

## ASSESSMENT OF NEGOTIATIONS – TEMPLATE QUESTIONNAIRE

### CORE DATA

Name of Table

Nature of Negotiations

Location of File (province or territory)

NOTE – If the file is a transboundary claim, please indicate all provinces and territories

Name of Aboriginal Communities

Total Population of Claimant Group

Chief Federal Negotiator

Aboriginal Party Negotiator

Territorial/Provincial Party Negotiator

Stage of Negotiations

Level of Progress (as per 2011-2012 Annual Table Review)

Total of Negotiation Funding (up to 2011-2012)

Title of MC(s) granting mandate for negotiation & RD number(s)

Date of Cabinet Ratification

Expiration date of mandate

Milestones Achieved & Date

## ANALYSIS OF NEGOTIATIONS – CORE PRINCIPLES

### 1. CERTAINTY

Treaties must provide finality and certainty with respect to an Aboriginal group's claimed Aboriginal rights, as well as clarity with respect to Aboriginal, federal and provincial/territorial jurisdictions and responsibilities. A treaty must provide a comprehensive picture, comprised of: the *certainty technique*, the exhaustive articulation of the s. 35 rights relating to matters addressed in the agreement, the full and final settlement of any obligations that may be related to pre-existing Aboriginal rights, and provisions to manage legal risks in the event that the *certainty technique* adopted is interpreted by the courts in a manner not intended by the parties. An agreement can be considered to have achieved certainty when it provides a legally effective full and final settlement of past obligations and a clear and predictable road map for the future exercise of s. 35 rights and fulfillment of related roles and responsibilities, while minimizing the risks of unintended judicial interpretations.

The *certainty technique* means the legal model used in a treaty to ensure that any pre-existing Aboriginal rights related to the subject matters addresses in the treaty, such as lands and resources, do not continue, from the effective date forward, to have independent legal effect outside of the terms of the treaty.

- Has Canada's position on certainty been presented to the negotiation parties prior to the engagement process?

Yes                      No

- If yes, what are the parties' positions?

Reject  
Dislike  
Somewhat Support  
Support  
Strongly Support  
Unknown

Please explain:

- Please specify what has been presented to the parties and when

**WHAT**

**WHEN**

- Basic Policy Position
- Legal Techniques
- Releases for past infringements
- Jurisdictional Clarity
- Other (*describe*)

- If certainty had not been discussed previously, how was it received by the Aboriginal group(s) during the engagement process?

- Reject
- Dislike
- Somewhat Support
- Support
- Strongly Support
- Unknown

Please explain:

- Was this identified as an impediment to resolution?

Yes                                  No

Please explain:

**2. LAND**

Land that will be involved in any treaty or self-government agreement must be clearly identified, and the Aboriginal group’s rights and responsibilities with respect to the land must be clearly set out in the agreement.

Land selection of federal Crown land for comprehensive land claim agreements north of the 60<sup>th</sup> parallel must be done in accordance with Canada’s land selection guidelines.

Third party interests on Aboriginal land must be respected.

**2.1 – LAND OFFER**

- Has a land offer been made to the Aboriginal group?

Yes                                  No

- If yes, when:
- If yes, has the offer been accepted by the Aboriginal group?

Yes                      No

Please Explain:

- If an offer has not been made, when is it anticipated to be made?

Approximate Date:

## 2.2 – 91(24) STATUS

Lands held in fee simple by the Aboriginal group post effective date of the treaty will not be reserve lands, as per section 91(24) of the *Constitution Act, 1867* or the *Indian Act*.

- Has Canada's position with respect to lands retaining 91(24) status been presented to the negotiation parties prior to the engagement process?

Yes                      No

- If yes, what is the Aboriginal group(s)'s position?

Reject  
Dislike  
Somewhat Support  
Support  
Strongly Support  
Unknown

Please Explain:

- If 91(24) status was not discussed previously, how was it received by the Aboriginal group(s) during the engagement process?

Reject  
Dislike  
Somewhat Support  
Support  
Strongly Support  
Unknown

Please Explain:

- Was this identified as an impediment to resolution?

Yes                      No

Please explain:

### **2.3 – OVERLAP**

A common impediment to conclusion of treaties is that the Aboriginal group has overlapping interests with another Aboriginal group and groups cannot resolve these overlapping interests

- Does/do the Aboriginal group(s) have any unresolved overlapping claims?

Yes                      No

- What is the likelihood of achieving a resolution of the overlapping claims?

Very Unlikely  
Not Likely  
Somewhat Likely  
Likely  
Very Likely

Please Explain:

- What is the proposed timeline (in years)

1-2  
2-4  
4-6

- Was overlap an item identified during the engagement process as an impediment to resolution of this claim?

Yes                      No

Please Explain:

### **2.4 – LAND SELECTION**

In a treaty, the Aboriginal group will select land and will hold that land in fee simple ownership

- Has the federal and/or provincial position regarding land selection been presented to the negotiation parties prior to the engagement process?

Yes                      No

- If yes, what is the Aboriginal group(s)'s position?

Reject  
Dislike  
Somewhat Support  
Support  
Strongly Support  
Unknown

Please Explain:

- If land selection was not discussed previously, how was it received by the Aboriginal group(s) during the engagement process?

Reject  
Dislike  
Somewhat Support  
Support  
Strongly Support  
Unknown

Please Explain:

- Was this identified as an impediment to resolution?

Yes                      No

Please Explain:

## **2.5 – THIRD PARTY INTERESTS**

Third party interests on Aboriginal-owned lands must be respected

- Has Canada's position on the third party interests been presented to the negotiation parties prior to the engagement process?

Yes                      No

- If yes, what is the Aboriginal group(s)'s position?

Reject  
Dislike  
Somewhat Support

Support  
Strongly Support  
Unknown

Please Explain:

- If Canada's position on the third party interests was not discussed previously, how was it received by the Aboriginal group(s) during the engagement process?

Reject  
Dislike  
Somewhat Support  
Support  
Strongly Support  
Unknown

Please Explain:

- Was this identified as an impediment to resolution?

Yes                      No

Please Explain:

## **2.6 – LAND MANAGEMENT REGIMES**

Depending on where the claim is situated, there are federal and provincial land management regimes in place that must be respected in the treaty or self-government agreement

- Has Canada's position on the application of existing land management regimes been presented to the negotiation parties prior to the engagement process?

Yes                      No

- If yes, what is the Aboriginal group(s)'s position?

Reject  
Dislike  
Somewhat Support  
Support  
Strongly Support  
Unknown

Please Explain:

- If Canada's position on the application of existing land management regimes was not discussed previously, how was it received by the Aboriginal group(s) during the engagement process?

Reject

Dislike

Somewhat Support

Support

Strongly Support

Unknown

Please Explain:

- Was this identified as an impediment to resolution?

Yes

No

Please explain:

### 3. GOVERNANCE

The agreement must contain the following elements:

- Provisions that *frame the content of the Aboriginal group's* internal constitution, including provisions that Aboriginal constitutions will provide for transparent and democratically accountable Aboriginal governments and that constitutions will be ratified by the Aboriginal group prior to federal ratification of the final agreement
- Provisions ensuring application of the *Charter of Rights and Freedoms*
- Provisions providing for the continued application of federal and provincial/territorial laws to Aboriginal groups, and rules of priority consistent with Canada's self-government policy framework, including priority for national interest powers
- Provisions setting out detailed descriptions of the Aboriginal government's law-making powers

Canada will not negotiate Aboriginal law making over national interest powers and powers over national sovereignty, defense or external relations; Aboriginal law making in some subject areas will be subject to federal or provincial/territorial laws in the event of a conflict. Agreement on law-making over provincial/territorial jurisdictions will require the provincial government to be party to the agreement; provincial or territorial



governments will also be required to be a party if the agreement is going to be constitutionally protected.

### 3.1 – ACCOUNTABLE ABORIGINAL GOVERNMENTS

Aboriginal governments and institutions should be fully accountable to their members or clients for all decisions made and actions taken in the exercise of their jurisdiction or authority. Mechanisms to ensure political and financial accountability should be comparable to those in place for other governments and institutions of similar size, although they need not be identified in all respects.

Mechanisms to ensure political accountability must be developed and ratified by the Aboriginal group concerned, and set out in an internal constitution so that they are transparent to all members, and to others who deal with the Aboriginal governments or institutions.

Aboriginal governments exercising law-making authority must establish:

- clear and open processes of law-making;
- transparent processes for proclaiming a law in effect;
- procedures for the notification and publication of laws; and
- procedures for the appeal of laws or other decisions.

Aboriginal institutions exercising authorities must:

- ensure that the decision making processes central to the core functions of those institutions are open and transparent;
- ensure that information on administrative policies and standards is readily obtainable by clients; and
- establish procedures, where appropriate, for administrative review, including appeal mechanisms.

- Has Canada's position on accountable Aboriginal governments been presented to the negotiation parties prior to the engagement process?

Yes

No

- If yes, what is the Aboriginal group(s)'s position?

Reject

Dislike

Somewhat Support

Support

Strongly Support

Unknown

Please Explain:

- If Canada's position on accountable Aboriginal government was not discussed previously, how was it received by the Aboriginal group(s) during the engagement process?

Reject  
Dislike  
Somewhat Support  
Support  
Strongly Support  
Unknown

Please Explain:

- Was this identified as an impediment to resolution?

Yes                      No

Please Explain:

### 3.2 – APPLICATION OF THE CHARTER OF RIGHTS AND FREEDOMS

The Government is committed to the principle that the *Canadian Charter of Rights and Freedoms* should bind all governments in Canada, so that Aboriginal peoples and non-Aboriginal Canadians alike may enjoy equally the rights and freedoms guaranteed by the *Charter*. Treaties with a self-government component and self-government agreements will therefore have to provide that the *Canadian Charter of Rights and Freedoms* applies to Aboriginal governments and institutions in relation to all matters within their respective jurisdictions and authorities.

- Has Canada's position on the application of the *Charter of Rights and Freedoms* been presented to the negotiation parties prior to the engagement process?

Yes                      No

- If yes, what is the Aboriginal group(s)'s position?

Reject  
Dislike  
Somewhat Support  
Support  
Strongly Support  
Unknown

Please Explain:

- If Canada's position on the application of the *Charter of Rights and Freedoms* was not discussed previously, how was it received by the Aboriginal group(s) during the engagement process?

Reject  
Dislike  
Somewhat Support  
Support  
Strongly Support  
Unknown

Please Explain:

- Was this identified as an impediment to resolution?

Yes                      No

Please Explain:

### 3.3 – NATIONAL INTEREST POWERS

There are a number of subject matters where there are no compelling reasons for Aboriginal governments or institutions to exercise law-making authority. These subject matters cannot be characterized as either integral to Aboriginal cultures, or internal to Aboriginal groups. They can be grouped under two heading: (i) powers related to Canadian sovereignty, defence and external relations; and (ii) other national interest powers. In these areas, it is essential that the federal government retain its law-making authority. Subject matters in this category would include:

- Powers related to Canadian sovereignty, defence and external relations
- Management and regulation of the national economy
- Maintenance of national law and order and substantive criminal law
- Protection of the health and safety of all Canadians
- Federal undertakings and other powers

- Has Canada's position on National Interest Powers been presented to the negotiation parties prior to the engagement process?

Yes                      No

- If yes, what is the Aboriginal group(s)'s position?

Reject  
Dislike  
Somewhat Support  
Support  
Strongly Support  
Unknown

Please Explain:

- If Canada's position on National Interest Powers was not discussed previously, how was it received by the Aboriginal group(s) during the engagement process?

Reject  
Dislike  
Somewhat Support  
Support  
Strongly Support  
Unknown

Please Explain:

- Was this identified as an impediment to resolution?

Yes                      No

Please Explain:

### **3.4- THE INHERENT RIGHT POLICY**

Aboriginal governments and institutions exercising the inherent right of self-government will operate within the framework of the Canadian Constitution. Aboriginal jurisdictions and authorities should, therefore, work in harmony with jurisdictions that are exercised by other governments. It is in the interest of both Aboriginal and non-Aboriginal governments to develop co-operative arrangements that will ensure the harmonious relationship of laws, which is indispensable to the proper functioning of the federation.

In light of the wide array of Aboriginal jurisdictions or authorities that may be the subject of negotiations, provincial governments are necessary parties to negotiations and agreements where subject matters being negotiated normally fall within provincial jurisdiction or may have impacts beyond the Aboriginal group or Aboriginal lands in questions. Territorial governments should be party to any negotiations and related agreements on implementing self-government north of the 60<sup>th</sup> parallel.

The inherent right of self-government does not include a right of sovereignty in the international law sense, and will not result in sovereign independent Aboriginal nation states. On the contrary, implementation of self-government should enhance the participation of Aboriginal peoples in the Canadian federation, and ensure that Aboriginal peoples and their governments do not exist in isolation, separate and apart from the rest of Canadian society.

- Has Canada's position on the place of self-government in the *Constitution Act, 1982* and existing jurisdictional frameworks, as laid out in the *Inherent Right Policy*, been presented to the negotiation parties prior to the engagement process?

Yes

No

- If yes, what is the Aboriginal group(s)'s position?

Reject

Dislike

Somewhat Support

Support

Strongly Support

Unknown

Please Explain:

- If Canada's position on the *Constitution Act, 1982*, was not discussed previously, how was it received by the Aboriginal group(s) during the engagement process?

Reject

Dislike

Somewhat Support

Support

Strongly Support

Unknown

Please Explain:

- Was this identified as an impediment to resolution?

Yes

No

Please Explain:

### 3.5- TAXATION

All negotiations related to taxation in treaty and self-government agreements are to be led by the Department of Finance, in collaboration with AANDC.

Federal negotiators are to contact the Department of Finance for assessing this portion of the template.

- Has Canada discussed taxation with the negotiation parties prior to the engagement process?

Yes                      No

- If yes, what is the Aboriginal group(s)'s position?

Reject  
Dislike  
Somewhat Support  
Support  
Strongly Support  
Unknown

Please Explain:

- If no, federal negotiators will need to advise the parties that the discussion on taxation will need to take place as soon as possible. Federal negotiators are to discuss with the Department of Finance when this would be feasible (note: this may only take place post-engagement).

### 3.6- FUNDING FRAMEWORK

Self-government funding is a shared responsibility and will be determined using a formula-based approach, including own source revenue components.

- Canada is not responsible for all programs and services on reserves nor does it fund all program and services on reserves. Has this message been delivered to the negotiation parties prior to the engagement process?

Yes                      No

- If yes, what is the Aboriginal group(s)'s position?

Reject  
Dislike

Somewhat Support  
Support  
Strongly Support  
Unknown

Please Explain:

- If no, how was it received by the Aboriginal group(s)'s during the engagement process?

Reject  
Dislike  
Somewhat Support  
Support  
Strongly Support  
Unknown

Please Explain:

- Was this identified as an impediment to resolution?

Yes                      No

Please Explain:

Canada's funding to bands is to support the provision of specific programs and services according to federal terms and conditions, but it does not necessarily fund 100% of those program and service costs. Has this message been delivered to the negotiation parties prior to the engagement process?

Yes                      No

- If yes, what is the Aboriginal group(s)'s position?

Reject  
Dislike  
Somewhat Support  
Support  
Strongly Support  
Unknown

Please Explain:

- If no, how was it received by the Aboriginal group(s)'s during the engagement process?

Reject  
Dislike  
Somewhat Support  
Support  
Strongly Support  
Unknown

Please Explain:

- Was this identified as an impediment to resolution?

Yes                      No

Please Explain:

Canada's funding of self-government arrangements includes a funding base that is established by the existing *Indian Act* program funding levels (i.e. it does not provide for enhanced program and service funding) as well as some incremental funding related to new governance-related responsibilities, with annual adjustors to address price and population sensitive programming, taking into consideration a proportion of the band(s)' own source revenue capacity in calculating the final transfers. Has this message been delivered to the negotiation parties prior to the engagement process?

Yes                      No

- If yes, what is the Aboriginal group(s)'s position?

Reject  
Dislike  
Somewhat Support  
Support  
Strongly Support  
Unknown

Please Explain:

- If no, how was it received by the Aboriginal group(s)'s during the engagement process?

Reject  
Dislike  
Somewhat Support  
Support  
Strongly Support  
Unknown



Please Explain:

- Was this identified as an impediment to resolution?

Yes                      No

Please Explain:

When determining the level of self-government transfers to a band, Canada's consideration of own source revenue capacity will be above the current level of contribution that a band may already be making towards the costs of their programs. Has this message been delivered to the negotiation parties prior to the engagement process?

Yes                      No

- If yes, what is the Aboriginal group(s)'s position?

Reject  
Dislike  
Somewhat Support  
Support  
Strongly Support  
Unknown

Please Explain:

- If no, how was it received by the Aboriginal group(s)'s during the engagement process?

Reject  
Dislike  
Somewhat Support  
Support  
Strongly Support  
Unknown

Please Explain:

- Was this identified as an impediment to resolution?

Yes                      No

Please Explain:

While Canada will always provide some minimum level of funding to support Aboriginal self-government, it is also Canada’s intention that in determining its transfers, the consideration of the bands own source revenue will be phased in and incrementally increased over time, leading to a gradual reduction of reliance on federal funding and greater self-sufficiency. Has this message been delivered to the negotiation parties prior to the engagement process?

Yes                                  No

- If yes, what is the Aboriginal group(s)’s position?

Reject  
Dislike  
Somewhat Support  
Support  
Strongly Support  
Unknown

Please Explain:

- If no, how was it received by the Aboriginal group(s)’s during the engagement process?

Reject  
Dislike  
Somewhat Support  
Support  
Strongly Support  
Unknown

Please Explain:

- Was this identified as an impediment to resolution?

Yes                                  No

Please Explain:

Canada has primary, but not exclusive, responsibility for supporting Aboriginal governments and programs and services to Indians resident on reserves. Has this message been delivered to the negotiation parties prior to the engagement process?

Yes                                  No

- If yes, what is the province/territory’s position?

Reject  
Dislike  
Somewhat Support  
Support  
Strongly Support  
Unknown

Please Explain:

- If no, how was it received by the province/territory during the engagement process?

Reject  
Dislike  
Somewhat Support  
Support  
Strongly Support  
Unknown

Please Explain:

- Was this identified as an impediment to resolution?

Yes                      No

Please Explain:

The province/territory has a responsibility to financially support Aboriginal self-governance and programs and services to non-Indians resident on reserve. Has this message been delivered to the negotiation parties prior to the engagement process?

Yes                      No

- If yes, what is the province/territory's position?

Reject  
Dislike  
Somewhat Support  
Support  
Strongly Support  
Unknown

Please Explain:

- If no, how was it received by the province/territory during the engagement process?

Reject  
Dislike  
Somewhat Support  
Support  
Strongly Support  
Unknown

Please Explain:

- Was this identified as an impediment to resolution?

Yes                      No

Please Explain:

The province/territory has the primary, but not exclusive, responsibility to support programs and services to Indians resident on reserve that are of a general nature and applicable to all provincial residents (i.e. hospitalization). Has this message been delivered to the negotiation parties prior to the engagement process?

Yes                      No

- If yes, what is the province/territory's position?

Reject  
Dislike  
Somewhat Support  
Support  
Strongly Support  
Unknown

Please Explain:

- If no, how was it received by the province/territory during the engagement process?

Reject  
Dislike  
Somewhat Support  
Support  
Strongly Support  
Unknown

Please Explain:

- Was this identified as an impediment to resolution?

Yes                      No

Please Explain:

Aboriginal governments possess and may exercise jurisdiction over certain taxation revenue streams of a local nature (i.e. real property) on reserves concurrent with any provincial jurisdictions. Has this message been delivered to the negotiation parties prior to the engagement process?

Yes                      No

- If yes, what is the province/territory's position?

Reject  
Dislike  
Somewhat Support  
Support  
Strongly Support  
Unknown

Please Explain:

- If no, how was it received by the province/territory during the engagement process?

Reject  
Dislike  
Somewhat Support  
Support  
Strongly Support  
Unknown

Please Explain:

- Was this identified as an impediment to resolution?

Yes                      No

Please Explain:

#### 4. OTHER

##### 4.1 - ABORIGINAL MANDATE AND REPRESENTATION

Canada requires that individuals negotiating on behalf of Aboriginal groups be duly mandated and that this requirement be satisfied by evidence of the Aboriginal community's knowledge and support throughout the negotiations process.

- Does the Aboriginal Negotiator have a clear mandate from the Aboriginal group he/she is representing?

Yes                      No

Please Explain:

- Has the mandate from the Aboriginal group been continuous throughout the negotiations?

Yes                      No

Please Explain:

##### 4.2 - RATIFICATION

Canada requires clear and adequate evidence that the negotiated agreement is acceptable and that the members of the Aboriginal group have given consent to the agreement. Ratification processes can be negotiated, but Canada must be satisfied that all members have an opportunity to participate, that all relevant information is available to eligible voters, and that ratification procedures are transparent, fair, democratic and recognized as binding.

- Has/have the Aboriginal group(s) undertaken activities to ensure community engagement and awareness of the treaty and/or self-government negotiation process and content of the agreement?

Yes                      No

Please Explain:

- ! Are you aware of any issues that have arisen from community engagement on the treaty and/or self government negotiation process, or other matters within the community (e.g. governance or capacity issues, competing or inconstant initiatives or decisions, etc. which may impede successful conclusion or ratification of the agreement?

Yes                      No

Please Explain:

- ! Have required federal approval levels for the agreement been presented to the Aboriginal group(s) prior to the engagement process?

Yes                      No

- ! If yes, how did the Aboriginal group(s) respond to Canada's position?

Reject  
Dislike  
Somewhat Support  
Support  
Strongly Support  
Unknown

Please Explain:

- ! If no, how was it received by the Aboriginal group(s) during the engagement process?

Reject  
Dislike  
Somewhat Support  
Support  
Strongly Support  
Unknown

Please Explain:

- ! Was this identified as an impediment to resolution?

Yes                      No

Please Explain:

Have federal process requirements to achieve ratification procedures that are transparent, fair, democratic and recognized as binding been discussed prior to the engagement process?

- ! If yes, how did the Aboriginal group(s) respond to Canada's position?

Reject

Dislike  
Somewhat Support  
Support  
Strongly Support  
Unknown

Please Explain:

-! If no, how was it received by the Aboriginal group(s) during the engagement process?

Reject  
Dislike  
Somewhat Support  
Support  
Strongly Support  
Unknown

Please Explain:

-! Was this identified as an impediment to resolution?

Yes                      No

Please Explain:

#### **4.3- STATUS OF AGREEMENTS (applicable to non-treaty stand alone self-government agreements)**

Agreements must clearly establish the non-treaty status of the self-government agreement and that nothing in the agreement recognizes or denies any Aboriginal rights under s. 35 of the *Constitution Act, 1982*. Where appropriate/necessary, agreements must also clarify the relationship between the self-government agreement and existing treaties to which the Aboriginal group is a signatory.

-! Has Canada's position on the status of agreements been presented to the negotiation parties prior to the engagement process?

Yes                      No

-! If yes, what is the Aboriginal group's position?

Reject  
Dislike  
Somewhat Support  
Support



Strongly Support  
Unknown

Please Explain:

- ! If Canada's position on the status of agreements had not been discussed previously, how was it received by the Aboriginal group(s) during the engagement process?

Reject  
Dislike  
Somewhat Support  
Support  
Strongly Support  
Unknown

Please Explain:

- ! Was this identified as an impediment to resolution?

Yes                      No

Please Explain:

#### **4.4- LEGAL STATUS AND CAPACITY OF THE ABORIGINAL SELF-GOVERNING ENTITY**

The Aboriginal legal entity and its capacities, powers and privileges as a natural person under the law must be addressed in the agreement.

- ! Has Canada's position on the legal status and capacity of the Aboriginal self-governing entity been presented to the negotiation parties prior to the engagement process?

Yes                      No

- ! If yes, what is the Aboriginal group's position?

Reject  
Dislike  
Somewhat Support  
Support  
Strongly Support  
Unknown

Please Explain:

- ! If Canada's position on the legal status and capacity of the Aboriginal self-governing entity had not been discussed previously, how was it received by the Aboriginal group(s) during the engagement process?

Reject  
Dislike  
Somewhat Support  
Support  
Strongly Support  
Unknown

Please Explain:

- ! Was this identified as an impediment to resolution?

Yes                      No

Please Explain:

#### **4.5- JURISDICTION OR AUTHORITY OVER NON-MEMBERS**

Agreements must address the rights and interests of non-members residing on Aboriginal lands, clearly indicating if Aboriginal jurisdiction or authority will be exercised over non-members. Where Aboriginal jurisdiction or authority will be exercised over non-members, agreements must set out mechanisms to provide for the input of non-members in decisions that may affect their rights and interests and must also provide non-members with rights of redress.

- ! Has Canada's position on jurisdiction or authority over non-members been presented to the negotiation parties prior to the engagement process?

Yes                      No

- ! If yes, what is the Aboriginal group's position?

Reject  
Dislike  
Somewhat Support  
Support  
Strongly Support  
Unknown

Please Explain:

- ! If Canada's position on jurisdiction or authority over non-members had not been discussed previously, how was it received by the Aboriginal group(s) during the engagement process?

Reject  
Dislike  
Somewhat Support  
Support  
Strongly Support  
Unknown

Please Explain:

- ! Was this identified as an impediment to resolution?

Yes                      No

Please Explain:

#### **4.6- ACCESS TO PROGRAMS**

Agreements must provide for the continued eligibility of Aboriginal groups and individuals covered by self-government agreements to participate in and benefit from the federal programs for Aboriginal people established from time-to-time by the federal government, to the extent the Aboriginal group has not assumed responsibility for the program and to the extent that groups and individuals otherwise qualify for the programs.

- ! Has Canada's position on access to programs been presented to the negotiation parties prior to the engagement process?

Yes                      No

- ! If yes, what is the Aboriginal group's position?

Reject  
Dislike  
Somewhat Support  
Support  
Strongly Support  
Unknown

Please Explain:

-! If Canada's position on access to programs had not been discussed previously, how was it received by the Aboriginal group(s) during the engagement process?

Reject  
Dislike  
Somewhat Support  
Support  
Strongly Support  
Unknown

Please Explain:

-! Was this identified as an impediment to resolution?

Yes                      No

Please Explain:

#### **4.7 LIABILITY**

Agreements must address the liability, immunity and indemnification of the Aboriginal government and its employees or subordinate bodies.

-! Has Canada's position on liability been presented to the negotiation parties prior to the engagement process?

Yes                      No

-! If yes, what is the Aboriginal group's position?

Reject  
Dislike  
Somewhat Support  
Support  
Strongly Support  
Unknown

Please Explain:

-! If Canada's position on liability had not been discussed previously, how was it received by the Aboriginal group(s) during the engagement process?

Reject  
Dislike  
Somewhat Support

Support  
Strongly Support  
Unknown

Please Explain:

-! Was this identified as an impediment to resolution?

Yes                      No

Please Explain:

#### **4.8- TRANSITION**

Agreements must provide for clarity regarding the transition from existing legal arrangements (e.g. operations under the *Indian Act*), to the new legal framework to ensure the transition does not create legal uncertainty.

-! Has Canada's position on transition been presented to the negotiation parties prior to the engagement process?

Yes                      No

-! If yes, what is the Aboriginal group's position?

Reject  
Dislike  
Somewhat Support  
Support  
Strongly Support  
Unknown

Please Explain:

-! If Canada's position on transition had not been discussed previously, how was it received by the Aboriginal group(s) during the engagement process?

Reject  
Dislike  
Somewhat Support  
Support  
Strongly Support  
Unknown

Please Explain:

-! Was this identified as an impediment to resolution?

Yes                      No

Please Explain:

#### **4.9! DISPUTE RESOLUTION**

Agreements should include provisions for a dispute resolution framework. Although Canada's approach to dispute resolution in treaties is flexible to an extent, the federal perspective, as laid out in *The Guide for the Management of Dispute Resolution Mechanisms in Modern Treaties*, is that a staged approach is preferred in a modern treaty context. Generally, a staged approach to dispute resolution would include provisions for a progression from informal discussions; to assisted or facilitated negotiations (including mediation); to arbitration.

-! Has Canada's position on dispute resolution been presented to the negotiation parties prior to the engagement process?

Yes                      No

-! If yes, what is the Aboriginal group's position?

Reject  
Dislike  
Somewhat Support  
Support  
Strongly Support  
Unknown

Please Explain:

-! If Canada's position on dispute resolution had not been discussed previously, how was it received by the Aboriginal group(s) during the engagement process?

Reject  
Dislike  
Somewhat Support  
Support  
Strongly Support  
Unknown

Please Explain:

-! Was this identified as an impediment to resolution?

Yes                      No

Please Explain:

#### **4.10! – IMPLEMENTATION PLANS**

A separate implementation plan must be developed by the parties to the agreement and must be presented for approval along with the Final Agreement.

Implementation plans must identify the activities, timeframes and agreed-upon resources associated with the fulfillment of activities. Although the implementation plan is not constitutionally protected, it is an important element of the treaty relationship.

-! Has Canada's position on implementation plans been presented to the negotiation parties prior to the engagement process?

Yes                      No

-! If yes, what is the Aboriginal group's position?

Reject  
Dislike  
Somewhat Support  
Support  
Strongly Support  
Unknown

Please Explain:

-! If Canada's position on implementation plans had not been discussed previously, how was it received by the Aboriginal group(s) during the engagement process?

Reject  
Dislike  
Somewhat Support  
Support  
Strongly Support  
Unknown

Please Explain:

-! Was this identified as an impediment to resolution?

Yes No

Please Explain:

#### **4.11! – FISHERIES**

Fisheries issues at many tables have proved to be challenging. In some regions, fisheries negotiations have been deferred for several years (BC) and in others, Canada does not have a mandate to negotiate fisheries issues (QUE, NB, NS, PEI). Many groups, however, are seeking to have their fisheries interests and rights reflected in treaty agreements.

- ! Has the Aboriginal group expressed a position seeking fisheries access in the treaty for food, social and ceremonial and commercial purposes? Do they have any expectations regarding fisheries management/governance?

Yes No

Please Explain:

- ! Would a comprehensive agreement be achievable without fish issues being addressed in the treaty?

Yes No

Please Explain:

#### **4.12! – OTHER FEDERAL CORE ELEMENTS**

Some tables may have other specific federal core elements that are significant to their negotiations processes but that are not covered by this template.

- ! Are there any other federal core elements that are a particular impediment to resolution of an agreement with the Aboriginal group and/or the province/territory?

Yes No

Please Explain:

- ! If yes, was this issue discussed with the negotiation parties prior to the engagement process?

Yes No



-! If yes, what is the Aboriginal group(s) and/or provincial/territorial government's position?

Reject  
Dislike  
Somewhat Support  
Support  
Strongly Support  
Unknown

Please Explain:

-! If the issue had not been discussed previously, how was it received by the Aboriginal group(s) during the engagement process?

Reject  
Dislike  
Somewhat Support  
Support  
Strongly Support  
Unknown

Please Explain:

-! Was this identified as an impediment to resolution?

Yes                      No

Please Explain:

### **OVERALL ANALYSIS**

Taking into consideration the above analysis, please provide an overall analysis of the file. In this section, you may wish to identify any strategic considerations related to the negotiations.