



**Affaires autochtones et  
Développement du Nord Canada**

**Aboriginal Affairs and  
Northern Development Canada**



# **Results Based Approach to Canada's Participation in Treaty and Self-Government Negotiations**

## **Engagement Process**

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# New Approach

## *Overview*

- This material provides a general overview of the results-based approach to Canada's participation in treaty and self-government negotiations and the objectives of the engagement process, but is not intended to identify or address table-specific negotiation issues

# New Approach

## *What is the new approach?*

- Canada is working towards implementing a new approach to accelerate progress on treaty and self-government negotiations and effectively addressing s.35 rights claims
- Based on three pillars:
  - 1) **Results-Based Negotiations to Achieve Results with Partners:** focus resources and efforts on negotiating tables with the greatest potential to conclude agreements in a timely way within existing federal mandates
  - 2) **Promoting More Effective Use of Other Tools to Address section 35 Rights and Promote Economic Development and Self-Sufficiency:** improving access to other tools and options outside the negotiation process that address section 35 rights and promote economic development and self-sufficiency
  - 3) **Speeding Up Federal Mandating Processes:** improving the federal approval and reporting processes

# Engagement Process

## *What are we engaging on?*

- The goal of the engagement process is to have frank discussions with Canada's negotiating partners (Aboriginal groups and provincial/territorial governments) regarding progress at the tables
- After seeking the views and input from its negotiating partners during the engagement process, Canada will be conducting an internal assessment of tables

# Engagement Process

## *What are we engaging on?*

- These discussions will include:
  - Do Aboriginal and Provincial/Territorial parties support an agreement that is consistent with the principles of the federal policies for the negotiation of a comprehensive land claim or self-government agreement (i.e. federal core elements)?
  - Do the parties share a common vision for resolution?
  - Can the agreement be achieved in a timely manner?

# Engagement Process

## *What are we engaging on?*

- The following slides are some examples of federal core elements in treaty and self-government negotiations
- While the slides do provide examples of some federal core elements, they are not exclusive
- There are other elements not listed that are integral for Canada in concluding an agreement
- The parties' position with respect to the federal core elements will form part of Canada's assessments of the tables

# Examples of Federal Core Elements

## Certainty

- Treaties must provide finality and certainty with respect to an Aboriginal group's claimed section 35 rights, as well as clarity with respect to Aboriginal, federal and provincial/territorial jurisdictions and responsibilities
- A treaty must provide a comprehensive picture comprised of:
  - the precise and exhaustive articulation of the s.35 rights that the Aboriginal group may be able to exercise post-treaty;
  - the full and final settlement of claims to s.35 rights including the elimination of any contingent Crown liability for past infringement of s.35 rights; and
  - provisions to manage legal risks in the event that the certainty technique is interpreted by the courts in a manner not intended by the parties

# Examples of Federal Core Elements

## Land

- Land that will be involved in any treaty or self-government agreement must be clearly identified, and the Aboriginal group's rights and responsibilities with respect to the land must be clearly set out in the agreement
- Land held in fee simple by the Aboriginal group post effective date of the treaty will not be lands reserved for Indians within the meaning of s.91(24) of the *Constitution Act, 1867* nor "reserves" as defined in the *Indian Act*
- Depending on where the land claim is situated, federal and provincial land management regimes in place must be respected in the agreement



# Examples of Federal Core Elements

## Governance

- The ***Canadian Charter of Rights and Freedoms*** applies to all Aboriginal governments and institutions in relation to matters within their respective jurisdictions and authorities
- Aboriginal governments and institutions exercising the inherent right of self-government will operate within the framework of the **Canadian Constitution**
- Aboriginal governments and institutions **must be fully accountable** to their members or clients for all decisions made and actions taken in the exercise of their jurisdictions or authority

# Examples of Federal Core Elements

## Governance

- It is essential that Canada retain its exclusive law-making authority in matters of **national interest**, including:
  - Powers related to Canadian sovereignty, defence and external relations
  - Management and regulation of the national economy
  - Maintenance of national law and order and substantive criminal law
  - Protected of the health and safety of all Canadians
  - Federal undertakings and others powers
- Scope and content of Aboriginal laws must be clearly defined and the relationship between federal, provincial/territorial and Aboriginal laws (**priority of laws**) must be set out in the treaty or self-government agreement

# Examples of Federal Core Elements

## Others

- **Funding Framework:** Self-government funding is a shared responsibility and will be determined using a formula-based approach, including own source revenue components
- **Aboriginal Mandate and Representation:** Canada requires that individuals negotiating on behalf of Aboriginal groups be duly mandated and that this requirement be satisfied by evidence of the Aboriginal community's knowledge and support throughout the negotiation process
- **Ratification:** Canada requires clear and adequate evidence that the negotiated agreement is acceptable and that the members of the Aboriginal group have given consent to the agreement

# Outcomes

## *What happens after the engagement?*

- Following the engagement process, Canada will use information gathered to inform internal review of the tables
- Possible outcomes could include:
  - **Expediting negotiations**

As this is a results-based approach to negotiations:

    1. Canada will introduce multi-year negotiation plans where there is sufficient common ground
    2. These plans will ensure that all parties share the same goals and objectives over the next years in terms of reaching milestones and ultimately concluding an agreement-in-principle or a final agreement
    3. Federal mandates for reaching these milestones will be time limited
    4. On an annual basis, Canada will review annual and multi-year plans in order to reconfirm federal participation at the table

# Outcomes

## *What happens after the engagement?*

- Possible outcomes could also include:
  - Reducing federal participation
  - Suspending tables or disengaging from tables, following an orderly process
- For tables where participation is reduced, table is suspended or where disengagement is proposed, Canada could consider alternative measures for managing section 35 rights
- Negotiation tables should be advised of the outcome in spring 2013