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Cabinet Directive on the Federal Approach to Modern Treaty Implementation

This Directive lays out an operational framework for the management of the Crown's modern treaty obligations. It guides federal departments and agencies to fulfill their responsibilities.

1 – Roles and Responsibilities

All Federal Departments and Agencies:

- Will ensure that they are aware of, understand, and fulfill their departments' obligations pursuant to all modern treaties in effect.
- Will ensure that they are aware of, understand and are prepared to fulfill their departments' obligations, prior to approving new modern treaties under negotiation.
- Will develop and deliver activities, programs, policies and legislation in a manner that respects and complies with modern treaty provisions and the rights therein. To this end, departments and agencies will conduct an Assessment of Modern Treaty Implications on all policy, plan and program proposals to Cabinet.
- Will report on the status of their obligations on an annual basis by contributing to an Annual Report, coordinated by AANDC (Aboriginal Affairs and Northern Development Canada), provided to the Minister of AANDC (Aboriginal Affairs and Northern Development Canada).
- Will participate in treaty-related governance structures as per the terms of reference of those structures, and as appropriate to the scope of their responsibilities.

Assessment of Modern Treaty Implications



In developing policy, plan and program proposals to Cabinet, departments and agencies are expected to consider the implications of modern treaties on the proposals, and to attest to the compliance of the proposals with the legal obligations contained in modern treaties.

More specifically, departments and agencies will complete an assessment of modern treaty implications of a legislative, policy, plan or program proposal, when:

1. the proposal is submitted to Cabinet for approval; and
2. implementation of the proposal may have implications on modern treaties in effect and the rights enshrined therein.

Cabinet

- Ministers, through meetings of Cabinet committees, will have the shared responsibility of determining if assessments of modern treaty implications have been undertaken on proposals to Cabinet.

Department of Aboriginal Affairs and Northern Development Canada

- AANDC (Aboriginal Affairs and Northern Development Canada) is responsible for federal representation on implementation committees.
- AANDC (Aboriginal Affairs and Northern Development Canada) will coordinate the interdepartmental committee structures put in place to manage the Crown's approach to modern treaties.
- AANDC (Aboriginal Affairs and Northern Development Canada) will administer the Treaty Obligation Monitoring System (TOMS); will be accountable for regularly updating the system to reflect new or revised obligations, and will provide direction to departments and agencies reporting into the system.
- AANDC (Aboriginal Affairs and Northern Development Canada) will provide guidance for other departments and agencies in interpreting modern treaty provisions and their implications for departmental activities; in determining potential implications of modern treaties on departmental policy, programs and legislation; in completing Assessments of Modern Treaty Implications, and in undertaking intergovernmental relationships with Aboriginal signatories.

Central Agencies

- Central agencies, including the Privy Council Office, the Department of Finance and the Treasury Board Secretariat will confirm that the assessment of modern treaty implications has been completed prior to referral of proposals to Cabinet.

Department of Justice

- The Department of Justice will provide advice and guidance to departments and agencies with respect to their legal responsibilities pursuant to modern treaties; potential legal repercussions/risk of contemplated departmental activities; relationship of laws and interpretation of key legal concepts related to modern treaties, such as honour of the Crown.

2 – Deputy Ministers' Oversight Committee

A Deputy Minister-level Oversight Committee will be created and chaired by the Deputy Minister of Aboriginal Affairs and Northern Development Canada. The Oversight Committee's mandate will be to provide executive oversight of the implementation of the Directive, and by extension, of Canada's roles and responsibilities under modern treaties. This mandate will encompass:

- Program and policy direction to departments in fulfilling the Canada's responsibilities under modern treaties;
- Decision-making (and dispute resolution), as necessary, when cross-cutting issues arise that require senior executive intervention;
- Coordination of the federal approach to broad, cross-cutting obligations;
- Oversight of monitoring and reporting and performance measurement;
- Meeting with Aboriginal and other treaty partners as appropriate and as laid out in the committee terms of reference.

3 – Modern Treaty Implementation Office

A Modern Treaty Implementation Office will be established in AANDC (Aboriginal Affairs and Northern Development Canada) to provide ongoing coordination and oversight of Canada's modern treaty obligations, and to support the mandate of the Deputy Ministers' Oversight Committee. The Office's mandate will be two-fold:

- The Office will work with departments to establish ongoing oversight and accountability through the development and implementation of a performance

measurement framework, the development and administration of monitoring and reporting tools, the coordination of departmental input into these tools, and the development of an annual report provided to the Minister of AANDC (Aboriginal Affairs and Northern Development Canada).

- The Office will provide interdepartmental coordination by serving a liaison function between implementation committees, regional and federal officials-level interdepartmental Caucuses, Federal Steering Committee and the Deputy Ministers' Oversight Committee. Further, the Office will provide a secretariat function for interdepartmental committees and will coordinate issues management across departments.

4 – Evaluation of the Directive

Within five years of the implementation of the Directive, AANDC (Aboriginal Affairs and Northern Development Canada) will conduct an evaluation to assess the effectiveness of the Directive in meeting its stated objectives; to assess the ongoing need for the Directive, and to determine if changes to the Directive and its component tools and structures should be pursued.

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