



SECTOR UPDATE  
RIGHTS & JUSTICE BRANCH: RIGHTS SECTOR  
ISSUE: TREATY RELATIONSHIPS  
July 2022

## What is the history of this issue and how does it impact First Nations?

Treaty Implementation— historic, modern and those being negotiated, including formal agreements and other constructive arrangements— is a core and historic interest for First Nations. First Nation-led agreements, documents, histories, along with the Royal Proclamation of 1763, indicate the sovereign and sacred nature of Treaties both historic and modern. Colonial governments have neither respected nor honoured Treaties fully. As Canada [states](#), “[O]ver many centuries these relationships were eroded by colonial and paternalistic policies that were enacted into laws”.

The 2019 Speech from the Throne stated that the government of Canada would “take new steps to ensure the Government is living up to the spirit and intent of the treaties, agreements, and other constructive arrangements made with Indigenous Peoples.” In 2019, Minister Carolyn Bennett, Crown-Indigenous Relations, was mandated to work with First Nations in a new distinctions-based process for the ongoing review, maintenance, and enforcement of Canada’s Treaty obligations, supported by a new National Treaty Commissioner’s Office.

The December 2021 mandate letter for Marc Miller, Minister, Crown-Indigenous Relations and Northern Affairs (CIRNA) included a directive to “work with First Nations and leaders, to renew and update treaty relationships where they exist, including pre-confederation treaties, and by seeking viable, trusting and respectful relationships where no treaty exists”. That same mandate letter directed the Minister to: “continue to support Indigenous-led processes for rebuilding and reconstituting their nations and advancing self-determination, and work in partnership on the implementation of the spirit and intent of treaties, and land claim and self-government agreements with appropriate oversight mechanisms to hold the federal government accountable.”

CIRNA’s 2022-2023 [Departmental Plan](#) identified efforts to implement accountability mechanisms and to advance the implementation of the Recognition and Reconciliation of Rights Policy for Treaty Negotiations in British Columbia. In addition, the Plan commits CIRNA to continue work on [Canada’s Collaborative Self-Government Fiscal Policy, a policy to address the fiscal relationship between Canada and self-governing Indigenous Governments, and](#) a potential Modern Treaty Implementation Review Commission, in addition to addressing the [Cabinet Directive](#) on the federal approach to Modern Treaty implementation.



### How has the AFN's recent advocacy affected this area?

With the passage of the *United Nations Declaration on the Rights of Indigenous Peoples Act* (UNDRIPA) on June 21, 2021, new opportunities for healing and rebuilding the sacred Treaty relationships in all their forms between First Nations and the Crown are on the horizon. Canada has committed to implementing the UN Declaration in the UNDA and explicitly committed itself to implementing the spirit and intent of Treaties “with appropriate oversight mechanisms to hold the federal government accountable”. UN Declaration Article 37 calling for States to honour and respect Treaties, agreements, and other constructive arrangements, must now be implemented, as well as Truth and Reconciliation Commission Calls to Action including 14, 18, 24, 27, 28, 4, 57, 62, 86, 92-94.

There are many resolutions from the First Nations-in-Assembly that engage the issues of respect for Treaties, both historic and modern. Decades of First Nations and AFN advocacy led to the passing of AFN resolutions 78/2015, *Establish a Treaty Commissioner's Office* and Resolution 87/2019, *Support a Process for Implementation of International Treaties*. The AFN successfully advocated for funding to support Treaty Nations to engage with their Treaty practices in regionally led work, such as ceremonial protocols as part of First Nations own inherent right and self-determination practices. In 2021-22, the AFN advocated for \$86 million over five years to support the creation and maintenance of a National Treaty Commissioner and Commissioner's Office. To date this investment has not been made by Canada. The AFN will continue advocating for resources and authority for new independent structures to hold the Crown accountable to the spirit and intent of the Treaties, in all their forms with First Nations.

### Where do we hope to go in the future?

First Nations-in-Assembly have called on the AFN to advocate for new federal government structures to create functional oversight mechanisms that will hold the Crown accountable to the spirit and intent of the Treaties. One of these structures that the AFN is mandated to advocate for is the creation of a National Treaty Commissioner with appropriate support, mandate, and capacity to meaningfully provide guidance and recommendations to Canada on how the spirit and intent of the Treaties and the sacred relationships made can be healed, respected, maintained, and expanded.

With the passage of the UNDA, the AFN hopes for a new era of improved Treaty relationships and investment in Treaty implementation, including support to formal agreements and other constructive arrangements. This need is compounded by the ongoing and evolving discussions



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regarding the creation of an Indigenous Peoples Human Rights Commission. Over the coming year, the AFN will again advocate for substantial investments for Treaty Nations to support rights holders in healing, rebuilding, and adapting their sacred Treaty relations with the Crown and with all Canadians.

The AFN will leverage the work already completed throughout 2020-22 with those Treaty Nations who wished to participate in developing options for independent oversight mechanisms to hold the federal government accountable for consideration by the First Nations-in-Assembly.