

Frequently Asked Questions: The Made-in-B.C. Negotiations Process and Modern Treaties in B.C.

In the context of the B.C. treaty negotiations process, “Crown” is the term that is used to describe the Government of Canada, the Government of British Columbia, or both.

This document provides key information to address frequently asked questions and common misconceptions related to modern treaties and the treaty negotiations process in British Columbia (B.C.).

Modern treaties are among the highest forms of reconciliation between First Nations, the Government of British Columbia (the Province) and the Government of Canada (Canada). Treaties are constitutionally protected agreements, capable of evolving over time (commonly referred to as “living agreements”) that are negotiated between the three parties. They are grounded in the recognition of First Nations’ rights and provide a process for the reconciliation of Crown title and the inherent titles of First Nations, and the reconciliation of pre-existing Indigenous sovereignty with assumed Crown sovereignty.

The [British Columbia Treaty Commission](#) (Treaty Commission) and the made-in-B.C. negotiations process were established in 1992 by an agreement among Canada, the Province, and the [First Nations Summit](#). The negotiations process sets out a pathway for negotiating parties to work toward their common goal of reconciliation through treaties, agreements and other constructive arrangements.

Addressing a wide range of matters and subjects, modern treaties and other agreements are an important part of advancing reconciliation and recognizing First Nations’ inherent rights, including self-determination. Treaties and other agreements can create jurisdictional and operational predictability, and support partnerships, economic development and social well-being. Treaties and other agreements can also contribute to the implementation of the [United Nations Declaration on the Rights of Indigenous Peoples](#) and the [Truth and Reconciliation Commission of Canada's Calls to Action](#).

The following treaties have been concluded under the B.C. treaty negotiations process:

- Tsawwassen First Nation Final Agreement in 2009,
- Maa-nulth First Nations (Huu-ay-aht First Nations, Ka:’yu:’k’t’h’/Che:k’tles7et’h’ First Nations, Toquaht Nation, Uchucklesaht Tribe, and Ucluelet First Nation) Final Agreement in 2011, and
- Tla’amin Treaty – “ʔaʔjinxʷegəs (“A good relationship with someone”) in 2016.

Negotiations for the Nisga’a Final Agreement, which became the first modern treaty in B.C. in 2000, began before the establishment of and were outside of the B.C. treaty negotiations process.

1. What are the differences between treaties and other types of agreements that advance reconciliation of First Nation and Crown title and rights?

Treaties are transformative, negotiated agreements protected under section 35 of the [Canadian constitution](#). They are typically comprehensive, meaning they address a wide range of matters and subjects such as:

- Ownership of lands under treaty and governance authorities over those lands
- Reconciliation of Crown and First Nations’ titles, jurisdictions, laws and legal systems
- Shared decision-making
- Economic benefits
- Resource revenue sharing

Other types of agreements that advance reconciliation, including incremental (“stepping stone”) agreements and constructive arrangements, may or may not involve constitutionally protected Aboriginal or treaty rights depending on what the agreement is about and what the parties intend.

First Nations can negotiate a comprehensive treaty while simultaneously negotiating subject-specific incremental agreements or other constructive arrangements.

Alternatively, a comprehensive treaty could be built through negotiation of a series of subject-specific incremental agreements or other constructive arrangements.

2. Why do First Nations choose different pathways? Are treaties better than other agreements?

Both treaties and other types of agreements are pathways to recognizing and implementing First Nations' rights and title, including self-government, to support lasting reconciliation.

Each First Nation is distinct in B.C. in how they govern themselves according to their own legal traditions and interests which, in turn, may influence the pathway they might choose. Some First Nations may take an incremental or "stepping stone" approach to bring benefits earlier on, increase community support, signal commitment, and help build capacity and trust by demonstrating incremental progress. Treaties, on the other hand, provide for a more comprehensive implementation of rights, which can take a longer time to negotiate.

Each type of agreement contributes to reconciliation in different ways, and it's up to the First Nation to choose which type of agreement they prefer and which best addresses their specific needs and interests. One pathway is not better than another.

3. What does it mean for a treaty to be a living agreement?

Modern treaties are not static agreements; they are capable of evolving over time to reflect new approaches.

For example, the periodic renewal provisions provide that every 10 years the treaties can, by agreement of the parties, be amended, including to address changes to laws and policy and inclusion of innovations from other modern treaties and land claims agreements. This provides a foundation for co-operation and partnership between treaty partners.

4. Do treaties extinguish the rights of First Nations?

Modern treaties in B.C. have *never* extinguished the rights of First Nations, including title. Modern treaties provide that rights continue and are exercisable in accordance with the agreement of the parties.

Nonetheless, there continues to be a perception that the approaches to reach predictability in treaties may result in extinguishment of rights. In 2019, the

Province, Canada, and the First Nations Summit finalized the [Recognition and Reconciliation of Rights Policy for Treaty Negotiations in British Columbia](#) (RRR policy). The RRR policy guides the negotiation of treaties, incremental agreements and other constructive arrangements in B.C. and makes clear that these agreements will not extinguish, surrender, or require the modification of rights, including title.

5. How do treaties affect people in surrounding areas?

Modern treaties and incremental agreements create predictable relationships, foster partnerships and provide a framework for all people in B.C. to live together and to help build a better future for everyone.

They provide transparent processes for managing land and resources together between the Province, Canada and First Nations with modern treaties (Modern Treaty Nations), which creates economic predictability for everyone in the surrounding region.

6. What happens when two or more First Nations have interests on the same territory?

When negotiating a treaty, the Crown has a duty to consult and, where appropriate, accommodate, other First Nations whose rights may be adversely affected by the treaty. In addition, First Nations also have a responsibility to engage amongst themselves to resolve issues related to overlapping traditional territories.

Not all overlapping interests result in boundary disputes. For example, some lands identified in a treaty may be non-exclusive areas that enable continued access and use for other First Nations to also exercise their Aboriginal or treaty rights. Crown consultations or nation to nation engagement could result in other mutually acceptable arrangements.

Lastly, modern treaties contain language that makes clear that, if another First Nation establishes in court that its Aboriginal rights are adversely affected by the treaty, the treaty will operate, or be amended, so as not to adversely affect those rights.

7. Do First Nations have to take loans from Canada to fund their negotiations?

No. Starting in 2018, the Government of Canada replaced all loans for comprehensive treaty negotiations throughout Canada with non-repayable contribution funding. In 2019, a further investment of \$1.4 billion was made to forgive all outstanding comprehensive treaty negotiation loans and reimburse those that already repaid their loans following the conclusion of their treaties. These changes removed the financial burden First Nations faced to repay federal loans.

8. Do First Nation members who meet the criteria for the section 87 tax exemption lose their eligibility to the exemption if their First Nation signs a treaty?

No. First Nation modern treaty beneficiaries, who are registered pursuant to the federal *Indian Act*, do not lose their eligibility under the section 87 (*Indian Act*) tax exemption if their First Nation signs a treaty.

In 2022, Canada and the Province revised their approaches to the phasing out of the section 87 tax exemption as a requirement in modern treaties, a significant development since previous approaches were seen as a significant disincentive and barrier for First Nations entering into modern treaties. The tax exemption, tied to section 87 of the *Indian Act*, will be available for continuation on a Modern Treaty Nation's former reserves and on other reserves in Canada for modern treaty beneficiaries who are registered pursuant to the *Indian Act*.

9. How does the revised section 87 tax policy change in treaties affect the jurisdiction of First Nation governments over tax matters?

The revised approach to the section 87 tax exemption brings an end to the era of First Nations' community members having to trade their exemption for non-Indigenous government forms of taxation. Modern Treaty Nation governments will continue to have the choice to maintain existing tax arrangements or take up direct tax powers on their own timeline, consistent with the commitment to advance the priority of First Nations' communities to exercise jurisdiction over tax matters and consistent with the principle of self-determination.

10. Do the members of First Nations with modern treaties have to give up *Indian Act* status? Do they lose access to programs and services?

No, completing a treaty does not require First Nation members to give up *Indian Act* status.

While most of the *Indian Act* ceases to apply upon entering into a treaty, First Nations and their members remain eligible to participate in programs and to receive public services, including health, education, and social services that they would otherwise be eligible for – to the extent that the First Nation has not assumed responsibility for those programs or public services.

11. Why are some First Nations no longer participating in the treaty negotiations process?

There are various reasons why some First Nations are no longer participating in the treaty negotiations process. The length of time spent in negotiations and insufficient government negotiation authorities have led some First Nations to become frustrated and step away from negotiations. Some First Nations also paused or left negotiations due to concerns about increasing treaty negotiation loan debt before this concern was addressed through the replacement of loans with contribution funding and the forgiveness of negotiation loans.

Innovations contained in modern treaties and recent changes to policies, negotiations, and government authorities, including increased flexibility and incremental approaches, have and may encourage some First Nations to enter or re-enter the negotiations process.

12. What is the approval process for a treaty?

Ratification is the approval process that treaties must go through before they can come into effect.

If the eligible voters of a First Nation approve the treaty, the Province and Canada complete their own ratification processes, which involves developing and passing legislation to give the treaty the force of federal and provincial law.

If successfully ratified, the treaty comes into effect on the "effective date," which is usually a couple of years after it is signed. On the effective date, the provisions of the treaty regarding land status/ownership and the First Nation's government and jurisdictions begin to operate.