

Glossary of Treaty-Related Terms

As Used by the Province of British Columbia

aboriginal people:

all indigenous people of Canada, including Indians (status and non-status), Metis, and Inuit people (as defined in the Constitution Act of 1982).

aboriginal rights:

- refer to practices, traditions or customs ("activity[ies]") which are integral to the distinctive culture of an aboriginal society and were practiced prior to European contact, meaning they were rooted in the pre-contact society (the date is no longer prior to 1846, the date British sovereignty was asserted in B.C.);
- must be practiced for a substantial period of time to have formed an integral part of the particular aboriginal society's culture;
- must be an activity that is a central, defining feature which is independently significant to the aboriginal society;
- must be distinctive (not unique), meaning it must be distinguishing and characteristic of that culture;
- must be based on an actual activity related to a resource: the significance of the activity is relevant but cannot itself constitute the claim to an aboriginal right;
- must be given a priority after conservation measures (not amounting to an exclusive right);
- must meet a continuity requirement, meaning that the aboriginal society must demonstrate that the connection with the land in its customs and laws has continued to the present day;
- may be the exercise in a modern form of an activity that existed prior to European contact;
- may include the right to fish, pick berries, hunt and trap for sustenance, social and ceremonial purposes (for example, ceremonial uses of trees and wildlife locations);
- may include an aboriginal right to sell or trade commercially in a resource where there is evidence to show that the activity existed prior to European contact "on a scale best characterized as commercial" and that such activity is an integral part of the aboriginal society's distinctive culture;
- may be adapted in response to the arrival of Europeans if the activity was an integral part of the aboriginal society's culture prior to European contact;
- do not include an activity that solely exists because of the influence of European contact; and
- do not include aspects of aboriginal society that are true of every society such as eating to survive.

Aboriginal rights arise from the prior occupation of land, but they also arise from the prior social organization and distinctive cultures of aboriginal peoples on that land. Treaty negotiations will translate aboriginal rights into contemporary terms.

aboriginal title:

a sub-category of aboriginal rights dealing solely with land claims.

agreement in principle (AIP):

document produced in the fourth phase of the six stage treaty negotiation process. The AIP outlines the major points of agreement between the parties regarding provisions which will form the basis of the treaty. An AIP is not binding on the parties, and changes may occur in negotiating the final agreement.

AIP:

see [agreement in principle](#).

band:

an organizational structure defined in the Indian Act which represents a particular body of Indians as defined under the Indian Act.

band council:

body elected according to provisions of the Indian Act, charged with the responsibility for "the good government of the band" and delegated the authority to pass by-laws on Indian reserve lands.

BCTC:

see [British Columbia Treaty Commission](#)

BCTC process:

see [six-stage process](#)

blanket extinguishment:

see [extinguishment](#)

British Columbia Treaty Commission (BCTC):

an independent body of five commissioners appointed by Canada, the Province and the First Nations Summit. BCTC oversees and facilitates the six-stage process for negotiating treaties.

capacity-building:

the development of human, technical and financial resources in First Nation communities. For example, some First Nations may require capacity building to respond to provincial requests for consultation concerning aboriginal rights, and subsequently to carry out the authorities that they will assume under treaties.

certainty provisions:

treaty provisions designed to clearly define the authorities, rights and responsibilities for all parties to the treaty. See also extinguishment.

claim area:

area identified by a First Nation as the basis for negotiating treaty settlement land. A First Nation's claim area may or may not be the same as their traditional territory.

comprehensive claim:

a claim made by a First Nation based upon continuing aboriginal rights and title which have not been dealt with by treaty or other legal means. In British Columbia comprehensive claims are being negotiated under the BCTC process. See also cut-off claim and specific claim.

cooperative management:

arrangements made between the Province and First Nations to involve First Nations in provincial land and resource management processes.

core land:

(obsolete term) see [treaty settlement land](#)

Cost Sharing Memorandum of Understanding (MOU):

the 1993 political agreement between Canada and British Columbia which outlines the financial

responsibilities of the federal government and the Province pursuant to treaty settlements. The agreement is entitled: Memorandum of Understanding between Canada and British Columbia Respecting the Sharing of Pre-treaty Costs, Settlement Costs, Implementation Costs and the Costs of Self-Government.

Crown activity:

any activity for which Canada or the Province is responsible through legislation, regulation, or policy. These activities may involve the issuance of tenure (permit, license, lease) or grants, or the approval to conduct a specific activity.

Crown grant:

usual mechanism by which the Crown conveys land to persons or corporate bodies who then hold the land in private ownership.

Crown land:

land or an interest in land, owned by Canada or the Province. Almost all Crown land in British Columbia is owned by the Province.

Crown Lands Activities Policy:

provincial policy designed to meet the Province's legal obligations to aboriginal people by requiring that Crown activity does not unjustifiably interfere with the aboriginal rights of aboriginal people. Full title: "Crown Land Activities and Aboriginal Rights Policy Framework".

Crown tenure:

a legal interest in Crown lands or resources, issued by the Province in the form of a permit, license, lease or approval.

cut-off claim:

a claim by a First Nation arising from the removal of portions of Indian reserves which occurred following the recommendations of the 1913-1916 federal-provincial McKenna-McBride Commission. Negotiated outside the treaty process.

Delgamuukw obligations:

informal term used to refer to the legal obligations of the Crown to aboriginal people arising out of the Court of Appeal decision in Delgamuukw.

Douglas treaties:

fourteen treaties struck between 1850 and 1854 between the British Crown, represented by Sir James Douglas, and some Vancouver Island First Nations.

eligibility:

entitlement to treaty benefits.

enrolment:

process of registering eligible treaty beneficiaries.

entrenchment:

term occasionally misused in the context of treaties to refer to protection under the constitution. Aboriginal rights and treaty rights are protected under s.35 of the Constitution Act, 1982. Entrenchment of treaty rights does not mean that treaties become part of the Constitution.

extinguishment:

term used to describe the cessation or surrender of aboriginal rights to lands and resources in exchange for rights granted in a treaty. To date, Canada has required full or partial extinguishment to conclude treaties.

fee simple:

legal interest in land that is commonly characterized as private ownership.

fiduciary duty:

legal obligation of one party to act in the best interests of another. Canada has a fiduciary obligation with respect to Indians and lands reserved for Indians under s.91(24).

final agreement:

document produced in the fifth phase of the six-stage process. The final agreement embodies the principles outlined in the AIP which are to be included in the treaty. Once ratified by the parties, it becomes a treaty.

financial transfer arrangements:

arrangements made in treaties for funding First Nation governments. The fiscal arrangements among Canada, British Columbia and each First Nation will identify the revenue sources available to the First Nation government for carrying out its governance responsibilities and will determine whether and to what extent Canada and B.C. will contribute to those revenues.

First Nation: a. an aboriginal governing body, organized and established by an aboriginal community, or b. the aboriginal community itself.

First Nation fee simple land:

land held in fee simple by a First Nation that does not have the status of treaty settlement land. No special rights attach to First Nation fee simple land and no aspect of First Nation jurisdiction will apply on it.

First Nation land:

see [treaty settlement land](#)

First Nation roads:

local roads on treaty settlement lands which First Nation governments own and bear full responsibility for. Not all roads on treaty lands will be owned by the First Nation. Most First Nation roads will accommodate public access.

First Nations Summit:

an umbrella organization of some British Columbia First Nations and tribal councils. The First Nations Summit is one of the parties to the British Columbia Treaty Commission.

fiscal arrangements:

government financial arrangements for treaties, including financial limits on settlements, revenue raising powers negotiated in the treaty, cost sharing arrangements between Canada and the Province, financial transfer arrangements with First Nations, and compensation arrangements with third parties.

food fish:

informal term used when referring to the legal obligation of the Crown to recognize an aboriginal right to fish, particularly for food, social and ceremonial purposes, arising from the Supreme Court of Canada's

decision in Sparrow. The Court's decision in Gladstone now leaves open the possibility that there can be aboriginal rights to the commercial sale or trade of fish. See also legal obligation.

framework agreement:

document produced in stage three of the six-stage process. The framework agreement identifies negotiation topics and objectives, and establishes a timetable and any special procedural arrangements for the negotiations.

implementation:

final phase of the six stage process. In the implementation stage, the terms of a treaty are put into effect: Program, financial, legislative, and other commitments which have been articulated in the treaty are fulfilled.

INAC:

acronym for Indian and Northern Affairs Canada. INAC is responsible for negotiating treaties on behalf of Canada. (Also referred to as the Department of Indian Affairs and Northern Development (DIAND).)

Indian Act:

federal legislation designed to give effect to the legislative authority of Canada for "Indians, and Lands reserved for the Indians," pursuant to s.91(24) of the Constitution Act, 1867.

Indian reserve:

defined in Section 2 of the Indian Act as a tract of land that has been set apart by the federal government for the use and benefit of an Indian band. The legal title to Indian reserve land is vested in the federal government. See also s.91(24).

infringement:

an action of the Crown which impairs an aboriginal right. See also Crown Lands Activity Policy.

initialled agreement:

an agreement which the negotiators for all parties have initialled as a means of expressing their intention to recommend the agreement to their respective authorities for approval.

interest-based negotiations:

approach to negotiating treaties in which negotiators focus on objectives rather than stating a single acceptable outcome, as in position-based negotiations. This approach allows negotiators the flexibility to explore options that meet the objectives of all parties.

interim measures:

any activity undertaken by the Province in the interim before treaties are concluded, that is related to the management or use of land or resources, and aimed at meeting British Columbia's legal obligations while balancing the rights and interests of aboriginal and non-aboriginal British Columbians. Interim measures include, but are not limited to activities undertaken pursuant to the Province's legal obligations. Interim measures may take the form of documented agreements between the Province and a First Nation, but they do not extend to broad restrictions or moratoria on the development or alienation of lands. Interim measures are conducted by individual line ministries, within their day to day operating mandate.

interim protection measures:

formal agreements between Canada, the Province and a First Nation, which are undertaken in the later stages of a treaty negotiation. The agreement may include carefully defined limits on the development or alienation of a specific area of land in order to protect what has been agreed to in the negotiations.

Interim protection measures require agreement among all parties to the treaty and must be approved by the Provincial Cabinet.

land claims agreement:

term used by the federal government to refer to a treaty with a First Nation.

land quantum:

amount of land to be negotiated as treaty settlement land in a particular treaty.

land settlement model:

description of the legal status of treaty settlement land, which will follow from the particular legal mechanism used to transfer the land from the Crown to First Nations.

land-based jurisdictional model:

a model of First Nation self-government whereby First Nation self-government powers are limited to treaty settlement lands.

legal obligations:

obligations regarding Crown activity which arise from court decisions. When the Province engages in Crown activity it must determine if aboriginal rights exist in the area of the proposed activity, whether the activity will infringe upon those rights, and make efforts to avoid or minimize the infringement of those rights to the extent possible. See also Crown Lands Activities Policy and Delgamuukw obligation.

legal uniformity:

provincial policy which holds that some laws will apply uniformly across the Province after treaties are concluded. This includes the Charter of Rights and Freedoms and the Criminal Code. Provincial laws of general application will also apply uniformly unless specifically varied by treaty.

MAA:

provincial Ministry of Aboriginal Affairs. MAA is responsible for negotiating treaties on behalf of the Province.

mandates:

see [treaty mandates](#)

negotiation-specific mandates:

instructions for provincial negotiators to conclude treaties with individual First Nations. See also treaty mandates.

Non-status Indian:

a person who claims aboriginal ancestry but does not meet the criteria for registration, or has chosen not to be registered, under the Indian Act.

openness protocol:

document negotiated between the three parties to a treaty, which provides for public involvement in the treaty process, for example, through public observation of negotiation sessions, media coverage and the public release of tabled documents.

overlaps:

areas of land identified by more than one First Nation as part of their traditional territory.

province-wide treaty mandates:

broad instructions given to provincial treaty negotiators by Cabinet, to establish consistent treaty policies and provide guidance in all treaty negotiations in the province.

RAC:

see [Regional Advisory Committee](#)

ratification:

official acceptance of an agreement by one of the parties.

readiness:

term which denotes that a negotiating party is adequately prepared to enter treaty negotiations. The readiness of each party -- Canada, the Province, and the First Nation -- is assessed by the BCTC in the second phase of the six-stage process.

Regional Advisory Committee (RAC):

a body of representatives from key social and economic sectors in a region where negotiations are occurring. A RAC advises both provincial and federal negotiators about issues in the region which should be taken into consideration in treaty negotiations.

Regional Caucus:

a body comprised of local provincial ministry, Crown corporation, and Treaty Advisory Committee representatives that provides advice to provincial negotiators regarding issues specific to the region.

registered Indian:

person who is defined as an Indian under the Indian Act, and who is registered under the Act.

reserve:

see [Indian reserve](#)

resource revenues:

revenues from resource extraction and related activities that accrue to the Province or Canada, usually in the form of rents and royalties.

s. 35:

section of the Constitution Act, 1982 that states that aboriginal rights and treaty rights are recognized and affirmed and makes it clear that treaty rights include rights that now exist by way of land claim agreements or that may be so acquired. As a result of this constitutional protection, government has an obligation not to infringe upon aboriginal and treaty rights without justification.

s. 87 tax exemption:

tax exemption arising from s. 87 of the Indian Act that applies to status Indians' income and property (including personal property) situated on Indian reserve land.

s. 91.24:

section of the Constitution Act, 1867 which confers upon the federal Parliament the power to make laws in relation to "Indians, and Lands reserved for the Indians."

self-government:

the internal regulation of a First Nation by its own people.

settlement land:

see [treaty settlement land](#)

six stage process:

process established for all treaty negotiations in the Province. The six stages are:

1. A First Nation sends a statement of intent to the British Columbia Treaty Commission;
2. the readiness of all parties is established;
3. the parties negotiate a framework agreement;
4. the parties negotiate an agreement in principle;
5. the parties negotiate a final agreement;
6. the provisions of the treaty are implemented.

specific claim:

a claim made by a First Nation which is based upon the alleged failure of Canada or British Columbia to meet either the terms of an existing agreement, or, in the case of Canada, their fiduciary obligation. Negotiated outside of the treaty process.

statement of intent:

document submitted by a First Nation to the B.C. Treaty Commission indicating their intention to negotiate a treaty.

status Indian:

person defined as an Indian under the Indian Act. See also registered Indian.

TAC:

see [Treaty Advisory Committee](#)

tax exemption:

see [s. 87 tax exemption](#)

third parties:

parties outside of governments and First Nations who have an interest in treaty negotiations, including parties who hold legal interests, rights, permits, or leases granted by a government. See also [Treaty Negotiations Advisory Committee](#).

traditional territory:

the geographic area identified by a First Nation to be the area of land which they and/or their ancestors traditionally occupied or used. See also [aboriginal rights](#).

transboundary agreement:

an agreement made with a First Nation whose traditional territory is not wholly within the Province, and who already has a treaty outside the province. A transboundary agreement may be protected under s.35 of the Constitution.

treaty:

an agreement between government and a First Nation that defines the rights of aboriginal peoples with respect to lands and resources over a specified area, and may also define the self-government authority of a First Nation. Treaties are final agreements which have been ratified by all parties.

Treaty 8:

treaty entered into by Canada and five bands from the Peace River area in 1889, with subsequent

adhesions up to 1914. The treaty covers large portions of northeast British Columbia and northern Alberta.

Treaty Advisory Committee (TAC):

a committee of local government representatives, set up pursuant to an agreement between the Province of British Columbia and Union of B.C. Municipalities. Treaty Advisory Committees enable local government representatives to discuss issues and interests, advise provincial negotiators on local government issues and participate in negotiations as members of provincial negotiating teams.

treaty entitlement:

see [treaty right](#).

treaty First Nation:

First Nation which has signed a treaty. (In British Columbia this refers only to First Nations included in Treaty 8 and the Douglas treaties.)

treaty mandates:

instructions for negotiators from their respective governments which set out treaty policy related to the subjects to be negotiated. See also [province-wide treaty mandates](#) and [negotiation-specific mandates](#).

Treaty Negotiations Advisory Committee (TNAC):

committee established to identify province-wide interests of third parties with respect to treaty negotiations, and provide advice to the provincial and federal ministers responsible for treaties. The 31 member TNAC includes provincial organizations whose members may be directly affected by treaty settlements. Committee members represent the interests of business, labour, environmental, recreational, fish and wildlife groups, and municipalities.

treaty right:

right protected under s. 35 of the Constitution which is held by First Nations people pursuant to a treaty.

treaty settlement land:

area of land that will be owned and managed by a First Nation pursuant to a treaty. The precise legal status of treaty settlement land, and the extent of First Nation jurisdiction on it remains to be determined. Some areas within treaty settlement lands will be held in private ownership, or otherwise designated for uses incompatible with public access. Other areas will accommodate public access as provided for in treaties. The underlying title to treaty settlement lands will rest with the Provincial Crown.

treaty-specific mandates:

see [negotiation-specific mandates](#)

tribal council:

a self-identified entity which represents aboriginal people or a group of bands.

underlying title:

legal interest in land which underlies private ownership and remains consistent through changes in private ownership. When land is abandoned by a private owner, it reverts to the entity which holds underlying title. The underlying title of all land in British Columbia vests with the Crown, either Canada or the Province. After treaties, the Province will have underlying title to treaty settlement lands.