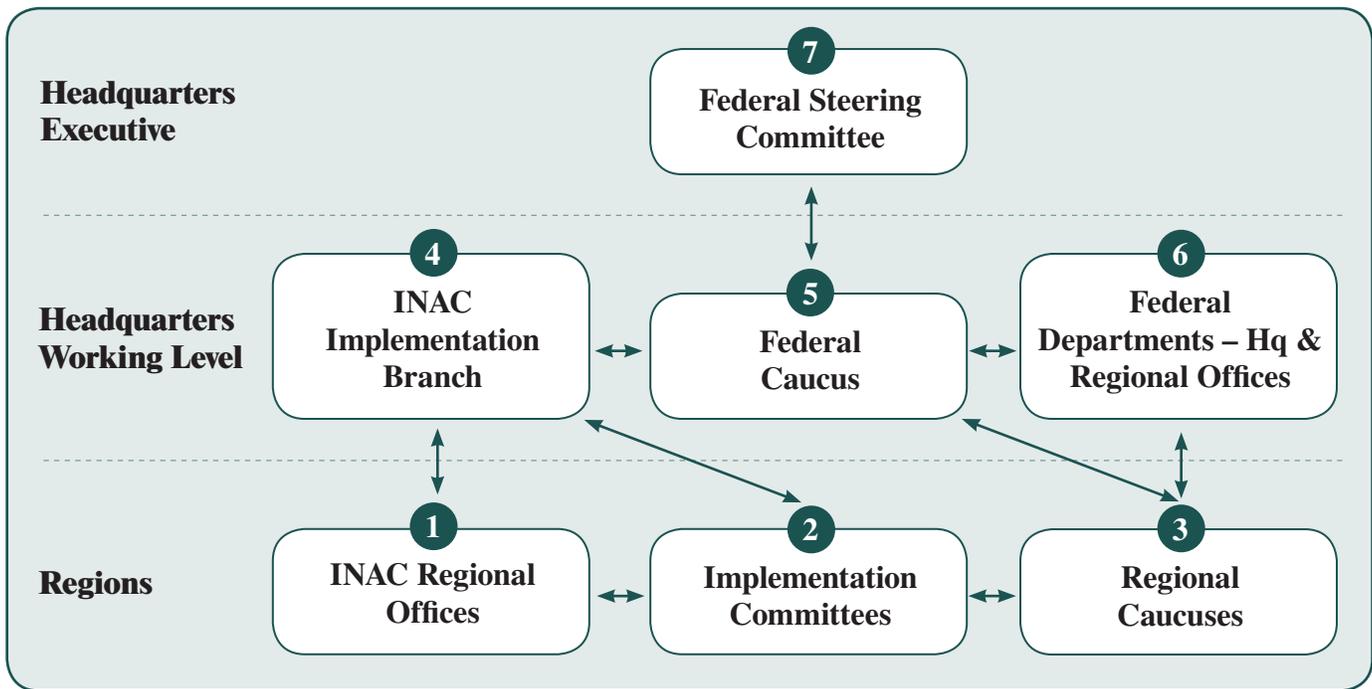
Provincial/Territorial Governments

Provincial and territorial signatories to CLCAs and SGAs play an equally important role in implementing the agreements. Aboriginal signatories' jurisdictions as laid out in CLCAs and SGAs are often devolved from, or related to, provincial or territorial jurisdictions. Some of the major roles that provincial/territorial governments play include:

- ❖ participating in land and resource management/development bodies;
- ❖ developing collaborative workplans for resource management;
- ❖ fulfilling their contracting obligations as set out in agreements;
- ❖ managing special management areas created by agreements;
- ❖ coordinating with other signatories on taxation and property assessment;
- ❖ participating in implementation committees and implementation bodies;
- ❖ participating in implementation reviews, annual reports, and other monitoring and reviewing processes; and
- ❖ coordinating with Aboriginal signatories to ensure that programs and services are delivered to all citizens in a clear, consistent manner that avoids duplication of services and other inefficiencies.

(This list is not intended to be exhaustive. It provides an overview of provincial and territorial signatories' broad roles in CLCA and SGA implementation).

ANNEX 7 – FEDERAL IMPLEMENTATION MANAGEMENT FRAMEWORK – HOW THE PIECES FIT TOGETHER



1 – INAC REGIONAL OFFICES

WHO

- ❖ INAC regional office officials with implementation and intergovernmental affairs responsibilities

WHAT

- ❖ Implementing INAC's obligations
- ❖ Key point of contact for federal departments' regional staff
- ❖ Lead INAC role in regional caucuses

HOW

- ❖ Liaising with provincial/territorial governments, implementing bodies and Aboriginal signatories on implementation issues and day-to-day implementation responsibilities
- ❖ Collaborating with INAC IB in representing Canada on implementation committees
- ❖ Participating in periodic reviews
- ❖ Collaborating with INAC IB on production and distribution of annual reports
- ❖ In some cases, administering fiscal arrangements

2 – IMPLEMENTATION COMMITTEES

WHO

- ❖ Designated representatives from CLCA/SGA signatories – federal, provincial/territorial and Aboriginal

WHAT

- ❖ Key tripartite body for implementing agreements; working toward annual collaborative goals

HOW

- ❖ Regular meetings (generally quarterly)
- ❖ Annual work planning/goal setting
- ❖ First line of dispute resolution between signatories
- ❖ Reviews/renewals
- ❖ Maintenance of networks between ICs/INAC IB/etc.
- ❖ Links to senior management from each signatory party (Canada: IB DG ->ADM ->MO; FSC; central agencies)
- ❖ Federal IC representative linked in to regional/federal caucuses to address federal implementation issues

3 – REGIONAL CAUCUSES

WHO

- ❖ Regional members of federal departments with responsibilities under CLCAs/SGAs

WHAT

- ❖ Address implementation issues specific to a region/agreement; inform Canada's representative to implementation committees (ICs) of departmental issues; bring broad implementation issues to INAC IB for tabling at Federal Caucus

HOW

- ❖ Regular caucus meetings; tabling of agendas and minutes on **Collaboration website**
- ❖ Coordination with INAC IB to propose tabling items at Federal Caucus
- ❖ Regular contact with Canada's IC representative before/after IC meetings (IC representative informs regional caucus members of IC agenda; seeks regional caucus members' guidance on federal perspectives; invites regional caucus members to attend IC meetings as appropriate; circulates IC minutes to regional caucus members; involves regional caucus in lead-up and conduct of reviews and renewals)

4 – INAC IMPLEMENTATION BRANCH (INAC IB)

WHO

- ❖ Manages INAC's coordinating role in the implementation of Canada's obligations under CLCAs/SGAs. (See Annex 5 for organization of INAC IB)

WHAT

- ❖ Coordination of Government of Canada obligations
- ❖ Ongoing implementation activities

HOW

- ❖ Managing monitoring and reporting tools.
- ❖ Administering funding for signatories, boards and committees
- ❖ Coordinating federal participation in mandated reviews, renewals
- ❖ **Working with federal negotiators and federal departments on development of agreements, implementation plans**
- ❖ **Point of contact for departments with implementation issues**
- ❖ **Administering the implementation management framework**
- ❖ **Administering and develops implementation resource centre on *Collaboration website***
- ❖ Managing tabling of items for Federal Caucus

5 – FEDERAL CAUCUS ON SELF-GOVERNMENT AND COMPREHENSIVE CLAIMS

WHO

- ❖ Committee of analysts from all federal departments with responsibilities/interests under CLCAs/SGAs

WHAT

- ❖ Provides feedback and creates dialogue on implementation issues of broad federal importance
- ❖ Recommends that items be tabled at FSC for senior-level discussion and decision-making
- ❖ Ensures that information on implementation issues is transmitted to everyone in departments with implementation responsibilities

HOW

- ❖ Caucus information meetings convened on regular basis; materials provided in advance on **Collaboration website**
- ❖ Caucus recommends decision items be tabled at FSC during regular Caucus decision meetings
- ❖ All Federal Caucus members have access to **Collaboration website**, including implementation resource centre
- ❖ Members of Federal Caucus are responsible for transmitting minutes/records of decisions to their respective departments at all appropriate levels

6 – FEDERAL DEPARTMENTS – HEADQUARTERS AND REGIONS

WHO

- ❖ Members of federal departments with mandates/programs involving implementation of CLCAs and SGAs and direct or indirect obligations under these agreements; most federal departments have both a headquarters and regional presence

WHAT

- ❖ Implementation of direct and indirect obligations that fall within departmental mandates (see Annex 2)
- ❖ Maintaining awareness of existing and upcoming CLCAs and SGAs, and how they intersect with/affect departmental mandates

HOW

- ❖ Participation in negotiation of agreements and development of implementation plan (as coordinated by INAC negotiators or during Caucus/FSC)
- ❖ Fulfillment of departmental obligations pursuant to agreement(s)
- ❖ Participation in monitoring and reporting processes such as TOMS and CLCA.net
- ❖ Departmental presence on regional, federal caucuses
- ❖ Informing federal implementation committee representative of departmental issues and initiatives with regard to agreements via regional caucus before implementation committee meetings; participating in implementation committee meetings as appropriate

Note: The division of responsibilities between headquarters and regions is unique in each department.

7 – FEDERAL STEERING COMMITTEE ON SELF-GOVERNMENT AND COMPREHENSIVE CLAIMS (FSC)

WHO

- ❖ ADM-level committee; members of federal departments with Aboriginal agendas/programs

WHAT

- ❖ Advice and decision-making on CLCA/SGA negotiations and implementation

HOW

- ❖ Periodic meetings to address tabled issues; decision produced via consensus and transmitted by decision document (available on **Collaboration website**) to members of Federal Caucus

ANNEX 8 – POLICY AND HISTORICAL CONTEXT

Policy Context

The Comprehensive Land Claims Policy

The *Comprehensive Land Claims Policy* (1973) laid out key principles underpinning the federal role in negotiating modern treaties.

One objective of the policy was to define certainty, replacing the ambiguous approach taken to Aboriginal rights to lands and resources by exchanging claims to undefined Aboriginal rights for a clearly defined package of rights and benefits set out in a settlement agreement. Section 35 of the *Constitution Act, 1982* recognizes and affirms Aboriginal and treaty rights that now exist or that may be acquired by way of land claim agreements.

Significant amendments to the *Comprehensive Land Claims Policy* were announced in 1986. These included widening the federal scope of comprehensive land claims negotiations to include matters like resource revenue, an expanded Aboriginal role in environmental decision-making and a commitment to negotiate self-government. One of the most important elements of the revised policy was the stipulation that all new CLCAs include a negotiated implementation plan to guide the work of the signatories after the agreement goes into effect. Over time, the policy has evolved through innovation in the claims process and legal decisions (such as approaches to certainty).

The Inherent Right Policy

The **Inherent Right Policy** (IRP) (1995) recognizes that Aboriginal peoples in Canada have an inherent right to govern themselves in matters internal to the Aboriginal group; integral to Aboriginal culture; and essential to the operation of an Aboriginal government. They include the establishment of government structures and internal constitutions; membership; marriage; languages; culture; religion; education; health; social services; and policing and enforcement, among others. The policy

also asserts that issues related to affordability, efficiency, capital requirements, duplication of services, feasibility and capacity have to be addressed in the negotiation of self-government.

The IRP requires the development of an implementation plan to accompany ratified self-government agreements. The implementation plan is designed to identify the roles and responsibilities of the signatories as well as the activities and timeframes that have been agreed on to give effect to the agreements.

Implementation Planning Context

The first comprehensive land claim agreements to be ratified by the federal government, provincial/territorial governments and Aboriginal signatories were the James Bay and Northern Quebec Agreement (1975) and the Northeastern Quebec Agreement (1978). As the signatories to these agreements managed the new financial, political, administrative and legislative relationships the agreements brought, it became clear that putting the clauses of a modern treaty into effect required a comprehensive plan. The lack of clarity regarding roles and responsibilities and the interpretation of treaty provisions became an obstacle to implementing the agreements and strained the new relationships they had forged.

The need to find a solution was raised both internally (by the signatories to the agreements) and externally (by the Office of the Auditor General). The agreements' stakeholders considered how they might collaborate to improve implementation processes and relationships. Several goals emerged from these assessments:

- ❖ clarifying the activities, timeframes and resources required to fulfill the provisions of the agreements;
- ❖ clarifying the roles and responsibilities of each signatory; and
- ❖ operationalizing implementation goals to facilitate monitoring and reporting.

The agreements' stakeholders have been working toward realizing these goals and strengthening their collaborative relationships since then, including instituting a policy directive to include implementation plans in new agreements.

Implementation plans were conceived as a roadmap for all implementing parties as they collaborate on making modern treaties work. They clarify the obligations contained in

the agreements and describe implementation activities in terms of “who,” “how,” “when” and “how much,” based on a joint decision by the parties on their individual and shared responsibilities. These documents represent a new implementation relationship based on clarity and accountability.

ANNEX 9 – ADDITIONAL RESOURCES

Policies

The Government of Canada’s Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government (1995)

<http://www.ainc-inac.gc.ca/al/ldc/ccl/pubs/sg/sg-eng.asp>

Reports and Reviews

Senate Committee on Aboriginal Peoples: Special Study on the Implementation of Comprehensive Land Claims Agreements in Canada, May 2008. **“Honouring the Spirit of Modern Treaties: Closing the Loopholes.”**

http://www.parl.gc.ca/common/Committee_SenRecentReps.asp

2003 *Auditor General Report*, Chapter 8: Indian and Northern Affairs Canada, **Transferring Federal Responsibilities to the North**

http://www.oag-bvg.gc.ca/internet/English/parl_oag_200311_08_e_12931.html

2006 *Auditor General Report*, Chapter 7: **Federal Participation in the British Columbia Treaty Process – Indian and Northern Affairs Canada**

http://www.oag-bvg.gc.ca/internet/English/parl_oag_200611_07_e_14975.html

2007 *Auditor General Report*, Chapter 3: **Inuvialuit Final Agreement**

http://www.oag-bvg.gc.ca/internet/English/parl_oag_200710_03_e_23827.html

Aboriginal Governance: An Annotated Bibliography

<http://www.fngovernance.org/pdf/FNGCbibliography.pdf>

ABORIGINAL SIGNATORIES

Council of Yukon First Nations	http://www.cyfn.ca/
Champagne and Aishihik First Nations	http://www.cafn.ca/
Carcross/Tagish First Nation	http://www.ctfn.ca/
First Nation of Na-Cho Nyak Dun	http://www.nndfn.com/
Grand Council of the Crees	http://www.gcc.ca/
Gwich'in Tribal Council	http://www.gwichin.nt.ca/
Inuvialuit Regional Corporation	http://www.inuvialuit.com/
Kluane First Nation	http://www.kfn.ca/
Kwanlin Dün First Nation	http://www.kwanlindun.com/
Little Salmon/Carmacks First Nation	http://www.lscfn.ca/
Maa-Nulth First Nations	http://www.maanulth.ca/
Makivik Corporation	http://www.makivik.org/
Naskapi Nation of Kawawachikamach	http://www.naskapi.ca/
Nisga'a Nation	http://www.nisgaalisims.ca/?q=welcome
Nunatsiavut Government	http://www.nunatsiavut.com/
Nunavut Tunngavik Inc.	http://www.tunngavik.com/
Sahtu Secretariat Inc.	http://www.sahtu.ca/
Selkirk First Nation	http://www.selkirkfn.com/
Ta'an Kwäch'än Council	http://www.taan.ca/
Teslin Tlingit Council	http://www.ttc-teslin.com/
Tlicho Government	http://www.tlicho.ca/
Tr'ondëk Hwëch'in First Nation	http://www.trondek.ca/
Tsawwassen First Nation	http://www.tsawwassenfirstnation.com/
Vuntut Gwitchin First Nation	http://www.vgfn.ca/
Westbank First Nation	http://www.wfn.ca/

ABORIGINAL ORGANIZATIONS

Assembly of First Nations	http://www.afn.ca/
Land Claims Agreements Coalition	http://www.landclaimscoalition.ca/index.php
Aboriginal Canada Portal – National Aboriginal Organization Index	http://www.aboriginalcanada.gc.ca/acp/site.nsf/eng/ao20001.html

PROVINCIAL/TERRITORIAL SIGNATORIES

British Columbia Ministry of Aboriginal Relations and Reconciliation	http://www.gov.bc.ca/arr/
Newfoundland and Labrador Department of Labrador and Aboriginal Affairs	http://www.laa.gov.nl.ca/laa/
Northwest Territories Department of Aboriginal Affairs and Intergovernmental Relations	http://www.daair.gov.nt.ca/_live/pages/wpPages/home.aspx
Government of Nunavut	http://www.gov.nu.ca/english/departments/
Quebec Aboriginal Affairs Secretariat	http://www.autochtones.gouv.qc.ca/index_en.asp
Yukon Government Executive Council Office	http://www.eco.gov.yk.ca/landclaims/index.html

INAC RESOURCES

INAC Homepage	http://www.ainc-inac.gc.ca/
INAC Bibliography	http://www.ainc-inac.gc.ca/al/hts/res/bib/
INAC Impact Evaluation of Comprehensive Land Claims Agreements	http://www.ainc-inac.gc.ca/ai/arp/aev/pubs/ev/clca/clca-eng.asp
Impact Evaluation of Treaty Related Measures in British Columbia	http://www.ainc-inac.gc.ca/ai/arp/aev/pubs/ev/trm/trm-eng.asp
INAC Regional Offices	http://www.ainc-inac.gc.ca/ai/scr/rmcdp-eng.asp

FEDERAL RESOURCES

Aboriginal Canada Portal Claims and Treaties Resources	http://www.aboriginalcanada.gc.ca/acp/site.nsf/en/ao20009.html
Parliamentary Research Branch Aboriginal and Treaty Rights	http://dsp-psd.communication.gc.ca/Collection-R/LoPBdP/EB/prb9916-e.htm

INAC General Briefing Note (Contact IB, IP3, for a copy)

ANNEX 10 – MAP OF LAND CLAIMS AND SELF-GOVERNMENT AREAS



Please note: This map is intended as a general reference guide and may not reflect the exact coordinates of the referenced CLCAs and SGAs.

Yukon CLCAs and SGAs:

- ❖ Champagne and Aishihik First Nations
- ❖ Carcross/Tagish First Nation
- ❖ First Nation of Na-Cho Nyak Dun
- ❖ Kluane First Nation
- ❖ Kwanlin Dün First Nation
- ❖ Little Salmon/Carmacks First Nation
- ❖ Selkirk First Nation
- ❖ Ta'an Kwäch'än Council
- ❖ Teslin Tlingit Council
- ❖ Tr'ondëk Hwëch'in First Nation
- ❖ Vuntut Gwitchin First Nation