

## Research Summary

“Implementing comprehensive land claims agreements in  
Canada: Towards an analytical framework”

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## **What you need to know**

As of 2016, 27 Indigenous groups have signed modern treaties, otherwise known as comprehensive land claims agreements (CLCAs). These documents are constitutionally protected under s. 35 of the Constitution Act, 1982 and negotiated between the federal government, Indigenous communities and the provincial/territorial government in which the Indigenous groups are located. Depending on one's perspective, the agreements either transform Indigenous land tenure into property regimes that are recognizable by the Canadian state or they transfer title and jurisdiction from the Crown to the Indigenous groups in accordance with Canadian law. Negotiating and implementing these agreements have been complicated because Indigenous communities gain jurisdiction over things such as fish and wildlife, education, and health care that normally belong to provincial, territorial, or federal governments. For that reason, the negotiation and implementation processes have been sluggish and/or incomplete.

## **What is this research about?**

This research focuses on the implementation process of modern treaties, particularly the role of two elements: the objectives of the different parties and the degree to which the treaty language is clear. Since little has been written on the topic, the research draws upon the policy literature to consider how parties (in this case the Indigenous community and the provincial and federal governments) behave during the process. The paper identifies a typology based on whether the objectives of the different parties are aligned (called actor congruence / incongruence), and whether the treaty provisions are clear or vague (called policy congruence / incongruence). Together, these two features form a typology consisting of four possible

implementation styles, which are described below.

## **What did the researcher do?**

The researcher created a typology by drawing on the policy literature and applied it to two cases of modern treaty implementation in the Canadian Arctic: Nunatsiavut in Labrador and the Inuvialuit Settlement Region in the NWT. Government reports, secondary research and other relevant documents were reviewed to write the case studies and create the typology.

## **What did the researcher find?**

A total of four specific policy areas from one of the two regions were closely examined, one for each of the four implementation styles the researcher identified. The article demonstrates that the typology is useful for analyzing particular policy domains within modern treaty implementation.

### *Administrative implementation*

This style occurs when the actors share similar goals (e.g. strong actor congruence) and when the treaty provisions are clear in terms of what they mean (e.g. strong provision coherence). As a result, successful implementation depends mainly on the availability of resources. A good example of this implementation style is the issue of funding for housing in Nunatsiavut. The treaty provisions on this issue are clear in terms of the responsibilities of the various actors and they all agreed that housing needed to be addressed in the region. Given these considerations, the federal government eventually found the necessary money to implement a solution to this issue.

### *Experimental Implementation and Policy Learning*

This style occurs when the actors share similar goals (e.g. strong actor congruence)

but the treaty provisions are unclear in terms of what they mean (e.g. weak provision coherence). As a result, successful implementation depends on the actors experimenting on their own and learning from those experiences and the experiences of others. A good example of this implementation style is the confusion over the management of archeological materials and sites in Torngat Mountains National Park. The actors (Parks Canada and Nunatsiavut Government) agreed that Inuit archeological artifacts and sites should be protected, but the treaty was not clear about the actors' respective responsibilities. In the end, successful implementation occurred because the parties learned from their early mistakes to cooperate in the development of policies to manage these sites and materials.

#### *Compromised Implementation*

This style occurs when the actors have conflicting goals (e.g. weak actor congruence), yet the treaty provisions are clear in terms of their meaning (e.g. strong provision coherence). As a result, successful implementation requires actors to reach a compromise to meet the treaty provisions. A good example of this implementation style is the dispute over shrimp fishing between the Canadian government and the Nunatsiavut government. Although the treaty is very clear about the respective volumes of shrimp catch that the various actors are allowed to license, the actors have different goals for the shrimp harvest. Nunatsiavut would like to increase its share of licenses but the federal government would like to offer licenses elsewhere while minimizing overfishing. The resolution of this dispute will hinge on the power relations of the actors involved.

#### *No Action or Zero-Sum Implementation*

This style occurs when actors have conflicting goals (e.g. weak actor congruence) and the treaty provisions are

unclear in terms of their meaning (e.g. weak provision coherence). For this style, implementation will likely be difficult and result in either coercion or bargaining. A good example of this implementation style is the dispute between the Canadian government and the Inuvialuit Settlement Region surrounding the need to facilitate full economic participation of the Inuvialuit in the economic development of the region. The relevant section of the treaty is vague about the actors' respective responsibilities and the actors have different economic priorities with respect to this treaty provision. Little progress has been made and will likely depend on the actors being able and willing to their power resources (e.g. political and legal) to facilitate action.

#### **How can you use this research?**

This research is useful for helping practitioners find solutions to a broad range of issues, concerns and disputes relating to treaty implementation. It does so by identifying four types of disputes and the kinds of strategies, tactics, and factors that are necessary to overcome them. Researchers can use these findings to investigate treaty implementation disputes across a variety of cases in Canada.

#### **About the researcher**

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