

Aboriginal:

in Canada, applies to status and non-status Indians, Inuvialuit, Inuit and Métis peoples. It is also used in other parts of the world to refer to the first inhabitants in a given area. Aboriginal is the term used in Canada's Constitution Act of 1982.

Aboriginal rights:

refer to practices, traditions or customs ("activity[ies]") which are integral to the distinctive culture of an Aboriginal society and were practiced prior to European contact, meaning they were rooted in the pre-contact society (the date is no longer prior to 1846, the date British sovereignty was asserted in B.C. by the signing of the Oregon Boundary Treaty);

- must be practiced for a substantial period of time to have formed an integral part of the particular Aboriginal society's culture;
- must be an activity that is a central, defining feature which is independently significant to the Aboriginal society;
- must be distinctive (not unique), meaning it must be distinguishing and characteristic of that culture;
- must be based on an actual activity related to a resource: the significance of the activity is relevant but cannot itself constitute the claim to an Aboriginal right;
- must be given a priority after conservation measures (not amounting to an exclusive right);
- must meet a continuity requirement, meaning that the Aboriginal society must demonstrate that the connection with the land in its customs and laws has continued to the present day;
- may be the exercise in a modern form of an activity that existed prior to European contact;
- may include the right to fish, pick berries, hunt and trap for sustenance, social and ceremonial purposes (for example, ceremonial uses of trees and wildlife locations)
- may include an Aboriginal right to sell or trade commercially in a resource where there is evidence to show that the activity existed prior to European contact "on a scale best characterized as commercial" and that such activity is an integral part of the Aboriginal society's distinctive culture;
- may be adapted in response to the arrival of Europeans if the activity was an integral part of the Aboriginal society's culture prior to European contact;
- do not include an activity that solely exists because of the influence of European contact; and
- do not include aspects of Aboriginal society that are true of every society such as eating to survive.

Aboriginal rights arise from the prior occupation of land, but they also arise from the prior social organization and distinctive cultures of Aboriginal peoples on that land. Treaty negotiations will translate Aboriginal rights into contemporary terms.

Aboriginal title:

a sub-category of Aboriginal rights dealing solely with land claims.

agreement in principle (AIP):

document produced in the fourth phase of the six stage treaty negotiation process. The AIP outlines the major points of agreement between the parties regarding provisions which will form the basis of the treaty. An AIP is not binding on the parties, and changes may occur in negotiating the final agreement.

B:

band:

a group of people that holds reserve land or has funds held for it by the federal government, or has been declared a band by the Governor-in-Council. Its definition is provided in the Indian Act. Across Canada there are 608 bands in total with 197 of those in B.C. alone.

band council:

body elected according to provisions of the Indian Act, charged with the responsibility for "the good government of the band" and delegated the authority to pass by-laws on Indian reserve lands.

blanket extinguishment:

see extinguishment

C:

capacity-building:

the development of human, technical and financial resources in First Nation communities. For example, some First Nations may require capacity building to respond to provincial requests for consultation concerning Aboriginal rights, and subsequently to carry out the authorities that they will assume under treaties.

certainty provisions:

treaty provisions designed to clearly define the authorities, rights and responsibilities for all parties to the treaty. See also extinguishment.

claim area:

area identified by a First Nation as the basis for negotiating treaty settlement land. A First Nation's claim area may or may not be the same as their traditional territory.

comprehensive claim or comprehensive land claim:

a claim made by a First Nation based upon continuing Aboriginal rights and title which have not been dealt with by treaty or other legal means. In British Columbia comprehensive claims are being negotiated under the BCTC process. See also cut-off claim and specific claim.

cooperative management:

arrangements made between the Province and First Nations to involve First Nations in provincial land and resource management processes.

core land:

(obsolete term) see treaty settlement land

Cost Sharing Memorandum of Understanding (MOU):

the 1993 political agreement between Canada and British Columbia which outlines the financial responsibilities of the federal government and the Province pursuant to treaty settlements. The agreement is entitled: Memorandum of Understanding between Canada and British Columbia Respecting the Sharing of Pre-treaty Costs, Settlement Costs, Implementation Costs and the Costs of Self-Government.

Crown activity:

any activity for which Canada or the Province is responsible through legislation, regulation, or policy. These activities may involve the issuance of tenure (permit, license, lease) or grants, or the approval to conduct a specific activity.

Crown grant:

usual mechanism by which the Crown conveys land to persons or corporate bodies who then hold the land in private ownership.

Crown land:

land or an interest in land, owned by Canada or the Province.

Crown Lands Activities Policy:

provincial policy designed to meet the Province's legal obligations to Aboriginal people by requiring that Crown activity does not unjustifiably interfere with the Aboriginal rights

of Aboriginal people. Full title: "Crown Land Activities and Aboriginal Rights Policy Framework".

Crown tenure:

a legal interest in Crown lands or resources, issued by the Province in the form of a permit, license, lease or approval.

cut-off claim:

a claim by a First Nation arising from the removal of portions of Indian reserves which occurred following the recommendations of the 1913-1916 federal-provincial McKenna-McBride Commission.

D:

Delgamuukw: (pronounced DEL ga mook)

a Gitksan chieftainship name. When *Delgamuukw v. The Queen* began in Smithers on May 11, 1987, two chiefs, Delgamuukw and Gisday Wa, were named as plaintiffs on behalf of the 50 Gitksan and Wet'suwet'en houses. The trial continued off and on for 374 days, accumulated a transcript of 26,000 pages, and was dismissed in 1990. The B.C. Court of Appeal gave its decision in 1993 and the Supreme Court of Canada's decision followed on December 11, 1997. At the outset of the trial, Delgamuukw was also known as Albert Tait. When Albert died, the chieftainship passed on to Kenny Muldoe. When Kenny passed away, Earl Muldoe received the chieftainship name of Delgamuukw which he carries today.

Delgamuukw obligations:

informal term used to refer to the legal obligations of the Crown to Aboriginal people arising out of the Court of Appeal decision in *Delgamuukw*.

E:

eligibility:

entitlement to treaty benefits.

enrolment:

process of registering eligible treaty beneficiaries.

entrenchment:

term occasionally misused in the context of treaties to refer to protection under the constitution. Aboriginal rights and treaty rights are protected under s.35 of the

Constitution Act, 1982. Entrenchment of treaty rights does not mean that treaties become part of the Constitution.

extinguishment:

term used to describe the cessation or surrender of Aboriginal rights to lands and resources in exchange for rights granted in a treaty.

F:

fee simple:

legal interest in land that is commonly characterized as private ownership.

fiduciary duty:

legal obligation of one party to act in the best interests of another. Canada has a fiduciary obligation with respect to Indians and lands reserved for Indians under s.91(24) of the Constitution Act of 1982.

final agreement:

document produced in the fifth phase of the six-stage process. The final agreement embodies the principles outlined in the AIP which are to be included in the treaty. Once ratified by the parties, it becomes a treaty.

financial transfer arrangements:

arrangements made in treaties for funding First Nation governments. The fiscal arrangements among Canada, British Columbia and each First Nation will identify the revenue sources available to the First Nation government for carrying out its governance responsibilities and will determine whether and to what extent Canada and B.C. will contribute to those revenues.

First Nation:

a. an Aboriginal governing body, organized and established by an Aboriginal community, or b. the Aboriginal community itself.

First Nation fee simple land:

land held in fee simple by a First Nation that does not have the status of treaty settlement land. No special rights attach to First Nation fee simple land and no aspect of First Nation jurisdiction will apply on it.

First Nation land:

see treaty settlement land

First Nation roads:

local roads on treaty settlement lands which First Nation governments own and bear full responsibility for. Not all roads on treaty lands will be owned by the First Nation. Most First Nation roads will accommodate public access.

First Nations Summit:

an umbrella organization of some British Columbia First Nations and tribal councils. The First Nations Summit is one of the parties to the British Columbia Treaty Commission.

fiscal arrangements:

government financial arrangements for treaties, including financial limits on settlements, revenue raising powers negotiated in the treaty, cost sharing arrangements between Canada and the Province, financial transfer arrangements with First Nations, and compensation arrangements with third parties.

framework agreement:

document produced in stage three of the six-stage process. The framework agreement identifies negotiation topics and objectives, and establishes a timetable and any special procedural arrangements for the negotiations.

I:**implementation:**

final phase of the six stage process. In the implementation stage, the terms of a treaty are put into effect: Program, financial, legislative, and other commitments which have been articulated in the treaty are fulfilled.

INAC:

acronym for Indian and Northern Affairs Canada. INAC is responsible for negotiating treaties on behalf of Canada. (Also referred to as the Department of Indian Affairs and Northern Development (DIAND).)

Indian:

a legal term defined in the Indian Act, some Aboriginal people still refer to themselves as Indians, but the term Aboriginal is becoming increasingly common. However, do not substitute Aboriginal for Indian when it is part of a title, for example Indian and Northern Affairs, the Indian Act, or part of a band name.

Indian Act:

federal legislation designed to give effect to the legislative authority of Canada for "Indians, and Lands reserved for the Indians," pursuant to s.91(24) of the Constitution Act, 1867.

Indian reserve:

initially created by colonial governors and later, the Canadian government, reserves are defined in Section 2 of the Indian Act as parcels or tracts of land that have been set apart by the federal government for the use and benefit of an Indian band. The legal title to Indian reserve land is vested in the federal government. See also s.91(24).

infringement:

an action of the Crown which impairs an Aboriginal right. See also Crown Lands Activity Policy.

initialled agreement:

an agreement which the negotiators for all parties have initialled as a means of expressing their intention to recommend the agreement to their respective authorities for approval.

interest-based negotiations:

approach to negotiating treaties in which negotiators focus on objectives rather than stating a single acceptable outcome, as in position-based negotiations. This approach allows negotiators the flexibility to explore options that meet the objectives of all parties.

interim measures:

any activity undertaken by the Province in the interim before treaties are concluded, that is related to the management or use of land or resources, and aimed at meeting British Columbia's legal obligations while balancing the rights and interests of Aboriginal and non-Aboriginal British Columbians. Interim measures include, but are not limited to activities undertaken pursuant to the Province's legal obligations. Interim measures may take the form of documented agreements between the Province and a First Nation, but they do not extend to broad restrictions or moratoria on the development or alienation of lands. Interim measures are conducted by individual line ministries, within their day to day operating mandate.

interim protection measures:

formal agreements between Canada, the Province and a First Nation, which are undertaken in the later stages of a treaty negotiation. The agreement may include carefully defined limits on the development or alienation of a specific area of land in order to protect what has been agreed to in the negotiations. Interim protection

measures require agreement among all parties to the treaty and must be approved by the Provincial Cabinet.

L:

land claims agreement:

term used by the federal government to refer to a treaty with a First Nation.

land quantum:

amount of land to be negotiated as treaty settlement land in a particular treaty.

land settlement model:

description of the legal status of treaty settlement land, which will follow from the particular legal mechanism used to transfer the land from the Crown to First Nations.

land-based jurisdictional model:

a model of First Nation self-government whereby First Nation self-government powers are limited to treaty settlement lands.

legal obligations:

obligations regarding Crown activity which arise from court decisions. When the Province engages in Crown activity it must determine if Aboriginal rights exist in the area of the proposed activity, whether the activity will infringe upon those rights, and make efforts to avoid or minimize the infringement of those rights to the extent possible. See also Crown Lands Activities Policy and Delgamuukw obligation.

legal uniformity:

provincial policy which holds that some laws will apply uniformly across the Province after treaties are concluded. This includes the Charter of Rights and Freedoms and the Criminal Code. Provincial laws of general application will also apply uniformly unless specifically varied by treaty.

M:

MAA:

provincial Ministry of Aboriginal Affairs. MAA is responsible for negotiating treaties on behalf of the Province.

mandates:

see treaty mandates

Métis:

originally used to refer to the descendants of the early 18th and 19th century French or Scottish fur traders and Aboriginal women in the mid-west (Alberta, Saskatchewan and Manitoba). Today, Métis can also refer to people of mixed ancestry not associated with a specific First Nation.

N:**negotiation-specific mandates:**

instructions for provincial negotiators to conclude treaties with individual First Nations. See also treaty mandates.

non-status Indians:

Aboriginal people who for one reason or another are not registered under the Indian Act. They are not members of any bands and are not entitled to any of the rights and benefits specified in the Indian Act.

O:**openness protocol:**

document negotiated between the three parties to a treaty, which provides for public involvement in the treaty process, for example, through public observation of negotiation sessions, media coverage and the public release of tabled documents.

overlaps:

areas of land identified by more than one First Nation as part of their traditional territory.

P:**province-wide treaty mandates:**

broad instructions given to provincial treaty negotiators by Cabinet, to establish consistent treaty policies and provide guidance in all treaty negotiations in the province.

R:**RAC:**

see Regional Advisory Committee

ratification:

official acceptance of an agreement by one of the parties.

readiness:

term which denotes that a negotiating party is adequately prepared to enter treaty negotiations. The readiness of each party -- Canada, the Province, and the First Nation -- is assessed in the second phase of a six-stage process.

Regional Advisory Committee :

a body of representatives from key social and economic sectors in a region where negotiations are occurring. Advises both provincial and federal negotiators about issues in the region which should be taken into consideration in treaty negotiations.

Regional Caucus:

a body comprised of local provincial ministry, Crown corporation, and Treaty Advisory Committee representatives that provides advice to provincial negotiators regarding issues specific to the region.

registered Indian:

person who is defined as an Indian under the Indian Act, and who is registered under the Act.

reserve:

see Indian reserve

resource revenues:

revenues from resource extraction and related activities that accrue to the Province or Canada, usually in the form of rents and royalties.

S:

s. 35:

section of the Constitution Act, 1982 that states that Aboriginal rights and treaty rights are recognized and affirmed and makes it clear that treaty rights include rights that now exist by way of land claim agreements or that may be so acquired. As a result of this constitutional protection, government has an obligation not to infringe upon Aboriginal and treaty rights without justification.

s. 87 tax exemption:

tax exemption arising from s. 87 of the Indian Act that applies to status Indians' income and property (including personal property) situated on Indian reserve land.

s. 91.24:

section of the Constitution Act, 1867 which confers upon the federal Parliament the power to make laws in relation to "Indians, and Lands reserved for the Indians."

self-government:

at the time of contact, all First Nations were self-governing. In modern usage, it has come to mean a process by which First Nations can re-establish control over their lands and affairs. Models of self-government may vary from First Nation to First Nation.

settlement land:

see treaty settlement land

six stage process:

process established for all treaty negotiations in the Province. The six stages are:

1. A First Nation sends a statement of intent to the Provincial Treaty Commission;
2. the readiness of all parties is established;
3. the parties negotiate a framework agreement;
4. the parties negotiate an agreement in principle;
5. the parties negotiate a final agreement;
6. the provisions of the treaty are implemented.

specific claim:

a claim made by a First Nation which is based upon the alleged failure of Canada or a province to meet either the terms of an existing treaty or other agreement, or, in the case of Canada, their fiduciary obligation under the terms of the Indian Act. Negotiated outside of the treaty process.

statement of intent:

document submitted by a First Nation to a government Treaty Commission indicating their intention to negotiate a treaty.

status Indian:

person defined as an Indian under the Indian Act. See also registered Indian.

T:

tax exemption:

see s. 87 tax exemption

third parties:

parties outside of governments and First Nations who have an interest in treaty negotiations, including parties who hold legal interests, rights, permits, or leases granted by a government.

traditional territory:

the geographic area identified by a First Nation to be the area of land which they and/or their ancestors traditionally occupied or used. See also Aboriginal rights.

transboundary agreement:

an agreement made with a First Nation whose traditional territory is not wholly within the Province, and who already has a treaty outside the province. A transboundary agreement may be protected under s.35 of the Constitution.

treaty:

an agreement between government and a First Nation that defines the rights of Aboriginal peoples with respect to lands and resources over a specified area, and may also define the self-government authority of a First Nation. Treaties are final agreements which have been ratified by all parties.

treaty entitlement:

see treaty right.

treaty First Nation:

First Nation which has signed a treaty.

treaty mandates:

instructions for negotiators from their respective governments which set out treaty policy related to the subjects to be negotiated. See also province-wide treaty mandates and negotiation-specific mandates.

treaty right:

right protected under s. 35 of the Constitution which is held by First Nations people pursuant to a treaty.

treaty settlement land:

area of land that will be owned and managed by a First Nation pursuant to a treaty. The precise legal status of treaty settlement land, and the extent of First Nation jurisdiction on it remains to be determined. Some areas within treaty settlement lands will be held in

private ownership, or otherwise designated for uses incompatible with public access. Other areas will accommodate public access as provided for in treaties. The underlying title to treaty settlement lands will rest with the Provincial Crown.

treaty-specific mandates:

see negotiation-specific mandates

tribal councils:

tribal councils, which are groupings of different bands, fall into two categories: traditional alliances of Aboriginal people with a common language and culture; and modern associations of bands who may not share a common language and culture, but were formed to deal with administrative, political and land use issues.

U:

underlying title:

legal interest in land which underlies private ownership and remains consistent through changes in private ownership. When land is abandoned by a private owner, it reverts to the entity which holds underlying title. After treaties, the Province will have underlying title to treaty settlement lands.

SPEAKING THE SAME LANGUAGE – FIRST NATIONS TERMINOLOGY

When communicating with First Nations people it can be difficult to know what terms to use. The following list will help with communications.

“Aboriginal people” is a collective name for the original peoples of North America and their descendants.

The Canadian Constitution (*The Constitution Act, 1982*) recognizes three groups of Aboriginal peoples –Indians, Métis and Inuit. These are three separate peoples with unique heritages, languages, cultural practices and spiritual beliefs.

Common Names: Aboriginal people(s), First Peoples, Indigenous people(s), Native people(s)

Narrowly defined groups of Aboriginal people: First Nation, Indian, Innu, Métis, Eskimo, Inuit

Terms associated with communities and community organization: Band, Tribal Council, tribe, reservation, reserve

The following list contains definitions that will be helpful to the developer.

Aboriginal people –Use when referring to all the Aboriginal people in Canada collectively, without regard to their separate origins and identities OR when referring to more than one Aboriginal person.

Aboriginal peoples – use “peoples” to emphasize the diversity of people within the group known as Aboriginal people.

non-Aboriginal people (not peoples) – refers to anyone who is not an Aboriginal person. Note that the “non” stays lowercase and Aboriginal is capitalized.

Band – is a body of Indians for whose collective use and benefit lands have been set apart, or money is held by the Crown (federal government), or declared to be a Band for the purposes of the *Indian Act*. Sometimes used in reference to a community. Today, Bands prefer to be known as First Nations (e.g., Musqueam First Nation). In writing, capitalize this word.

Band Council – is the governing body for a Band. It usually consists of a chief and councillors. Band Councils may be elected or selected through a traditional process (e.g., hereditary leadership system).

Aboriginal Nations – defined by the Royal Commission on Aboriginal Peoples (RCAP) in its final report, it means “a sizeable body of Aboriginal people with a shared sense of national identity that constitutes the predominant population in a certain territory or collection of territories.”

Elected Chief or Council – are elected through a voting or appointment system either defined by the *Indian Act* or through a federally approved “customs” system developed by the Band.

First Nation – used to refer to a Band or all the Bands that share the same geographic, political or cultural and linguistic lines (and people descending from that cultural group). First Nation is often used to reinforce indigenous rights and titles, as well as the right of a people to govern themselves.

Hereditary Chief – leadership passed on through generations genetically; a hereditary Chief is born into the role and often must complete cultural ceremonies to receive the title Chief. A hereditary Chief may have responsibility for overseeing the sustainability of select lands and resources within the traditional territory.

Indian – a legal term defined in the *Indian Act*. Indian collectively describes all the Indigenous people in Canada who are not Inuit or Métis, and otherwise recognized as Aboriginal in the *Constitution Act, 1982*, that specifies that Aboriginal people in Canada consist of the Indian, Inuit and Métis peoples.

There are three categories of Indians in Canada: Status Indians, Non-Status Indians and Treaty Indians.

Status Indians – Status Indians are people who are entitled to have their names included on the official list of the federal government Indian Register. The *Indian Act* specifically defines who can be registered as a Status Indian: “a person who, pursuant to this Act, is registered as an Indian or is entitled to be registered as an Indian.” Only Status Indians are entitled to certain rights and benefits under the law.

Non-Status Indians – are people who consider themselves Indians or members of a First Nation but are not legally entitled to be registered as Indians under the *Indian Act*, either because they are unable to prove their status or have lost their status rights. Non-Status Indians are not entitled to the same rights and benefits available to Status Indians; however, they may be eligible for programs designated for Aboriginal people (this includes Métis and Inuit people).

Treaty Indian – is a Status Indian who belongs to a First Nation that signed a treaty with the Crown. In British Columbia, the majority of First Nations have not signed treaties.

Tribal Council – is a group made up of several Bands that represents the interests of those Bands and may administer funds or deliver common services to those Bands.

Membership in a tribal council tends to be organized around geographic, political, or cultural and linguistic lines.

Using these Terms

The term “Indian” is considered outdated; however, it is used when referring to the *Indian Act*. The preferred term is “First Nation,” instead of “Indian” except when using the term in the following ways:

- in direct quotations;
- when citing titles of books, works of art, etc.;
- in discussions of history where necessary for clarity and accuracy;
- in discussions of some legal / constitutional matters requiring precision in terminology;
- in discussions of rights and benefits provided on the basis of “Indian” status; and
- in statistical information collected using these categories (e.g., the Census).

Capitalize – “Indian,” “Status Indian,” “Non-Status Indian,” “Treaty Indian,” “Band”, and “First Nation”. The term is acceptable as both a noun and a modifier.