

Session 3 - Land Claims Agreements and the North to 2030

Session Theme

“Implementing northern comprehensive land claims and Aboriginal self-government agreements: can we get it right? Poorly understood in southern Canada, these historic compacts between Canada and northern Aboriginal peoples are the foundation of economic and social development in the North; they create important obligations concerning consultation, accommodation, partnership and accountability. The conference will also examine the concepts of sovereignty in the context of these agreements.”

Session Paper Author

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Panel Members

John Merritt, Legal Counsel, Nunavut Tunngavik Inc.

Emily Borsy, Land Use Policy Coordinator, Inuvialuit Regional Corporation

Don Axford, Land Claims Consultant and Negotiator

Ed Schultz, Executive Director, Council for Yukon Indians

Summary of Session Paper –

**Land Claim Agreements and the North to 2030
John Donihee**

“Nothing endures but change.”

(Heraclitus, from Diogenes Laertius, Lives of Eminent Philosophers.)

Canada and the international community are turning their eyes to the north, and as Sheila Watt-Cloutier expressed, “Everything is connected”. Specifically, land claim agreements (LCAs) are connected to all the themes explored in this conference.

Land claims are and will be fundamental components for everything, which Canada hopes to achieve in the North to 2030. Donihee emphasized that Northerners are ready to participate and want to benefit from their hard work. There is an opportunity for a constructive and inclusive project for the North and litigation to achieve implementation of claims is not the way to build a good relationship.

The Structure of Modern Land Claim Agreements

These agreements were negotiated to provide certainty of title, enhance Canadian sovereignty and to provide beneficiaries the opportunities and support needed to participate fully in Canadian social and economic development.

Consideration for the settlement of claims included a suite of constitutionally protected rights, land ownership, cash, and a role in governance of the settlement areas.



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Co-Management and the Regulatory Regime

All LCAs include co-management arrangements and institutions.

These tribunals have also contributed to important changes to the process of northern development and governance. They also contribute to increasing regulatory complexity and require careful management. Donihee emphasized that this all is a work in progress.

Conclusion - Everything is connected to LCAs.

The agreements and rights vary from region to region but some overarching lessons have emerged: implementation experience has not all been positive; it takes constant work by aboriginal organizations to assert and prevent the erosion of hard fought rights and opportunities; and finally it is critical to ensure youth are aware of their LCAs- they are a fundamental part of the legal framework of the north.

LCAs are fundamental legal commitments of Canada. If Canada wants to develop the north from the moral high ground we are going to have to ensure a full implementation and spirit of intent is honoured.

“In closing we need to strive for a future where Canada meets its obligations; to have a north we can all be proud of.”

A complete copy of the paper can be found in PDF at www.carc.org click on 2030 NORTH.

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Summary of Panel Comments – Land Claim Agreements and the North to 2030

Emily Borsy: Emily Borsy is a land use policy coordinator for the Inuvialuit Land Administration. In order to speak to the material she focused on The Inuvialuit Final Agreement. Objectives for the IFA are: to preserve their culture; protect and preserve environmental and biological productivity.

For implementation of the IFA it is important to remember that the claim is evolving and that it serves as a building block for progress in other areas. She notes that the IRC supports local sustainable development and that resources need to be planned for and managed more holistically.

Greater inclusiveness is the key. Cooperative planning in the ISR is required, including: movement towards cooperative resource planning and management that fosters economic growth. Borsy stresses that the Inuvialuit are proactively striving towards co-management of resources.

She concluded by stating land claims agreements will have to change and adapt as people and communities change. Overall it comes down to recognizing and staying true to the basic principles of land claims.

John Merritt: Merritt began by stating that Land Claim Agreements have to be situated within Canadian history. LCAs include both legal and political dimensions.

There are several items that should be kept in mind:

- LCAs are expressed in language that contains ambiguity.
- They address some areas of Aboriginal rights, not all.
- Many of these have broad objectives.
- LCAs are under the constitution, which again is subject to interpretation.
- LCAs have multiple personalities.
- Ultimately LCAs are power-sharing tools.

In order to measure their success, Merritt explains that we can look at whether or not they mutually benefit Aboriginal peoples and the Crown. There is no single answer, but benefits for aboriginal people could include:

- Sustaining their own societies
- Avoiding policies that would create demographic impacts
- Safeguarding the environment
- The development of natural resource wealth.

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Don Axford: Axford stated that he agrees with every word of John's paper, and provides five items that should be kept in mind in regards to Comprehensive Land Claim Agreements (CLCA):

- Although Land Claims (LCs) are similar they are not the same. The differences are more significant than just regional. This can partly be attributed to the evolution of policy over the years.
- Remember to read the Implementation Plan as well as the agreement itself. Some LCAs were created before IPs; both are extremely important.
- Remember CLCAs are not carved in stone.
- Remember to read the phantom chapters of a CLCA. For example, language, heritage and culture may be spread throughout the CLCA but not have their own chapters. This is an extremely important area.
- Most CLCAs are not self-governing agreements, these will have to be negotiated and harmonized.

Overall, Axford is positive about the future in the North.

Ed Schultz: Schultz provided a website: www.cyfn.ca for delegates to find more information on the Yukon land claim if they are interested.

He explained that his area does not have all the resources but they do have a land claim and there has been a visible progression between the land claims negotiated for each community.

There are two key components to the land claim: they needed to have community agreements to go along with an umbrella land claim agreement. They believed people in the communities had to empower the overall land claim. It could not stand-alone by itself solely as an institution.

He emphasized that the Yukon has the largest congregation of self-governing communities in Canada. Schultz explained that CYFN asserts that self-government agreements are protected under the constitution, although Canada still takes the position that they are just policy.

Beyond that debate, there is a strong urge to empower local people and local communities and engage people with what is happening in their own back yard-, which had not happened in the past before the land claims.

Schultz urges everyone to consider the purpose of connecting CLCAs with community: to generate own source revenue; for people to have an opportunity to get their fair share of what is being extracted from their community; to create meaningful participants in the Canadian framework, to get rid of the social dependency network. Land claims groups need to be provided with the resources to adequately implement their claims.

Schultz concluded by explaining that it is unrealistic to expect the aboriginal population to have come up with a program for self-government in less than two decades when Canada has had 300 years of development and it can be argued that they still do not have it right. "We want to do it ourselves. Give us the resources, we will handle it."

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Recommendations from Presentation and Panel – Land Claim Agreements

1. Ensure youth are aware of their LCAs; they are a fundamental part of the legal framework of the north.
2. If Canada wants to develop the north from the moral high ground it has to ensure that resources are provided for full implementation of land claims agreements and the spirit and intent of the agreements are honoured.

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Recommendations from Small Group Discussions – Land Claim Agreements

Three questions were posed to lead the Small Group Discussion.

Based on the presentations, the discussions and your own experience:

1. What are the essential components of a Northern Strategy related to land claim agreements that will guide Canada forwards to the year 2030?
2. What additional public policy issues need to be addressed for an effective Northern Strategy?
3. What specific action or policy recommendations are critical to a future northern land claim agreements strategy, and who should take the lead in implementing them?

Recommendations

1. Northern Strategy: Land Claim Agreements need to be recognized as a primary vehicle for a northern strategy.
2. Resolution of Claims:
 - Resolution of the remaining land claims and self-government agreements is a priority.
 - Governments must acknowledge that LCAs are about power sharing and are based on a “government to government relationship”.
 - Their need to be interim measures for resource sharing while claims are being settled.
3. Implementation:
 - Implementation must respect the spirit and intent of the land claim agreements: government departments involved in land claims implementation plans should honour and fulfil the stated obligations and responsibilities.
 - There should be a separate branch dedicated to implementation: a Cabinet Committee or Commission should oversee implementation.
 - There should be a central monitoring agency to monitor implementation and compel other government departments to fulfil their obligations.
 - There should be more collaboration in the implementation of land claims agreements.
 - Improper implementations of LCAs create barriers to moving forward on areas of importance including devolution, and lack of devolution may mean difficulty in implementing an effective Northern strategy.
 - All branches of government must be informed of their obligations under LCAs.
 - There needs to be flexibility in implementation plans due to changes in community needs: implementation plans need to be reviewed and revisited.
4. Implementation Funding:

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- There should be transparent monitoring of implementation funding that includes accounting for implementation of all departments' obligations, with an annual breakdown of implementation allocations for each claim.
 - Implementation funding must reflect the cost of living and doing business in the north.
 - Managing responsibilities of land claim agreement could include obtaining resources through third party.
 - Land claim and self-government institutions must have an adequate revenue stream, as well as control of taxation.
5. Education and Training:
- There is a need for better training of land claim beneficiaries so they can assume positions related to administering LCAs.
 - Treasury Board should develop and provide training on land claims agreements to all federal departments.
 - Their needs to be education of the general public, youth, government employees and businesses in all areas of land claims agreements.
 - Youth need to be informed of their rights as beneficiaries under land claim agreements.
6. Governance:
- Design of governance structures under claims must allow for more input from Indigenous peoples.
 - Co-management should be structured to allow indigenous peoples' input, rather than being based on southern style structures and regime, and reflect and promote traditional knowledge.
 - Regulatory road maps should be developed for each modern treaty.
 - There need to be more links between land claims and municipal governments: municipalities can help implement land claims, and benefits from land claim agreements should be used to benefit other levels of government that serve land claim beneficiaries.