

Outline/Proposal for Edited Volume focused on Modern Treaties and Modern Treaty Implementation in Canada

Working Title:

Modern Treaties and the Law

Description:

This edited volume will present legal perspectives on modern treaties (also known as land claims agreements) and modern treaty implementation in Canada. The envisioned chapters will collectively provide a wide-ranging account of different modern treaties and modern treaty implementation contexts from across Canada. This volume will fill a significant gap in the literature. To date, there is no book or edited collection in the legal literature that is focused on modern treaties, yet this is one of the most complex and quickly-developing areas of Aboriginal and Indigenous law in Canada.

Concept:

In early fall 2022, invited authors will convene in a workshop and share draft chapters. This project is primarily invitation-based, from the editors' academic and practitioner networks, including the partners involved with the Modern Treaties Implementation Research Project (MTIRP). In addition, Indigenous governments and organizations and their officials will be approached through the Land Claims Agreement Coalition to gauge interest in involvement and collaboration, including with respect to co-authorship in some cases. This project will not involve conducting any interviews or means of obtaining information or data from individuals and organizations. Rather, this project is premised on desktop-based doctrinal legal research. As such, it is expected that no ethics approvals will be required. Given the large potential scope of topics, the editors envision a second volume in the future that includes topics not covered by the first, particularly those pertaining to social dimensions and implementation of self-government agreements.

Support/Funding:

It is anticipated that this project will take place under the Land Claims Agreements Coalition (LCAC) Modern Treaties Implementation Research Project (MTIRP), which is supported by a five-year, \$2.5M Social Sciences and Humanities Research Council partnership grant.¹ The MTIRP initiative is guided by scholars and Indigenous governments, who share co-leadership of research themes. As such, this book is envisioned to be "demand driven", i.e. there will be involvement of Indigenous governments and modern treaty organizations who have expressed an interest in collaborating. Particular organizations may include Nunavut Tunngavik Inc., Vuntut Gwitchin Government, and the Nisga Lisims Government, though that will all be pursued and clarified once the edited volume concept is reviewed by the steering committee.

¹ <https://moderntreaties.tlicho.ca/about/about-modern-treaties-implementation-research-project>

Timeline:

- Invitations to authors: December 2021
- Author abstract deadline: 15 February 2022
- Secure publisher: winter/spring 2022 (targets of U of T, McGill-Queen's, UBC Press)
- Employ RAs: Jan-Dec 2022
- Author draft chapter deadline: 22 August 2022
- Authors' workshop: Week of 12 September 2022 (In-person, location TBD)
- Revised chapter submission: 31 October 2022
- Feedback from Editors: Dec 15
- Final chapter submission: January 30

Budget items (est. dollar figures to come):

Personnel:

- One part-time research assistants at 5hrs/week, Jan-Apr 2022
- One part-time research assistant at 25hrs/week, May-Sept 2022
- One part-time research assistant at 10 hrs/week, Oct 2022 – May 2023

Workshop (specific figures will depend on number of authors, and specific location, esp north or south)

- Venue, AV, event catering, misc (e.g. elder, field visit)
- Author travel (airfare, per diem, ground transport, misc)

Travel (dissemination, capacity building)

- TBD but could include presentations of the book, particularly editors' respective chapters
- TBD but could also include education/capacity-focused sessions in LCAC communities for Indigenous community members

Miscellaneous (placeholder)

- Could include materials required for research (e.g. books, articles), including materials for research assistants

Draft Outline:

Introduction (legal and historical context, legal developments, doctrinal developments, future directions, roadmap of the volume)

Substantive introductory chapter (frame the volume and legal landscape through a literature review and discussion of evolution of modern treaties and their implementation)

Part 1: Modern Treaties: A Thematic Review

Part one will be primarily descriptive based on in-depth analyses of particular treaties, including in comparative ways. This portion of the book will speak to broad audiences, but may be of particular value to audiences in need of a single volume that speaks to essential information and analysis on modern treaties (e.g. practitioners, students, land claim organization officials, etc). Topics will include key aspects of modern treaties such as the following (some of which may be coupled or bundled together such that the number of chapters is manageable):

- Land Administration/Access
- Wildlife and
- Water
- Renewable resources (e.g. forests)
- Dispute Resolution
- Cede, Release and Surrender
- Land-Use Planning (including parks and protected areas)
- Culture, Language, and Heritage
- Resource Development (EA/IA)
- Marine areas and resources (including fisheries)
- Overlapping claims, boundaries, and shared territories
- Taxation and financial dimensions
- Enrollment
- Governance, Elections, and Constitutions

Part 2: Modern Treaties: Implementation Dimensions

Part two will take a more critical and normative approach to modern treaties and the law. This part is aimed at audiences interested in deeper analysis, including future directions and controversies (e.g. scholars, policy-makers, senior counsel, etc). Topics may focus on areas such as the following:

- Judicial interpretation (e.g. Beckman, NND, Moses, etc)
- Recent policy developments (fiscal, statement of principles, Honour of the Crown etc)
- Negotiating land claims agreements and their implementation – past, present and future
- Funding, Taxation, and Fiscal Arrangements
- UNDRIP implementation in MT contexts
- Federalism and Modern Treaties
- Subsequent and side agreements

- Major natural resource projects /Benefit Agreements
- Comparative analysis of structuring Indigenous/settler relationships
- Self-Government Agreements in modern treaty contexts
- Revitalization of Indigenous Laws in modern treaty contexts
- Judicial oversight of Indigenous Jurisdiction and Decisions