

ARCHAEOLOGICAL AND PALAEOONTOLOGICAL SITES ACT

Application to lands and waters in Nunavut

1. This Act applies to all lands and waters in Nunavut other than lands and waters under the administration and control of the Crown in right of Canada.

Conflict or inconsistency

2. This Act and the regulations prevail over any other enactments to the extent of any inconsistency unless specifically stated otherwise.

Seizure by peace officer

3. (1) A peace officer who believes on reasonable grounds that any object, specimen or document has been removed, taken, shipped, had in possession or otherwise dealt with in contravention of the regulations may, without a warrant, seize the object, specimen or document.

Report and forfeiture

(2) A peace officer who makes a seizure under subsection (1) must report the seizure as soon as practicable to a justice of the peace, who may, on being satisfied that the object, specimen or document was removed, taken, shipped, had in possession or otherwise dealt with in contravention of the regulations, declare it to be forfeited to the Government of Nunavut and on that declaration it is forfeited.

Offence and punishment

4. A person who contravenes the regulations is guilty of an offence punishable on summary conviction.

Regulations

5. The Commissioner in Executive Council may make regulations
- (a) for the protection, care and preservation of sites, works, objects and specimens of palaeontological, archaeological, ethnological or historical importance, interest or significance and of explorers' cairns and explorers' documents;
 - (b) respecting the issuance of permits; and
 - (c) respecting reports in relation to permits.

TRANSITIONAL

Matters governed by the *Nunavut Act*

6. (1) This Act applies to all matters in respect of archaeological and palaeontological sites and artifacts that were governed by the *Nunavut Act (Canada)* and the *Nunavut Archaeological and Palaeontological Sites Regulations (Canada)* before the coming into force of this Act.

l'entrée en vigueur de la présente loi, restent en vigueur comme s'ils avaient été délivrés en conformité avec la présente loi.

ENTRÉE EN VIGUEUR

Entrée en vigueur

7. La présente loi entre en vigueur le 1^{er} avril 2027.

PUBLIC LANDS ACT

INTERPRETATION

Definitions

1. In this Act,

"enforcement officer" means

- (a) an enforcement officer appointed under section 16, or
- (b) a person of a class that is prescribed by regulation; (*agent de l'autorité*)

"grant" means a notification and any other instrument by which public lands may be granted in fee simple or for an equivalent estate; (*concession*)

"land" includes mines, minerals, easements, servitudes and all other interests in real property; (*terre*)

"notification" means a direction in a form prescribed by regulation and issued pursuant to subsection 4(2); (*notification*)

"penalty" means an administrative monetary penalty imposed under this Act for a violation; (*pénalité*)

"permit" means a permit issued under this Act or the regulations; (*permis*)

"public lands" means lands, or any interest in lands, under the administration and control of the Commissioner. (*terres publiques*)

APPLICATION

Application

2. (1) Subject to subsection (2), this Act applies only in respect of public lands that are transferred to the administration and control of the Commissioner on or after April 1, 2027.

Application of certain provisions

(2) Sections 4 and 6 to 9 and paragraphs 42(h) and 43(1)(h), (i) and (j) apply to all public lands.

Application of certain Acts

(3) Nothing in this Act is to be construed as limiting the operation of the *Dominion Water Power Act* (Canada) or the *Canada National Parks Act* (Canada).

SALE OR LEASE OF PUBLIC LANDS

Authorizing disposition

3. Subject to this Act, the Commissioner in Executive Council may authorize the sale, lease or other disposition of public lands.

Interpretation

4. (1) In this section, "certificate of title" and "Registrar" have the meanings as in the *Land Titles Act*.

Issue of notification

(2) A notification may be issued to a Registrar directing the Registrar to issue a certificate of title to a person named in the notification in respect of public lands described in the notification that are within the registration district administered by the Registrar.

Execution of notification

(3) A notification pursuant must be signed and issued by the Commissioner or by a person designated in writing by the Commissioner in Executive Council to sign on the Commissioner's behalf.

Effect of issue of notification

(4) The issue of a notification has the same force and effect as a grant of public land made by letters patent under the Great Seal of Nunavut.

Notification to set out nature of grant

(5) A notification must set out the nature of the estate granted by it and any easements, rights or other interests excepted or reserved from that grant.

Limitation on sale

5. Not more than 64.75 hectares of public lands may be sold to any one person without the approval of the Commissioner in Executive Council .

RESERVATION FROM GRANTS

Reservation

6. Unless otherwise provided in an order under this Act, administration and control of a strip of land 30.48 metres in width, measured from ordinary high-water mark or from the boundary line, as the case may be, is reserved to the Commissioner out of every grant of public lands where the land extends

- (a) to the sea or an inlet of the sea;
- (b) to the shore of any navigable water or an inlet of any navigable water; or
- (c) to the boundary line between Nunavut and the Northwest Territories or the Province of Manitoba.

Reservation of bed of body of water

7. Unless the grant contains a provision to the contrary, the administration and control of the bed below ordinary high-water mark of a body of water is reserved to the Commissioner out of every grant of public lands where the lands border a body of water.

Other reservations

8. There is reserved to the Commissioner out of every grant of public lands, administration and control of

- (a) all mines and minerals whether solid, liquid or gaseous that may be found to exist in, under or on those lands, together with the right to work the mines and minerals and for this purpose to enter on, use and occupy the lands or so much of the lands and to such extent as may be necessary for the working and extraction of the minerals; and
- (b) all rights of fishery and fishing and occupation in connection with fishery and fishing on or around or adjacent to those lands.

Grant does not convey water rights

9. Unless the grant or other document establishing a grant, lease or other disposition of public lands expressly states the contrary, no grant, lease or other disposition of public lands conveys any exclusive right, privilege, property or interest with respect to any lake, river, stream or other body of water, within, bordering or passing through the lands.

SLIDES, STREAMS AND LAKE FRONTS

Works for the movement of timber

10. Unless the grant or other document establishing a grant, lease or other disposition of public lands expressly states the contrary, no grant, lease or other disposition of public lands

- (a) conveys any right, title or interest in or to any slide, dam, pier, boom or other work constructed, for the purpose of facilitating the movement of timber, prior to the date of the grant, lease or other disposition of land;
- (b) affects the unimpeded right to use or repair the works referred to in paragraph (a); or
- (c) affects the unimpeded right to use, for the purpose of facilitating the movement of timber, all streams, lakes, bodies of water, portage roads or trails past rapids, falls or other natural obstacles or connecting bodies of water, or any land that has to be used in connection with that purpose.

TRESPASS ON PUBLIC LANDS

Summons to vacate or show cause

11. (1) If under this Act the right of any person to use, possess or occupy public lands has been forfeited or if, in the opinion of the Minister, a person is wrongfully or without lawful authority using, possessing or occupying public lands and that person continues to use, possess or occupy or fails to deliver up possession of the lands, an officer of the Government of Nunavut

authorized by the Minister for that purpose may apply to a judge for a summons directed to that person calling on that person

- (a) to, without delay, vacate or abandon and cease using, possessing or occupying the lands; or
- (b) within 30 days after service of the summons on that person to show cause why an order or warrant should not be made for the removal of that person from the lands.

Warrant for removal

(2) If a summons has been served under subsection (1) and, within 30 days from the service of the summons, the person named in the summons has not removed from, vacated or ceased using, possessing or occupying the public lands or has not shown cause why they should not do so, a judge may make an order or warrant for that person's summary removal from the lands.

Persons executing warrant

(3) A warrant made under subsection (2) must be executed by the Sheriff, a deputy sheriff, a bailiff, a member of the Royal Canadian Mounted Police, or another person to whom it is delivered for that purpose and they have all the powers, rights, immunities and privileges of a peace officer in the execution of their duty.

Execution of warrant

(4) A person to whom an order or warrant made under subsection (2) is addressed must, without delay, remove the person named in the order or warrant from the public lands and all members of that person's family, employees, servants, labourers, tenants or other persons employed by or living with that person or with the tenants of that person.

Service of summons or warrant

(5) Service of a summons or warrant under this section is made by leaving a copy with an adult person found on the public lands and by posting up another copy in a conspicuous place on the lands or, if no adult person is found on the lands, by posting up copies in two conspicuous places on the lands.

GENERAL

Effect of receipt

12. A receipt for payment made on the filing of an application to purchase or lease land does not entitle the person making the payment to take, occupy or use the land described in the receipt.

Execution of documents

13. Any lease, agreement, licence, permit or notice of cancellation issued or made pursuant to this Act and any consent to any assignment of any such lease, agreement, licence or permit may be executed on behalf of the Commissioner by

- (a) the Minister;

- (b) the Deputy Minister of the department responsible for the administration of this Act; or
- (c) any other member of the public service employed in the department responsible for the administration of this Act and authorized in writing for the purpose by the Minister.

Interest

14. Whenever interest is payable under or by virtue of this Act or for or on account of any claim, matter or thing arising under any provision of this Act, the rate of interest is equivalent to the rate of interest prescribed under subsection 17(1) of the *Financial Administration Act*, whether that interest is payable under the terms of any sealed or unsealed instrument or not.

Appeal

15. The order or judgment of a judge in any action or proceedings under this Act is subject to an appeal by a party to the action or proceedings in the same manner as any other order or judgment of a judge.

ADMINISTRATION AND ENFORCEMENT

Enforcement officers

16. (1) The Minister may appoint enforcement officers for the purposes of the administration and enforcement of this Act.

Certificate of designation

(2) An enforcement officer is to receive a certificate attesting to their designation and must, on request, present the certificate to any person appearing to be in charge of any place that the enforcement officer enters under subsection 17(1).

Authority to enter

17. (1) An enforcement officer may, for a purpose related to verifying compliance with this Act, enter any place in which the enforcement officer has reasonable grounds to believe there is any document, information or other thing to which this Act applies.

Powers on entry

(2) The enforcement officer may, for a purpose related to verifying compliance with this Act,

- (a) examine any document, information or other thing that is in the place and open or cause to be opened any container or other thing;
- (b) test or cause to be tested anything that is in the place;
- (c) take samples of anything that is in the place;
- (d) use, or cause to be used, any computer system in the place to examine any information contained in or available to the system;
- (e) reproduce, or cause to be reproduced, any information in the form of a printout, or other intelligible output, and remove the printout, or other output, for examination or copying;

- (f) use, or cause to be used, any copying equipment or means of telecommunication at the place;
- (g) take photographs and make recordings or sketches;
- (h) order the owner or person in charge of the place or any person at the place to establish their identity to the enforcement officer's satisfaction or to stop or start an activity;
- (i) order the owner or person having possession, care or control of anything that is in the place to not move it, or to restrict its movement, for as long as, in the enforcement officer's opinion, is necessary;
- (j) direct any person to put any machinery, vehicle or equipment that is in the place into operation or to cease operating it; and
- (k) prohibit or limit access to all or part of the place.

Duty to assist

(3) The owner or person in charge of the place and every person in the place must give all assistance that is reasonably required to enable the enforcement officer to perform their functions under this section and must provide any documents or information, and access to any data, that are reasonably required for that purpose.

Enforcement officer may be accompanied

(4) The enforcement officer may be accompanied by any other person that they believe is necessary to help them perform their functions under this section.

Dwelling-place

(5) An enforcement officer must not enter any place designed to be used and being used as a permanent or temporary private dwelling-place.

Private property

18. An enforcement officer and any person accompanying them may enter private property, other than a dwelling-place, and pass through it in order to gain entry to any place referred to in subsection 17(1).

False or misleading information

19. (1) A person must not knowingly make a false or misleading statement or provide false or misleading information, in connection with any matter under this Act, to an enforcement officer who is performing their functions under section 17.

Obstruction or hindrance

(2) A person must not obstruct or hinder an enforcement officer who is performing their functions under section 17.

ADMINISTRATIVE MONETARY PENALTIES

Violations

Commission of violation

20. (1) Every person who contravenes or fails to comply with a provision, order, direction, decision, term or condition designated under the regulations commits a violation and is liable to a penalty in the amount that is determined in accordance with the regulations.

Purpose of penalty

(2) The purpose of the penalty is to promote compliance with this Act and not to punish.

Liability of directors, officers, etc.

21. If a corporation commits a violation, any director, officer or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the violation is a party to the violation and is liable to a penalty in the amount that is determined in accordance with the regulations, whether or not the corporation has been proceeded against in accordance with this Act.

Proof of violation

22. In any proceedings under this Act against a person in relation to a violation, it is sufficient proof of the violation to establish that it was committed by an employee or agent of the person, whether or not the employee or agent is identified or proceeded against in accordance with this Act.

Issuance and service of notice of violation

23. (1) If an enforcement officer believes on reasonable grounds that a person has committed a violation, the enforcement officer may issue a notice of violation and cause it to be served on the person.

Contents

(2) The notice of violation must

- (a) name the person that is believed to have committed the violation;
- (b) set out the relevant facts surrounding the violation;
- (c) set out the amount of the penalty;
- (d) inform the person of their right to request a review with respect to the violation or the amount of the penalty, and of the period within which that right must be exercised;
- (e) inform the person of the time and manner of paying the penalty; and
- (f) inform the person that, if they do not pay the penalty or exercise their right referred to in paragraph (d), they are considered to have committed the violation and are liable to the penalty.

Authenticity of notice

(3) In the absence of evidence to the contrary, a document that appears to be a notice issued under this section is presumed to be authentic and is proof of its contents in any proceeding in respect of a violation.

Rules about violations

Certain defences not available

24. (1) A person named in a notice of violation does not have a defence by reason that the person

- (a) exercised due diligence to prevent the commission of the violation; or
- (b) reasonably and honestly believed in the existence of facts that, if true, would exonerate the person.

Common law principles

(2) Every rule and principle of the common law that renders any circumstance a justification or excuse in relation to a charge for an offence under this Act applies in respect of a violation to the extent that it is not inconsistent with this Act.

Continuing violation

25. A violation that is committed or continued on more than one day constitutes a separate violation for each day on which it is committed or continued.

Violation or offence

26. Proceeding with any act or omission as a violation under this Act precludes proceeding with it as an offence under this Act, and proceeding with it as an offence under this Act precludes proceeding with it as a violation under this Act.

Limitation period

27. No notice of violation is to be issued more than two years after the day on which the Minister becomes aware of the acts or omissions that constitute the alleged violation.

Reviews

Right to request review

28. A person who is served with a notice of violation may, within 30 days after the day on which it is served or within any longer period that is prescribed by the regulations, make a request to the Minister for a review of the amount of the penalty or the facts of the violation, or both.

Correction or cancellation of notice of violation

29. At any time before a request for a review in respect of a notice of violation is received by the Minister, an enforcement officer may cancel the notice of violation or correct an error in it.

Review

30. On receipt of a request for a review in respect of a notice of violation, the Minister must conduct the review.

Object of review

31. (1) The Minister must determine, as the case may be, whether the amount of the penalty was determined in accordance with the regulations or whether the person committed the violation, or both.

Determination

(2) The Minister must render a determination in writing and cause the person who requested the review to be served with a copy of the determination and the reasons for it.

Correction of penalty

(3) If the Minister determines that the amount of the penalty was not determined in accordance with the regulations, the Minister must correct it.

Responsibility

(4) If the Minister determines that the person who requested the review committed the violation, that person is liable to the penalty as set out in the determination.

Determination final

(5) A determination made under this section is final and binding and, except for judicial review, is not subject to appeal or to review by any court.

Burden of proof

32. If the facts of a violation are reviewed, the enforcement officer who issued the notice of violation must establish, on a balance of probabilities, that the person named in it committed the violation identified in it.

Responsibility

Payment

33. If a person pays the penalty set out in a notice of violation, the person is considered to have committed the violation and proceedings in respect of it are ended.

Failure to act

34. A person that neither pays the penalty within the period set out in the notice of violation, nor requests a review within the period referred to in section 32, is considered to have committed the violation and is liable to the penalty.

Recovery of penalties

Debts to the Government of Nunavut

35. (1) A penalty constitutes a debt due to the Government of Nunavut and may be recovered in any court of competent jurisdiction.

Limitation period

(2) No proceedings to recover the debt are to be instituted more than five years after the day on which the debt becomes payable.

Certificate

36. (1) The Minister may issue a certificate of non-payment certifying the unpaid amount of any debt referred to in subsection 35(1).

Registration

(2) Registration in any court of competent jurisdiction of a certificate of non-payment has the same effect as a judgment of that court for a debt of the amount specified in the certificate and all related registration costs.

OFFENCES AND PENALTIES

Offences related to land use

37. (1) Every person is guilty of an offence who

- (a) contravenes any regulation made under paragraph 43(1)(a) or (b); or
- (b) fails to comply with any term or condition of a permit issued under such a regulation.

Punishment

(2) Every person who commits an offence under subsection (1) is liable on summary conviction,

- (a) for a first offence, to a fine not exceeding \$100,000; and
- (b) for a second or subsequent offence, to a fine not exceeding \$200,000.

Offences related to trespassing

38. A person who remains on public lands, returns to them or assumes any possession or occupancy of them after having been ordered to vacate them under section 11 or after having been removed from them under that section is guilty of an offence and liable on summary conviction

- (a) for a first offence, to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding six months, or to both; and
- (b) for a second or subsequent offence, to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding six months, or to both.

Continuing offences

39. An offence under section 37 or 38 that is committed or continued on more than one day constitutes a separate offence for each day on which it is committed or continued.

Deeming – second or subsequent offence

40. (1) A conviction for an offence under section 37 or 38 is deemed to be a conviction for a second or subsequent offence if the court is satisfied that the offender has been previously convicted of a substantially similar offence under an Act of Nunavut, an Act of Parliament or any

Act of the legislature of a province or another territory that relates to environmental or wildlife conservation or protection.

Application

- (2) Subsection (1) applies only to previous convictions
- (a) on indictment;
 - (b) on summary conviction; or
 - (c) under any similar procedure under any Act of the legislature of a province or territory.

Other offences

41. Every person who contravenes any provision of this Act or any regulation for which no other punishment is provided is guilty of an offence punishable on summary conviction.

ORDERS AND REGULATIONS

Orders

- 42.** The Commissioner in Executive Council may, by order,
- (a) on setting out the reasons for withdrawal in the order, withdraw any tract or tracts of public lands from disposal under this Act;
 - (b) set apart and appropriate public lands for the sites of places of public worship, burial grounds, schools, market places, jails, court houses, town halls, public parks or gardens, hospitals, harbours, landings, bridge sites, airports, landing fields, railway stations, town-sites, historic sites or for other public purposes and, at any time before the issue of a grant, alter or revoke those appropriations;
 - (c) order that grants or leases for a nominal consideration be made of the lands appropriated under paragraph (b) and that there be expressed in any grant or lease the trusts and uses to which the public lands granted or leased are subject;
 - (d) set apart and appropriate such areas or lands as may be necessary to enable the Government of Nunavut to fulfil its obligations under land claim agreements and to make free grants or leases for that purpose;
 - (e) set apart and appropriate public lands for use as game preserves, game sanctuaries, bird sanctuaries, public shooting grounds, public resorts or for any other similar public purpose;
 - (f) respecting inquiries into any question affecting public lands by persons designated in the order who may, for the purposes of the inquiry, summon and bring before them any person whose attendance they consider necessary to the inquiry, examine that person under oath, compel the production of documents and do all things necessary to provide a full and proper inquiry;
 - (g) authorize the acquisition by any railway, power company or pipeline company, on and subject to such terms and conditions as may be considered proper, of a right-of-way for a road bed, for transmission lines or for pipelines through public lands together with such other public lands

as may be considered necessary for stations, station grounds, workshops, buildings, yards, pumps, tanks, reservoirs or other appurtenances in connection with them;

- (h) divide public lands into mining districts and land districts; and
- (i) authorize the sale, lease or other disposition of public lands within the 30.48 metre strip of land referred to in section 6.

Regulations

- 43.** (1) The Commissioner in Executive Council may make regulations
- (a) respecting the protection, control and use of the surface of land;
 - (b) respecting the issue of permits for the use of the surface of land, the terms and conditions of those permits and the fees for those permits;
 - (c) if the Commissioner in Executive Council considers it necessary for the protection of the ecological balance or physical characteristics of any area in Nunavut, setting apart and appropriating any public lands in that area as a land management zone and making specific regulations under paragraphs (a) and (b) with respect to that land management zone;
 - (d) respecting the appointment of public officers to perform functions under the regulations;
 - (e) authorizing the Minister or public officers appointed under the regulations to sell, lease or otherwise dispose of public lands subject to such limitations and conditions prescribed by the regulations;
 - (f) prescribing a tariff of fees for copies of maps, plans, field notes, documents, papers and other records pertaining to public lands, and for the preparation of documents evidencing a sale, lease or other disposition of public lands and for the registration of any documents pertaining to public lands;
 - (g) respecting the protection, control and use of the surface of public lands;
 - (h) respecting the leasing of mining rights in, under or on public lands and the payment of royalties for the lease of those mineral rights, but the regulations must provide for the protection of and compensation to the holders of surface rights;
 - (i) respecting the form of a notification;
 - (j) prescribing the fee for the issue a notification;
 - (k) respecting any matter that is necessary to carry out the purposes and provisions of this Act;
 - (l) designating as a violation that may be proceeded with in accordance with this Act
 - (i) the contravention of any specified provision of this Act or of its regulations,
 - (ii) the contravention of any order, direction or decision, or of any order, direction or decision of a specified class, made under this Act, or

- (iii) the failure to comply with a term or condition of any permit or licence, or of any permit or licence of a specified class, issued under this Act;
- (m) respecting the determination of or the method of determining the amount payable as the penalty, which may be different for individuals and other persons, for each violation;
- (n) establishing the form and content of notices of violations;
- (o) respecting the service of documents required or authorized under this Act, including the manner and proof of service and the circumstances under which documents are considered to be served; and
- (p) respecting reviews by the Minister in respect of a notice of violation.

Maximum amount of penalty

(2) The amount that may be determined under any regulations made under paragraph (1)(m) as the penalty for each violation must not be more than \$25,000, in the case of an individual, and \$100,000 in the case of any other person.

Publication in the *Nunavut Gazette*

44. A copy of each proposed regulation to be made under paragraph 43(1)(a), (b), (c) or (g) must be published in the *Nunavut Gazette* and a reasonable opportunity must be afforded to all interested persons to make representations to the Minister with respect to the proposed regulation or amendment.

Ministerial regulations

45. The Minister may make regulations

- (a) respecting the forms of leases, agreements of sale, licences and other documents required for use under this Act; and
- (b) prescribing classes of persons as enforcement officers.

TRANSITIONAL

46. Any lease, agreement, licence, permit or other authorization in respect of lands that was in force under the *Territorial Lands Act (Canada)* immediately before the coming into force of this section and that relates to lands that became public lands under this Act, continues to be in force in accordance with its terms and conditions as if it had been made or issued under this Act.

47. Section 44 does not apply to a regulation made by the Commissioner in Executive Council if it is registered under the *Legislation Act* before April 1, 2027.

COMING INTO FORCE

48. This Act comes into force on April 1, 2027.

SURFACE RIGHTS TRIBUNAL ACT

INTERPRETATION

Definitions

1. In this Act,

"carving stone" means serpentinite, argillite or soapstone that is suitable for carving; (*pierre à sculpter*)

"designated Inuit organization" means

- (a) except in the case of the jointly owned lands referred to in section 40.2.8 of the Nunavut Agreement,
 - (i) Nunavut Tunngavik Incorporated, or
 - (ii) in respect of a provision of this Act referred to in the Schedule, any organization designated in the public record maintained by Nunavut Tunngavik Incorporated under the Nunavut Agreement as being responsible for any function under the corresponding provision or provisions of the Nunavut Agreement referred to in the Schedule, or
- (b) in the case of the jointly owned lands referred to in section 40.2.8 of the Nunavut Agreement, Makivik acting jointly with the organization determined under paragraph (a); (*organisation inuit désignée*)

"flora" means terrestrial and aquatic flora and any of their parts or products, but does not include trees suitable for commercial production of lumber or other building materials except for trees that are required by Inuit for local use, land-based activities or handicraft production; (*espèces végétales*)

"harvesting" means, in relation to wildlife, reduction into possession and includes hunting, trapping, fishing as defined in section 2 of the *Fisheries Act* (Canada), netting, eggng, picking, collecting, gathering, spearing, killing, capturing or taking by any means; (*exploitation*)

"Inuit" means Nunavut Inuit and includes, in the case of the jointly owned lands referred to in section 40.2.8 of the Nunavut Agreement, the Inuit of northern Quebec; (*Inuit*)

"Inuit of northern Quebec" means the Inuit of northern Quebec within the meaning of the James Bay and Northern Quebec Agreement that was approved, given effect and declared valid by the *James Bay and Northern Quebec Native Claims Settlement Act*; (*Inuit du Nord québécois*)

"Inuit Owned Lands" has the same meaning as in the Nunavut Agreement and includes the jointly owned lands referred to in section 40.2.8 of the Nunavut Agreement; (*Terres inuites*)

"Makivik" means the corporation established by *An Act respecting the Makivik Corporation*, R.S.Q., c. S-18.1, and representing the Inuit of northern Quebec; (*Makivik*)

"mineral right" means a right to explore for, develop, produce or transport minerals, other than specified substances; (*droit minier*)

"minerals" means precious and base metals and other non-living, naturally occurring substances, whether solid, liquid or gaseous, and includes coal, oil and gas, but does not include water; (*minéraux*)

"Nunavut Settlement Area" has the meaning assigned to that expression by section 3.1.1 of the Nunavut Agreement; (*région du Nunavut*)

"specified substances" means construction stone, sand, gravel, limestone, marble, gypsum, shale, clay, volcanic ash, earth, soil, diatomaceous earth, ochre, marl, peat and carving stone; (*matières spécifiées*)

"Tribunal" means the Surface Rights Tribunal continued under section 4; (*Tribunal*)

"wildlife"

- (a) means terrestrial, aquatic, avian and amphibian fauna in their wild state and any of their parts or products, and
- (b) subject to subsection 56(3), includes flora. (*ressources fauniques*)

Inconsistency with Agreement

2. (1) If there is any inconsistency or conflict between the Nunavut Agreement and this Act, the Nunavut Agreement prevails to the extent of the inconsistency or conflict.

Inconsistency with other Acts

(2) If there is any inconsistency or conflict between this Act and any other Act, this Act prevails to the extent of the inconsistency or conflict.

GENERAL PROVISIONS

Access with consent

3. (1) For greater certainty, except as otherwise provided in the Nunavut Agreement, no persons, other than Inuit, may enter, cross or remain on Inuit Owned Lands without the consent of the designated Inuit organization.

Effect of entry order

(2) Neither the issuance of an entry order by the Tribunal nor any term or condition of an entry order has the effect of exempting the person to whom the entry order is issued from any obligation, restriction or prohibition

- (a) imposed under an Act;
- (b) set out in the Nunavut Agreement.

PART 1

ESTABLISHMENT AND ORGANIZATION OF TRIBUNAL

TRIBUNAL ESTABLISHED

Establishment

- 4.** (1) The Surface Rights Tribunal is continued and consists of the following members appointed by the Minister:
- (a) a Chairperson;
 - (b) not fewer than two nor more than ten other members.

Odd number

(2) The Minister must make appointments to the Tribunal as are necessary to ensure that an odd number of members holds office at any time.

Residency qualification

- 5.** (1) At least two of the members must be resident in Nunavut.

Effect of ceasing to be resident

(2) If the Minister determines that a member has ceased to be resident in Nunavut and that the condition imposed by subsection (1) is not satisfied, the appointment of the member is terminated as of the date on which the member receives written notification from the Minister that the determination has been made.

Term of office

- 6.** (1) A member must be appointed to hold office for a term not exceeding three years.

Acting after expiry of term

(2) If the term of a member expires before the member has made a decision in a matter for which a hearing is held, the member may, with the authorization of the Chairperson, continue to act as a member only in relation to that matter until the hearing is concluded and a decision is made. The office of the member is deemed to be vacant as soon as the term expires for the purpose of the appointment of a replacement.

Reappointment

- 7.** A member is eligible to be reappointed to the Tribunal in the same or another capacity.

Duties of Chairperson

- 8.** The Chairperson is the chief executive officer of the Tribunal and has the powers, duties and functions that are prescribed by the by-laws of the Tribunal.

Remuneration and expenses

- 9.** (1) The members of the Tribunal must receive fair remuneration, as determined by the Minister, for the performance of their duties and must be paid travel and living expenses incurred

while absent from their ordinary place of residence in the course of performing their duties that are consistent with Financial Management Board directives for public servants.

Workers' compensation

(2) A member is deemed to be a worker for the purposes of the *Workers' Compensation Act*.

Indemnification of Tribunal members and employees

10. The members and employees of the Tribunal must be indemnified by the Tribunal against all damages awarded against them, any settlement paid by them with the approval of the Minister and all expenses reasonably incurred by them, in respect of any claim arising out of their functions as members or employees, if those functions were carried out honestly and in good faith with a view to the best interests of the Tribunal.

LANGUAGES

Language of business

11. (1) The Tribunal must conduct its business in accordance with the *Official Languages Act* and any directives of the Minister respecting the use of Official Languages.

Translation or interpretation

(2) Nothing in subsection (1) is to be construed to prevent the use of translation or interpretation services when a member of the Tribunal is otherwise unable to conduct business in an Official Language.

Witnesses

(3) The Tribunal has, in any proceedings before it, the duty to ensure that any person giving evidence before it may be heard in any Official Language, and that in being so heard the person will not be placed at a disadvantage by not being heard in another of those languages.

Duty to provide simultaneous interpretation

(4) The Tribunal has, in any proceedings before it, the duty to ensure that, at the request of any party to the proceedings, facilities are made available for the simultaneous interpretation of the proceedings, including the evidence given and taken, from one of the Official Language into another.

Translation of documents

(5) The Tribunal has, in any proceedings before it, the duty to provide a translation of any document prepared in an Official Language for the purpose of the proceedings by a party to the proceedings into one or more of the Official Languages when necessary to enable another party to the proceedings to understand and deal with the document.

Translation of orders

(6) The Tribunal must, on the request of a party to any proceedings before it, provide a translation into Inuktitut of any order made in the proceedings, including any reasons given for the order.

Official Languages Act

(7) For greater certainty, nothing in subsection (6) reduces the obligations of the Tribunal under section 9 of the *Official Languages Act*.

HEAD OFFICE AND MEETINGS

Head office

12. The head office of the Tribunal must be in Iqaluit or at another place in Nunavut that the Commissioner in Executive Council may designate.

Business meetings

13. (1) The meetings of the Tribunal must be held at the times and the places that the Tribunal considers necessary or desirable for the proper conduct of its business.

Participation by telephone

(2) Subject to the by-laws of the Tribunal, any member may participate in a business meeting by means of telephone or other communications facilities that are likely to enable all persons participating in the meeting to hear each other, and a member so participating is deemed for all purposes of this Act to be present at that meeting.

BY-LAWS

By-laws

14. The Tribunal may make by-laws respecting the conduct and management of the internal administrative affairs of the Tribunal, including by-laws respecting the assignment of members to panels of the Tribunal.

GENERAL POWERS

Staff

15. (1) The Tribunal may employ officers and employees and engage the services of agents, advisers and experts that are necessary for the proper conduct of its business and may fix the terms and conditions of their employment or engagement and pay their remuneration.

Not members of the public service

(2) Officers and employees employed under subsection (1) are not members of the public service.

Government facilities and information

16. In exercising its powers or performing its duties or functions, the Tribunal may, if appropriate, use the services and facilities of departments, boards and agencies of the Government of Canada or the Government of Nunavut and may, subject to any other Act, obtain from any the department, board or agency any information that is required to exercise those powers or perform those duties or functions.

Property and contracts

- 17.** (1) The Tribunal may, for the purposes of conducting its business,
- (a) acquire property in its own name and dispose of the property; and
 - (b) enter into contracts in its own name.

Legal proceedings

(2) Actions, suits or other legal proceedings in respect of any right or obligation acquired or incurred by the Tribunal may be brought or taken by or against the Tribunal in its name in any court that would have jurisdiction if the Tribunal were a corporation.

STATUS

Status

18. The Tribunal is an institution of public government but is not an agent of the Government of Nunavut.

FINANCIAL PROVISIONS

Annual budget

19. (1) The Tribunal must annually submit a budget for the following fiscal year to the Minister for consideration.

Accounts

(2) The Tribunal must maintain books of account and records in relation to them in accordance with accounting principles recommended by the Chartered Professional Accountants of Canada or its successor.

Consolidated financial statements

(3) The Tribunal must, within the time after the end of each fiscal year that the Minister specifies, prepare consolidated financial statements in respect of that fiscal year in accordance with the accounting principles referred to in subsection (2), and must include in the consolidated financial statements any information or statements that are required in support of them.

Audit

(4) The accounts, financial statements and financial transactions of the Tribunal must be audited annually by the Auditor General.

Audit report

(5) The Auditor General must make a report of the audit to the Tribunal and the Minister.

ANNUAL REPORT

Annual report

20. The Tribunal must, within three months after the end of each fiscal year, submit to the Minister a report on its activities in that year, and must include in the annual report information on the following matters:

- (a) its operations;
- (b) the number of applications made to it;
- (c) the orders made by it;
- (d) other matters as the Minister may specify.

Publication

21. The Tribunal must publish the annual report.

JURISDICTION OF TRIBUNAL

Negotiations

22. (1) A person may not apply to the Tribunal for an order unless the person has attempted to resolve the matter in dispute by negotiation in accordance with the rules made under section 35 or, until the rules have been made, in a manner satisfactory to the Tribunal.

Resolved matters

(2) The Tribunal may not hear or make an order in respect of any matter that was resolved by negotiation unless the parties consent or it appears, in the opinion of the Tribunal, that there has been a material change in the facts or circumstances that formed the basis of the negotiated resolution.

Matters not raised

23. The Tribunal may not make an order in respect of a matter that is not raised by any of the parties.

APPLICATIONS AND HEARINGS

Informal and expeditious

24. An application before the Tribunal must be dealt with as informally and expeditiously as the circumstances and considerations of fairness permit and, in particular, the Tribunal

- (a) is not bound by any strict rules of evidence;
- (b) may take into account any material it considers relevant;
- (c) must give due weight to Inuit knowledge of wildlife and the environment;
and
- (d) must, in hearing an application under Part 5, take into account the social, cultural and economic importance of wildlife to Inuit.

General powers of Tribunal

25. The Tribunal has, with respect to the attendance and examination of witnesses, the production and inspection of documents and all other matters necessary or proper in relation to applications before the Tribunal, all the powers, rights and privileges of a superior court.

Parties to a hearing

26. The following are parties to a hearing before the Tribunal:

- (a) the applicant and any other person who may apply for an order in respect of which the hearing is held;

- (b) the owner of land that would be subject to an order in respect of which the hearing is held and any occupant of that land.

Hearing in absence of party

- 27.** The Tribunal may not hear an application in the absence of any party unless
- (a) that party consents to the holding of the hearing in their absence; or
 - (b) notice of the hearing was given to that party in accordance with the rules of the Tribunal or, in the absence of rules respecting the giving of notice, in a manner satisfactory to the Tribunal.

Location of hearing

- 28.** Unless the parties agree otherwise,
- (a) an application under section 59 or 71 in relation to an order made under section 59 must be heard in a community that is convenient to the claimant; and
 - (b) any other application must be heard in the community that is closest to the land involved.

Hearing of applications

- 29.** (1) An application to the Tribunal must be heard by a panel consisting of three members or, if the parties consent, by one member.

Absence of panel member

(2) If one of the members of a panel is absent, the hearing may continue with only one of the members if the parties consent, but if the parties do not consent, the application must be reheard by another panel or member.

Disposition of application

(3) A member who is not present during the entire hearing of an application may not participate in the disposition of the application.

Residency requirement

(4) When an application involves Inuit Owned Lands, at least two of the members of the panel hearing the application, or in the case of an application heard by one member, that member, must be resident in Nunavut.

Assignment of members

30. (1) Members must be assigned to panels in accordance with the by-laws of the Tribunal or, in the absence of by-laws respecting the assignment of members, by the Chairperson.

Conflict of interest

(2) A member must not be assigned to, or continue to, hear an application if doing so would place the member in a material conflict of interest.

Status of Inuk or interest in land

(3) A member is not placed in a material conflict of interest merely because the member has the status under the Nunavut Agreement of an Inuk or has an interest in land in Nunavut.

Powers, duties and functions

31. (1) A panel, or member hearing an application, has all of the powers, and must perform all of the duties and functions, of the Tribunal in relation to the application.

Status of order

(2) Any order disposing of an application is an order of the Tribunal.

Information made available

32. Before disposing of an application, the Tribunal must make any information that it intends to use in the disposition available to the parties and provide them with a reasonable opportunity to respond to the information.

References to Nunavut Court of Justice

33. The Tribunal may, at any stage of its proceedings, refer to the Nunavut Court of Justice any question or issue of law or of jurisdiction, other than a question or issue that has been referred to an arbitration panel established under Article 38 of the Nunavut Agreement.

RECORDS

Records

34. (1) The Tribunal must

- (a) keep a public record of all applications made to the Tribunal and orders and other decisions made by the Tribunal in respect of applications;
- (b) issue, on request and on payment of a fee that the Tribunal may fix, certified copies of any order or other decision, rule or by-law made by the Tribunal; and
- (c) have the custody and care of all documents filed with the Tribunal.

Fees

(2) Any fee received by the Tribunal under paragraph (1)(b) may be used by the Tribunal for its operations.

RULES

Procedures, mediation and costs

35. (1) The Tribunal may make rules

- (a) respecting the practice and procedure in relation to applications to and hearings before the Tribunal, including the service of documents and the imposition of reasonable time limits;
- (b) establishing procedures that may be followed in the mediation of matters in dispute; and
- (c) respecting the allowance of costs, including rules

- (i) establishing a schedule of fees and other expenses incurred by a party in relation to applications to or hearings before the Tribunal that may be allowed as part of that party's costs under this Act, and
- (ii) respecting the circumstances under which the Tribunal may allow costs with respect to matters dealt with in the schedule of fees and other expenses on a basis other than that established by the schedule.

Negotiations

(2) The Tribunal must make rules establishing procedures to be followed in the conduct of negotiations for the purposes of subsection 22(1), either generally or with respect to any class of applications.

Pre-publication

- 36.** (1) The Tribunal must give notice at least sixty days before making a rule by
- (a) publishing the proposed rule in a newspaper or other periodical that, in the opinion of the Tribunal, has a large circulation in Nunavut; and
 - (b) sending a copy of the proposed rule to the council of each municipality.

Representations invited

(2) The notice referred to in subsection (1) must include an invitation to interested persons to make representations in writing to the Tribunal about the proposed rule within sixty days after publication of the notice.

Response to representations

(3) The Tribunal may not make the rule until after it has responded to any representations made within the time limit referred to in subsection (2).

Exception

(4) Once a notice is published under subsection (1), no further notice is required to be published about any amendment to the proposed rule that results from representations made by interested persons.

Publication

- (5) As soon as possible after the rule has been made, the Tribunal must
- (a) publish it in a newspaper or other periodical that, in the opinion of the Tribunal, has a large circulation in Nunavut; and
 - (b) publish a notice in the *Nunavut Gazette* that the rule has been made, indicating the newspaper or periodical in which it has been published.

PART 2

ENTRY ORDERS FOR INUIT OWNED LANDS

EXERCISE OF MINERAL RIGHTS

Use and occupation

- 37.** (1) An application for an entry order may be made by a person
- (a) who has a mineral right granted by the Commissioner or the Crown in right of Canada in relation to Inuit Owned Land; and
 - (b) who has been unable to obtain the consent of the designated Inuit organization.

Entry order

(2) Following an application under subsection (1), the Tribunal must make an entry order setting out the terms and conditions for the use and occupation of the land to the extent necessary for the purpose of exercising the mineral right.

Prospecting right

38. (1) A person who has a right to prospect for minerals and who applies under section 37 for an entry order to exercise that right on Inuit Owned Lands must make a separate application in respect of each parcel of that land.

Confidentiality

(2) In disposing of an application made by a person who has a right to prospect for minerals, the Tribunal must take into account the need to provide confidentiality for that person.

Definition of parcel

(3) In subsection (1), parcel means the portion of land represented by a code of letters and numbers in the property description, as defined in section 19.1.1 of the Nunavut Agreement, used for the purposes of conveying title to Inuit Owned Lands.

Access to other land

- 39.** (1) Subject to subsection (3), an application for an entry order may be made by a person
- (a) who requires access to Inuit Owned Lands in order to exercise a mineral right, granted under an Act of Nunavut or Canada, in relation to any other land; and
 - (b) who has been unable to obtain the consent of the designated Inuit organization.

Entry order

(2) Following an application under subsection (1), the Tribunal must make an entry order setting out the terms and conditions for access to that Inuit Owned Lands to the extent necessary for the purpose of exercising the mineral right.

Restriction

(3) The Tribunal must not make an entry order under subsection (2) unless the applicant satisfies the Tribunal that the access is reasonably required.

OTHER COMMERCIAL PURPOSES

Right to cross

- 40.** (1) Subject to subsection (2), an application for an entry order may be made by a person
- (a) who requires access across Inuit Owned Lands for a commercial purpose; and
 - (b) who has been unable to obtain the consent of the designated Inuit organization.

Entry order

(2) Following an application under subsection (1), the Tribunal must make an entry order setting out the terms and conditions for the access.

Restriction

(3) The Tribunal must not make an entry order under subsection (2) unless an arbitration panel established under Article 38 of the Nunavut Agreement has, in accordance with the Nunavut Agreement,

- (a) established that the applicant attempted for a period of not less than sixty days to negotiate the access in good faith;
- (b) determined that the access is essential to the commercial purposes of the applicant and that access by any other means is physically or financially impractical; and
- (c) designated a route of access that will minimize any damage to the Inuit Owned Lands and interference with Inuit use of that land.

Terms and conditions

(4) An entry order made under subsection (2) must include terms and conditions to minimize any damage to the Inuit Owned Lands and interference with Inuit use of that land.

Compensation dispute

(5) If the designated Inuit organization has consented to permit a person to cross Inuit Owned Lands for commercial purposes but that organization and that person are unable to agree on appropriate compensation, the Tribunal must, on application by that organization or person, make an order resolving the matter.

CONSTRUCTION MATERIALS

Right to remove materials

41. (1) Subject to subsection (2), on application by the Minister or the federal minister designated by an instrument of the Governor in Council, in any case where the designated Inuit organization has refused entry on Inuit Owned Lands to remove sand, gravel or other like construction materials, the Tribunal must make an entry order setting out the terms and

conditions, including the payment of compensation, for entry on that land by agents of the Government of Nunavut or of the Government of Canada to remove those construction materials.

Restriction

(2) The Tribunal must not make an entry order under subsection (1) unless it determines that the construction materials are required for public purposes and that no alternative supply is reasonably available.

Terms and conditions

(3) An entry order made under subsection (1) must include terms and conditions to minimize any damage to the Inuit Owned Lands and interference with Inuit use of that land and must require the rehabilitation of the site by the government that removed the construction materials.

Compensation

(4) In determining the amount of compensation that is payable as a term or condition of an entry order made under subsection (1), the Tribunal must not take into account any amount that is payable for the construction materials.

GENERAL RULES FOR ORDERS

Offer of compensation

42. An applicant for an entry order must file with the application a copy of the most recent written offer of compensation made to the designated Inuit organization or to the occupant of the land that would be subject to the order.

Terms and conditions

43. The Tribunal may include in an entry order, in addition to the terms and conditions required by this Act,

- (a) terms and conditions respecting any of the following matters, namely,
 - (i) the times when the right may be exercised,
 - (ii) the giving of notice,
 - (iii) limitations on the location in which the right may be exercised and on routes of access,
 - (iv) limitations on the number of persons exercising the right,
 - (v) limitations on the activities that may be carried on and the equipment that may be used,
 - (vi) the giving of security in accordance with the regulations and the purposes for which the security is given,
 - (vii) abandonment and restoration work, and
 - (viii) the right of the designated Inuit organization or occupant of the land to verify, by inspection or otherwise, whether the other terms and conditions have been complied with; and
- (b) any other terms and conditions that the Tribunal considers appropriate to minimize any damage to or interference with the use and peaceful enjoyment of the land by the occupant of the land or Inuit.

Compensation factors

44. (1) Subject to subsection (2), in determining the amount of compensation that is payable under an order, the Tribunal may consider any factors that it considers appropriate and, without limiting the generality of the foregoing, must consider

- (a) the market value of the land;
- (b) the loss of the use of the land to the designated Inuit organization, the occupant of the land and Inuit;
- (c) the effect on wildlife harvesting by Inuit;
- (d) the adverse effect of the use or occupancy on any other Inuit Owned Lands;
- (e) any damage that may be caused to the land;
- (f) any nuisance and inconvenience, including noise, to the designated Inuit organization, the occupant of the land and Inuit;
- (g) the cultural attachment of Inuit to the land;
- (h) the peculiar and special value of the land to Inuit;
- (i) any reasonable expenses that may be incurred by the designated Inuit organization or occupant of the land as or on account of costs of an inspection under subparagraph 43(a)(viii); and
- (j) any reasonable costs incurred by the designated Inuit organization in connection with the application and the hearing.

Restriction

(2) In determining the amount of compensation payable, the Tribunal must not consider the reversionary value of the land or any entry fee payable.

Payment

(3) The Tribunal may require compensation to be paid by one lump sum payment or by periodic payments of equal or different amounts and may require the payment of interest, at a rate to be determined in accordance with the regulations, on compensation payments made after the day on which they are required to be made.

Allocation

45. If the Tribunal finds that both the designated Inuit organization and the occupant of the land are affected by the access, it may allocate any compensation payable between them.

Effect of entry order

46. (1) Subject to subsection (2), a person to whom an entry order is issued and every successor of that person referred to in section 67 who has notified the designated Inuit organization of the succession is entitled to have access to the land that is subject to the entry order, in accordance with the terms and conditions of the entry order.

Payment of entry fee and compensation

(2) A person may not exercise the rights under an entry order until after the payment of both the entry fee fixed by regulations made under the *Nunavut Land Claims Agreement Act*

(Canada) and eighty per cent of either the lump sum or the first periodic payment, as the case may be, of the compensation referred to in the offer filed under section 42.

PART 3

ENTRY ORDERS FOR NON-INUIT-OWNED LAND

INTERPRETATION

Definitions

47. In this Part,

"non-Inuit-owned land" means land that is not Inuit Owned Lands and that is owned or occupied by a person other than the Commissioner or the Crown in right of Canada; (*terre non inuit*)

"occupant" means, in respect of land, any person, other than the owner of the land, whose consent is required by or under an Act of Nunavut or Canada as a condition of the exercise of a right of access to that land by a person who has a mineral right. (*occupant*)

EXERCISE OF MINERAL RIGHTS

Applications for entry orders

- 48.** (1) An application for an entry order may be made by a person
- (a) who has a mineral right granted by the Commissioner or the Crown in right of Canada;
 - (b) who has, under an Act or Nunavut or Canada, for the purpose of exercising that mineral right, a right of access to non-Inuit-owned land that is subject to the consent of the owner or occupant; and
 - (c) who has been unable to obtain the consent of the owner or occupant.

Entry order

(2) Following an application under subsection (1), the Tribunal must make an entry order setting out the terms and conditions for the exercise of the right of access to the extent necessary for the purpose of exercising the mineral right.

GENERAL RULES FOR ORDERS

Offer of compensation

49. An applicant for an entry order must file with the application a copy of the most recent written offer of compensation made to the owner or occupant of the land that would be subject to the order.

Terms and conditions

- 50.** The Tribunal may include in an entry order in respect of a right of access
- (a) terms and conditions respecting any of the following matters, namely,
 - (i) the times when the right may be exercised,

- (ii) the giving of notice,
 - (iii) limitations on the location in which the right may be exercised and on routes of access,
 - (iv) limitations on the number of persons exercising the right,
 - (v) limitations on the activities that may be carried on and the equipment that may be used,
 - (vi) the giving of security in accordance with the regulations and the purposes for which the security is given,
 - (vii) abandonment and restoration work, and
 - (viii) the right of the owner or occupant of the land to verify, by inspection or otherwise, whether the other terms and conditions have been complied with; and
- (b) any other terms and conditions that the Tribunal considers appropriate to minimize any damage to or interference with the use and peaceful enjoyment of the land by the owner or occupant of the land.

Compensation factors

51. (1) Subject to subsection (2), in determining the amount of compensation that is payable under an entry order, the Tribunal may consider any factors that it considers appropriate and, without limiting the generality of the foregoing, must consider

- (a) the market value of the land;
- (b) the loss of the use of the land to the owner or occupant of the land;
- (c) any damage that may be caused to the land;
- (d) any nuisance and inconvenience, including noise, to the owner or occupant of the land;
- (e) any reasonable expenses that may be incurred by the owner or occupant of the land as or on account of costs of an inspection under subparagraph 50(a)(viii); and
- (f) any reasonable costs incurred by the owner or occupant of the land in connection with the application and the hearing.

Restriction

(2) In determining the amount of compensation payable, the Tribunal must not consider the reversionary value of the land.

Payment

(3) The Tribunal may require compensation to be paid by one lump sum payment or by periodic payments of equal or different amounts and may require the payment of interest, at a rate to be determined in accordance with the regulations, on compensation payments made after the day on which they are required to be made.

Allocation

52. If the Tribunal finds that both the owner and the occupant of the land are affected by the access, it may allocate any compensation payable between them.

Effect of entry order

53. (1) Subject to subsection (2), a person to whom an entry order is issued and every successor of that person referred to in section 67 who has notified the owner or occupant of the land that is subject to the entry order of the succession is entitled to have access to that land, in accordance with the terms and conditions of the entry order.

Payment of compensation

(2) A person may not exercise the rights under an entry order until after the payment of eighty per cent of either the lump sum or the first periodic payment, as the case may be, of the compensation referred to in the offer filed under section 49.

PART 4

MINERAL RIGHTS AND CARVING STONE

SPECIFIED SUBSTANCES ON INUIT OWNED LANDS

Determinations about specified substances

54. On application by the designated Inuit organization or any person who has a mineral right granted by the Commissioner or the Crown in right of Canada in relation to Inuit Owned Lands, the Tribunal must

- (a) determine whether the specified substances in that land are removed, worked or used for a purpose strictly incidental to the exercise of the mineral right;
- (b) determine whether the specified substances are used for a purpose directly related to the exercise of the mineral right; or
- (c) fix the amount of compensation to be paid for specified substances that are used for a purpose not directly related to the exercise of the mineral right.

CARVING STONE ON GOVERNMENT LANDS

Conflicts

55. (1) On application by a designated Inuit organization that holds a permit or a lease for the quarrying of carving stone on government lands or by a person who has a mineral right granted by the Commissioner or the Crown in right of Canada in relation to those lands, the Tribunal must make an order resolving any conflict between the designated Inuit organization and that person respecting the mineral right and the rights flowing from the permit or lease.

Definition of Crown lands

(2) In this section, "government lands" means any lands in the Nunavut Settlement Area belonging to the Commissioner or to the Crown in right of Canada or of which the Government of Canada or the Government of Nunavut has power to dispose.

PART 5

WILDLIFE COMPENSATION

INTERPRETATION

Definitions

56. (1) In this Part,

"claimant" means an Inuk or Inuit; (*réclamant*)

"developer" means any person engaged in a development activity and includes, in the case of marine transportation as described in paragraph (c) of the definition development activity, the owner of a ship; (*entrepreneur*)

"development activity" means, subject to subsection (2), any of the following carried out on land or water in the Nunavut Settlement Area or in Zone I or Zone II, within the meaning assigned by section 1.1.1 of the Nunavut Agreement:

- (a) a commercial or industrial undertaking or any extension of the undertaking, provided it is not a marine transportation undertaking,
- (b) a municipal, territorial, provincial or federal government undertaking or any extension of the undertaking, provided it is not a marine transportation undertaking,
- (c) marine transportation directly associated with an undertaking described in paragraph (a) or (b); (*activités de développement*)

"Inuk" means an individual member of the group of persons referred to in the definition of Inuit in section 1. (*Inuk*)

Exception

(2) Development activity does not include any wildlife measure or use approved in accordance with Article 5 of the Nunavut Agreement.

Wildlife

(3) In this Part, wildlife does not include flora.

Definitions from *Marine Liability Act* (Canada)

(4) For the purposes of the definition developer in subsection (1) and for the purposes of sections 57 and 58, the words discharge, oil, owner and ship have the same meaning as in section 91 of the *Marine Liability Act* (Canada).

LIABILITY OF DEVELOPERS

Loss or damage

57. (1) Subject to this section, a developer is absolutely liable, without proof of fault or negligence, for any of the following losses or damage suffered by a claimant as a result of a development activity of the developer:

- (a) loss of or damage to property or equipment used in harvesting wildlife or to wildlife that has been harvested;
- (b) present and future loss of income from the harvesting of wildlife;
- (c) present and future loss of wildlife harvested for personal use by claimants.

Exceptions

(2) A developer is not liable under subsection (1)

- (a) if the developer establishes that the loss or damage was wholly the result of an act of war, hostilities, a civil war, an insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character;
- (b) if the loss or damage was caused by a ship, to the extent that the developer would not, but for subsection (1), have been liable as a result of a defence or limitation of liability available at law; or
- (c) to the extent that the aggregate loss or damage for each incident exceeds the applicable limit of liability prescribed by, or determined pursuant to, regulations under paragraph 75(e).

Claim

(3) Any claim for compensation by a claimant, or by a designated Inuit organization or a Hunters and Trappers Organization, within the meaning assigned to that expression by section 1.1.1 of the Nunavut Agreement, acting on behalf of the claimant, for loss or damage described in subsection (1) must be made in writing to the developer within three years after the later of the date on which the loss or damage occurs and the date on which it comes to the knowledge of the claimant.

Compensation

(4) The following principles apply to the determination of the amount of compensation payable as a result of loss or damage described in subsection (1):

- (a) a claimant is required to make all reasonable attempts to mitigate any loss or damage;
- (b) in general, compensation must not be a guaranteed annual income in perpetuity.

Liability of Minister

58. Without limiting the liability of the Minister when the Minister is the person engaged in the development activity or the owner of the ship that caused the loss or damage, the Minister is liable, in relation to any loss or damage that is attributable to marine transportation as described in paragraph (c) of the definition of "development activity" in subsection 56(1) other than that resulting from a discharge of oil from a ship, for any portion of the loss or damage for which a

developer is not liable because of the application of paragraph 57(2)(b) and for which no other person is liable.

APPLICATIONS TO TRIBUNAL

Application for order

59. An application for an order determining liability may be made not less than thirty days after the making of a claim in accordance with subsection 57(3),

- (a) by the claimant, or by a designated Inuit organization or a Hunters and Trappers Organization, within the meaning assigned to that expression by section 1.1.1 of the Nunavut Agreement, on behalf of the claimant;
- (b) by a developer; or
- (c) by the Minister if the Minister, under subsection 58(1), may be liable.

Order determining liability

(2) Following an application under subsection (1), the Tribunal must make an order determining liability for loss or damage and the amount of compensation payable in respect of it.

Minimization of loss or damage

60. (1) In order to minimize any loss or damage suffered by a claimant, the Tribunal may

- (a) dispose of any portion of the application that concerns loss or damage described in paragraph 57(1)(a) before any portion that concerns any other loss;
- (b) require that interest be paid on compensation, at a rate set by the Tribunal, from the later of the date the loss or damage occurred and the date that it came to the knowledge of the claimant; and
- (c) provide for additional compensation
 - (i) for any additional loss or damage that may result from any delay in carrying out the terms of an order determining the amount of compensation, and
 - (ii) for costs, including costs of collecting that may result from any delay in carrying out the terms of an order determining the amount of compensation.

Terms of payment

(2) The Tribunal may require compensation to be paid by one lump sum payment or by periodic payments of equal or different amounts and may order that, if the limit referred to in paragraph 57(2)(c) has been met, compensation be prorated.

Apportionment of liability

(3) If the Tribunal determines that more than one developer caused the loss or damage, it must apportion liability in accordance with generally accepted legal principles.

Deadline

61. The Tribunal must render a decision on an application within thirty days after completing the hearing of the application.

OTHER REMEDIES

Developer and Minister

62. (1) Nothing in this Part is to be construed as limiting or restricting any remedy that a developer or the Minister may have against any person other than the claimant.

Claimant

(2) Subject to section 70, this Part is without prejudice to any other right or remedy that a claimant may have under a law of general application.

PART 6

GENERAL

DECISIONS OF THE TRIBUNAL

Costs

63. The costs relating to an application to or a hearing before the Tribunal that are incurred by the parties are in the discretion of the Tribunal and the Tribunal may, by order, award those costs on or before the final disposition of the application.

Reasons for decisions

64. The Tribunal must give written reasons for every decision that it makes in relation to an application.

Copies

65. As soon as practicable after making a decision in relation to an application, the Tribunal must give copies of the decision and the reasons for it to the parties.

Proof of orders

66. A document purporting to be an order or other decision of the Tribunal, or to be certified by the Chairperson of the Tribunal or any other person authorized by the by-laws as a true copy of a decision, is evidence of the making of the decision and of its contents, without proof of the signature or official character of the person appearing to have signed the decision or certified the copy.

Order binding on successor

67. An order of the Tribunal is binding on, and the rights and obligations under it extend to, any person who subsequently acquires the ownership of or other interest or right in the land that is subject to the order and, in the case of an entry order, the right of access and the right for which the right of access was acquired.

Enforcement of orders

68. (1) An order of the Tribunal may be made an order of the Nunavut Court of Justice by filing a certified copy of the order with the registrar of the Court and the order is enforceable in the same manner as an order of that Court.

Wildlife compensation orders

(2) At the request of a claimant, the Tribunal must file a certified copy of an order made under section 59 with the registrar of the Nunavut Court of Justice.

Assistance by Tribunal

69. The Tribunal may provide assistance in the enforcement of an order made under section 59.

REVIEW OF ORDERS

Findings of fact

70. Subject to sections 71 to 73 and the Rules of Nunavut Court of Justice, a determination of the Tribunal on the following questions is final and binding:

- (a) on any question of fact within its jurisdiction;
- (b) in an application under section 59, on any question in relation to loss or damage described in subsection 57(1).

Review by Tribunal

71. The Tribunal may, on application made by any person who was a party to the hearing held in respect of the order or any successor to the party referred to in section 67, review any of its orders, including an order made under this section, if it appears, in the opinion of the Tribunal, that there has been a material change in the facts or circumstances relating to the order and must

- (a) if it determines that there has been a material change in the facts or circumstances relating to the order that would justify the amendment applied for,
 - (i) if the effects on Inuit or on Inuit Owned Lands that would be caused as a result of the amendment are significantly detrimental, rescind that order and make a new order accordingly, or
 - (ii) in any other case, amend the order accordingly; or
- (b) in any other case, dismiss the application.

Termination

72. The Tribunal must, on application made by any person who was a party to the hearing held in respect of the order or any successor to the party referred to in section 67, terminate an entry order under this Act if it is satisfied that the land subject to the order is no longer being used for the purpose for which the order was made.

Review of compensation

73. (1) Subject to subsection (2), the Tribunal must review the amount of compensation payable under an order providing for compensation in relation to Inuit Owned Lands at the expiry of each five year period after the day on which the order was made.

Exception

(2) Subsection (1) does not apply if every person to whom notice is given under subsection (2)

- (a) waives the requirement for a review; or
- (b) is deemed, under subsection (4), to have waived that requirement,

Notice

(3) The Tribunal must, not later than sixty days before the expiry of each period referred to in subsection (1), notify, in writing, each person to whom a copy of the order was sent and any successor to the person referred to in section 67 who has notified the Tribunal of the succession that

- (a) the Tribunal intends to review the amount of compensation payable under the order; and
- (b) the person may make written representations in respect of the amount of compensation to the Tribunal within thirty days after the day on which the person receives the notice.

Deemed waiver

(4) Every person who does not make representations in the manner described in paragraph (3)(b) is deemed to have waived the requirement for a review.

REVIEW OF ACT

Review of Act

74. The Minister must review the provisions of this Act, except those provisions that implement obligations under the Nunavut Agreement, with the representatives of any indigenous group that is negotiating, in relation to Nunavut, a land claim, the implementation of a treaty or self-government in order to determine whether the provisions under review are inconsistent with the matters being negotiated and, if so, whether those provisions should be amended.

REGULATIONS

Regulations

75. The Commissioner in Executive Council may make regulations

- (a) prescribing what constitutes a material conflict of interest for the purposes of subsection 30(2);
- (b) respecting the maintenance of public records by the Tribunal;
- (c) respecting the amount of security that may be required to be given under a term or condition of an order of the Tribunal made under this Act and the nature, form, terms and conditions of the security and the manner in which the security may be realized;

- (d) prescribing, for the purposes of subsections 44(3) and 51(3), a rate of interest or rules for determining the rate of interest that may be payable on compensation payments;
- (e) prescribing, for the purposes of paragraph 57(2)(c), limits of liability of developers, or the method for determining those limits, that are sufficient to cover reasonably foreseeable damages in relation to various development activities; and
- (f) generally, for carrying out the purposes and provisions of this Act.

TRANSITIONAL

Definition

76. (1) In this section, "federal Act" means the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* (Canada), as it read immediately before the coming into force of this Act.

Tribunal continued in Nunavut

(2) The Surface Rights Tribunal continued under subsection 4(1) is the Nunavut Surface Rights Tribunal established under Part 2 of the federal Act.

Other members of the Board

(3) Members of the Nunavut Surface Rights Tribunal appointed under the federal Act who are in office on the coming into force of this Act are deemed to have been appointed under this Act.

Terms of office

(4) Despite any other provision of this Act, the terms of office of all members deemed to be appointed under this section end of the same day they would have ended under the federal Act if the federal Act had not been repealed.

Acts and decisions of the Board

77. (1) Any act of the Nunavut Surface Rights Tribunal taken, or any decision made by it, under the federal Act, before this Act comes into force is deemed, to the extent that the act or decision would have been valid under this Act, to have been validly taken or made by the Tribunal under this Act.

Pending applications

(2) The Tribunal must dispose, in accordance with this Act, of any application for an order that was made to the Nunavut Surface Rights Tribunal under the federal Act and was pending on the coming into force of this Act.

CONSEQUENTIAL AMENDMENT

78. The following is added after paragraph (r) of Schedule B to the *Public Service Act*:

- (r.1) members, officers and employees of the Surface Rights Tribunal continued under the *Surface Rights Tribunal Act*;

COMING INTO FORCE

- 79. This Act comes into force on April 1, 2027.**

SCHEDULE

(Section 1)

For the purposes of the definition designated Inuit organization, the following are the provisions of the Act and the corresponding provisions of the Agreement:

- (a) subsection 3(1), section 21.2.1;
- (b) subsection 11(1), section 21.8.8;
- (c) section 37, section 21.7.11;
- (d) paragraph 39(1)(b), section 21.2.1;
- (e) paragraph 40(1)(b), section 21.7.15;
- (f) subsection 40(4), section 21.7.14;
- (g) subsection 41(1), section 21.6.1;
- (h) section 42, section 21.8.4;
- (i) subparagraph 43(a)(viii), subsection 21.8.3(i);
- (j) paragraph 44(1)(b), subsection 21.8.3(b);
- (k) paragraph 44(1)(f), subsection 21.8.3(f);
- (l) paragraph 44(1)(i), subsection 21.8.3(i);
- (m) paragraph 44(1)(j), subsection 21.8.3(j);
- (n) section 45, section 21.8.5;
- (o) subsection 46(1), section 19.3.1;
- (p) section 54, sections 19.2.3 and 19.2.4;
- (q) subsection 55(1), section 19.9.5;
- (r) subsection 57(3), section 6.4.1; and
- (s) paragraph 59(a), section 6.4.1.

WATERS ACT

INTERPRETATION

Definitions

1. (1) In this Act,

"appurtenant undertaking" means an undertaking in relation to which a use of waters or a deposit of waste is permitted by a licence; (*entreprise principale*)

"Board" means the Nunavut Water Board continued by section 12; (*Office*)

"designated Inuit organization" means

- (a) except in the case of the jointly owned lands referred to in section 40.2.8 of the Nunavut Agreement,
 - (i) Nunavut Tunngavik Incorporated, or
 - (ii) in respect of a provision of this Act referred to in Schedule 1, any organization designated in the public record maintained by Nunavut Tunngavik Incorporated under the Nunavut Agreement as being responsible for any function under the corresponding provision or provisions of the Nunavut Agreement referred to in that Schedule, or
- (b) in the case of the jointly owned lands referred to in section 40.2.8 of the Nunavut Agreement, Makivik acting jointly with the organization determined under paragraph (a); (*organisation inuit désignée*)

"domestic purpose" means the use of waters for one or more of the following purposes:

- (a) household requirements, including sanitation and fire prevention,
- (b) the watering of domestic animals,
- (c) the irrigation of a garden that adjoins a dwelling and is not ordinarily used in the growth of produce for market; (*domestique*)

"federal area" has the same meaning as in the *Nunavut Planning and Project Assessment Act* (Canada); (*zone fédérale*)

"federal minister" means a minister designated by the Governor in Council to exercise the powers and functions of a federal minister under this Act; (*ministre fédéral*)

"instream use" means a use of waters by a person, other than for a domestic purpose or as described in paragraph (a), (b) or (c) of the definition use, to earn income or for subsistence purposes; (*ordinaire*)

"Inuit" means Nunavut Inuit and includes, in the case of the jointly owned lands referred to in section 40.2.8 of the Nunavut Agreement, the Inuit of northern Quebec; (*Inuit*)

"Inuit of northern Quebec" means the Inuit of northern Quebec within the meaning of the James Bay and Northern Quebec Agreement that was approved, given effect and declared valid by the *James Bay and Northern Quebec Native Claims Settlement Act*; (*Inuit du Nord québécois*)

"Inuit Owned Lands" has the same meaning as in the Nunavut Agreement and includes the jointly owned lands referred to in section 40.2.8 of the Nunavut Agreement; (*Terres inuites*)

"licence" means, unless the context otherwise requires, a type A or type B licence, in accordance with the criteria prescribed by regulation, issued for the use of waters or the deposit of waste, or both, under section 38; (*permis*)

"licensee" means a person to whom a licence is issued or assigned; (*titulaire*)

"Makivik" means the corporation established by *An Act respecting the Makivik Corporation*, R.S.Q., c. S-18.1, and representing the Inuit of northern Quebec; (*Makivik*)

"marine area" means any waters, including those that are ice-covered, of the Nunavut Settlement Area, other than inland waters, and the seabed and subsoil below those waters; (*zones marines*)

"minerals" means precious and base metals and other non-living, naturally occurring substances, whether solid, liquid or gaseous, and includes coal, oil and gas, but does not include water; (*minéraux*)

"national park" means a park within the meaning of the *Canada National Parks Act* (Canada), or lands set aside as a reserve for a park under that Act; (*parc national*)

"Nunavut Impact Review Board" means the Nunavut Impact Review Board referred to in section 18 of the *Nunavut Planning and Project Assessment Act* (Canada); (*Commission d'examen des projets de développement*)

"Nunavut Planning Commission" means the Nunavut Planning Commission referred to in section 10 of the *Nunavut Planning and Project Assessment Act* (Canada); (*Commission d'aménagement*)

"Nunavut Settlement Area" has the meaning assigned to that expression by section 3.1.1 of the Nunavut Agreement; (*région du Nunavut*)

"overlapping undertaking" means an undertaking that is both on and outside of a federal area;

"penalty" means an administrative monetary penalty imposed for a violation; (*pénalité*)

"use", in relation to waters and subject to subsection (2), means a direct or indirect use of any kind, including, but not limited to,

- (a) any use of water power and geothermal resources,
- (b) any diversion or obstruction of waters,
- (c) any alteration of the flow of waters, and

- (d) any alteration of the bed or banks of a river, stream, lake or other body of water, whether or not the body of water is seasonal; (*utilisation*)

"waste" means any substance that, by itself or in combination with other substances found in water, would have the effect of altering the quality of any water to which the substance is added to an extent that is detrimental to its use by people or by any animal, fish or plant, or any water that would have that effect because of the quantity or concentration of the substances contained in it or because it has been treated or changed, by heat or other means, and includes

- (a) any substance or water that, for the purposes of the *Canada Water Act* (Canada), is deemed to be waste,
- (b) any substance or class of substances specified by the regulations,
- (c) water containing any substance or class of substances in a quantity or concentration that is equal to or greater than that prescribed by regulation, and
- (d) water that has been subjected to a treatment or change described by the regulations; (*déchet*)

"waters" means inland waters, whether in a liquid or solid state, on or below the surface of land. (*eaux*)

Exception

(2) In this Act, "use" does not include navigation or any other use connected with shipping activities that are governed by the *Canada Shipping Act, 2001* (Canada).

Inconsistency with Agreement

2. (1) If there is any inconsistency or conflict between the Nunavut Agreement and this Act, the Nunavut Agreement prevails to the extent of the inconsistency or conflict.

Inconsistency with other Acts

(2) If there is any inconsistency or conflict between this Act and any other Act, this Act prevails to the extent of the inconsistency or conflict.

SCOPE AND APPLICATION

Other Acts

3. Nothing in this Act, the regulations or a licence authorizes a person to contravene any other Act or a regulation or order made under any other Act.

Rights preserved

4. Nothing in this Act, the regulations or a licence constitutes a defence to a claim for loss or damage sustained by any person by reason of the construction or operation of any work forming part of an appurtenant undertaking.

INUIT OWNED LANDS

Rights of designated Inuit organization

5. The designated Inuit organization has, in respect of waters, the rights that are provided in the Nunavut Agreement, including the exclusive right to the use of water on, in, or flowing through Inuit Owned Lands and the right to have water flow through that land substantially unaffected in quality, quantity and flow.

FEDERAL AREAS

Federal minister acts in federal areas

6. (1) Despite any other provision of this Act other than section 7, the federal minister has the sole authority to exercise the powers of the Minister in relation to federal areas under the following provisions:

- (a) subsection 40(2);
- (b) paragraph 49(2)(c);
- (c) subsection 52(7);
- (d) subsections 59(1);
- (e) section 60;
- (f) sections 80 and 81;
- (g) sections 88 and 90;
- (h) subsection 92(1).

DELEGATION AND AGREEMENTS

Delegation to federal minister

7. (1) With respect to an overlapping undertaking, the Minister may, in writing, delegate to the federal minister, with the federal Minister's consent, any of the Minister's functions under the provisions listed in section 6, either generally or as otherwise provided in the instrument of delegation, except that the delegation cannot abrogate or derogate from any rights of Inuit under the Nunavut Agreement.

Delegation to Minister

(2) With respect to an overlapping undertaking, the federal minister may, in writing, delegate to the Minister, with the Minister's consent, any of the federal minister's functions under provisions listed in section 6, either generally or as otherwise provided in the instrument of delegation, except that the delegation cannot abrogate or derogate from any rights of Inuit under the Nunavut Agreement.

Agreements with provinces and other territories

8. With the approval of the Commissioner in Executive Council and subject to any agreement entered into under section 5 or 11 of the *Canada Water Act* (Canada), the Minister must, with the assistance of the Board, use the Minister's best efforts to negotiate an agreement with a provincial or territorial government providing for the management of any waters situated partially in Nunavut and partially in a province or other territory, or flowing between Nunavut and a province or other territory.

PROHIBITIONS

Use of waters

9. (1) Subject to subsection (2), a person must not use, or permit the use of, waters except in accordance with the conditions of a licence.

Exceptions

- (2) Subsection (1) does not apply in respect of
- (a) any unlicensed use of waters that is authorized by the regulations;
 - (b) the use of waters
 - (i) for a domestic purpose, or
 - (ii) for the purpose of extinguishing a fire or, on an emergency basis, controlling or preventing a flood; or
 - (c) the use of waters in a national park.

Duties in certain cases

(3) If a person diverts waters for a purpose referred to in subparagraph (2)(b)(ii), the person must, when the need for the diversion has ceased, discontinue the diversion and, in so far as possible, restore the waters to their original channel.

Deposit of waste

10. (1) Subject to subsection (2) and except in accordance with the conditions of a licence, a person must not deposit or permit the deposit of waste

- (a) in waters; or
- (b) in any other place under conditions in which the waste, or any other waste that results from the deposit of that waste, may enter waters.

Exceptions

- (2) Subsection (1) does not apply in respect of
- (a) any unlicensed deposit of waste that is authorized by the regulations; or
 - (b) the deposit of waste in a national park.

Duty to report deposits

(3) If waste is deposited in contravention of this section, every person who owns or has the charge, management or control of the waste, or who caused or contributed to the deposit, must, subject to the regulations, without delay report the deposit to an inspector.

COMPENSATION

Right to compensation

11. (1) Except as otherwise provided by a compensation agreement referred to in this Act, a person, including the designated Inuit organization, who is adversely affected by a licensed use of waters or deposit of waste, or by an unlicensed use of waters or deposit of waste authorized by the regulations, is entitled to be compensated in respect of that adverse effect by the licensee or the person so authorized and to recover the compensation in any court of competent jurisdiction.

Limitation

(2) A person, including the designated Inuit organization, is entitled to recover compensation under subsection (1) only to the extent that the person is not paid compensation under any other provision of this Act in respect of the adverse effect.

NUNAVUT WATER BOARD

ESTABLISHMENT AND ORGANIZATION OF BOARD

Establishment of Board

12. (1) The Nunavut Water Board is continued.

Number of members

(2) Subject to sections 14 and 15, the Board consists of nine members, including the Chairperson.

Proportions

(3) The following rules apply to the appointment of members of the Board, other than the Chairperson:

- (a) four members are appointed by the Minister on the nomination of the designated Inuit organization;
- (b) two other members are appointed by the Minister;
- (c) two members are appointed by the federal Minister.

Appointment of Chairperson

(4) The Chairperson of the Board must be appointed by the Minister after consultation with the other members of the Board.

Term of office

13. (1) A member of the Board must be appointed to hold office for a term of three years.

Acting after expiry of term

(2) If the term of a member expires before the member has made a decision in a matter for which a public hearing is held,

- (a) the member may, with the authorization of the Chairperson, continue to act as a member only in relation to that matter until the hearing is concluded and a decision is made; but
- (b) the office of the member is deemed to be vacant as soon as the term expires for the purpose of the appointment of a replacement.

Additional members

14. Additional members may be appointed to the Board for the performance of a specified purpose, or for a term of less than three years, in the manner and the proportions provided by subsection 12(3).

Inuit of northern Quebec

15. (1) During any period preceding the ratification by the parties of an agreement to settle the offshore land claims of the Inuit of northern Quebec, the Minister must appoint, on the nomination of Makivik, a number of substitute members of the Board equal to one-half the number appointed on the nomination of the designated Inuit organization.

Role of substitute members

(2) In respect of licensing decisions of the Board that apply to any area of equal use and occupancy described in Schedule 40-1 to the Nunavut Agreement, the substitute members must act in the place of the members appointed on the nomination of the designated Inuit organization as are identified by the Minister, after consultation with that organization, at the time of the appointment of the substitute members.

Term

(3) Subject to subsection 13(2), the term of a substitute member is three years, except that the term of that member expires on the ratification referred to in subsection (1).

Status of substitute members

(4) Substitute members are not to be considered to be members, except in respect of decisions referred to in subsection (2).

Oath of office

16. Before taking up their duties, members of the Board must take and subscribe the oath of office set out in Schedule 2 before a commissioner of oaths.

Removal

17. Any member of the Board may be removed for cause, but before a member who was nominated by the designated Inuit organization, Makivik or the federal minister is removed, the Minister must consult the designated Inuit organization, Makivik or the federal minister, as the case may be.

Reappointment

18. A member of the Board is eligible to be reappointed to the Board in the same or another capacity.

Vacancies

19. If the office of a member becomes vacant, the Minister or federal Minister, as the case may be, must, without delay, appoint a new member to that office, and if the vacancy occurs during the term of a member, a replacement must be appointed only for the remainder of that term.

Duties of Chairperson

20. The Chairperson is the chief executive officer of the Board and has the powers, duties and functions as are prescribed by the rules or by-laws of the Board.

Remuneration and expenses

- 21.** (1) The members of the Board must
- (a) receive fair remuneration, as determined by the Minister, for the performance of their duties; and
 - (b) must be paid travel and living expenses incurred while absent from their ordinary place of residence in the course of performing their duties in accordance with Financial Management Board directives for members of the public service.

Workers' compensation

- (2) A member is deemed to be a worker for the purposes of the *Workers' Compensation Act*.

LANGUAGES

Language of business and public hearings

- 22.** (1) The Board must conduct its business and public hearings in accordance with the *Official Languages Act* and any directives of the Minister respecting the use of Official Languages.

Translation or interpretation

- (2) Nothing in subsection (1) is to be construed to prevent the use of translation or interpretation services when a member is otherwise unable to conduct business in an Official Language.

Witnesses

- (3) The Board has, in any proceedings before it, the duty to ensure that any person giving evidence before it may be heard in any Official Language, and that in being so heard the person will not be placed at a disadvantage by not being heard in another Official Language.

HEAD OFFICE AND MEETINGS

Head office

- 23.** The head office of the Board must be at
- (a) Gjoa Haven; or
 - (b) at another place in Nunavut that the Commissioner in Executive Council may designate.

Business meetings

- 24.** (1) The Board must ordinarily hold its meetings in Nunavut.

Participation by telephone

- (2) Subject to the rules and by-laws of the Board, any member may participate in a business meeting by means of telephone or other communications facilities that are likely to enable all persons participating in the meeting to hear each other, and a member so participating is deemed for all purposes of this Act to be present at that meeting.

STATUS AND GENERAL POWERS

Status

25. (1) The Board is an institution of public government but is not an agent of the Government of Nunavut.

Property and contracts

- (2) The Board may, for the purposes of conducting its business,
- (a) acquire property in its own name and dispose of the property; and
 - (b) enter into contracts in its own name.

Legal proceedings

(3) Actions, suits or other legal proceedings in respect of any right or obligation acquired or incurred by the Board may be brought or taken by or against the Board in its name in any court that would have jurisdiction if the Board were a corporation.

Panels

26. (1) The Board may establish panels of the Board and delegate any of its powers, duties and functions to them.

Composition

(2) Every panel must consist of equal numbers of members appointed to the Board on the nomination of the designated Inuit organization or Makivik, as the case may be, and other members.

Staff

27. (1) The Board may employ officers and employees and engage the services of agents, advisers and experts that are necessary for the proper conduct of its business, and may fix the terms and conditions of their employment or engagement and pay their remuneration.

Not members of the public service

(2) Officers and employees employed under subsection (1) are not members of the public service.

Indemnification of Board members and employees

28. The members and employees of the Board must be indemnified by the Board against all damages awarded against them, any settlement paid by them with the approval of the Minister and all expenses reasonably incurred by them, in respect of any claim arising out of their functions as members or employees, if those functions were carried out honestly and in good faith with a view to the best interests of the Board.

FINANCIAL PROVISIONS

Annual budget

29. (1) The Board must annually submit a budget for the following fiscal year to the Minister for consideration.

Accounts

(2) The must maintain books of account and records in relation to them in accordance with accounting principles recommended by the Chartered Professional Accountants of Canada or its successor.

Consolidated financial statements

(3) The Board Must, within the time after the end of each fiscal year that the Minister specifies, prepare consolidated financial statements in respect of that fiscal year in accordance with the accounting principles referred to in subsection (2), and must include in the consolidated financial statements any information or statements that are required in support of them.

Audit

(4) The accounts, financial statements and financial transactions of the Board must be audited annually by the auditor of the Board and, if the Minister requests, the Auditor General.

Report of audit

(5) The auditor of the Board and, if applicable, the Auditor General must make a report of the audit to the Board and the Minister.

RULES AND BY-LAWS

Powers of Board

30. (1) The Board may make rules and by-laws respecting the conduct and management of its business.

Principles to be applied

(2) The Board must apply the following principles when making rules or by-laws for the conduct of public hearings:

- (a) the admission of evidence that would not normally be admissible under strict rules of evidence must be allowed, and appropriate weight must be given to the evidence;
- (b) due regard and weight must be given to Inuit culture, customs and knowledge;
- (c) procedural fairness must be observed.

Pre-publication

31. (1) The Board must give notice at least sixty days in advance of making any rule or by-law about practice and procedure for applications and hearings before it by

- (a) publishing the proposed rule or by-law in a newspaper or other periodical that, in the opinion of the Board, has a large circulation in Nunavut; and

- (b) sending a copy of the proposed rule or by-law to the council of each municipality.

Representations invited

(2) The notice referred to in subsection (1) must include an invitation to interested persons to make representations in writing to the Board about the proposed rule or by-law within sixty days after publication of the notice.

Response to representations

(3) The Board may not make the rule or by-law until after it has responded to any representations made within the time limit referred to in subsection (2).

Exception

(4) Once a notice is published under subsection (1), no further notice is required to be published about any amendment to the proposed rule or by-law that results from representations made by interested persons.

Publication

- (5) As soon as possible after the rule or by-law has been made, the Board must
- (a) publish it in a newspaper or other periodical that, in the opinion of the Board, has a large circulation in Nunavut; and
 - (b) publish a notice in the *Nunavut Gazette* that the rule or by-law has been made, indicating the newspaper or periodical in which it has been published.

OBJECTS OF BOARD AND ITS RELATIONSHIP WITH OTHER BODIES

Objects

32. The objects of the Board are to provide for the conservation and utilization of waters, except in a national park, in a manner that will provide the optimum benefit from those waters for the residents of Nunavut in particular and Canadians in general.

Land use plans

33. (1) The Board must contribute fully to the development of land use plans so far as they concern waters, by providing recommendations to the Nunavut Planning Commission.

Review by Nunavut Planning Commission

(2) In order to avoid unnecessary duplication and to ensure that projects are dealt with in a timely manner, the Board must cooperate and coordinate its consideration of applications with the Nunavut Planning Commission's review of projects under sections 76 to 85 of the *Nunavut Planning and Project Assessment Act* (Canada) for conformity with any applicable land use plans approved under subsection 55(1) of that Act.

Screening and review of projects

34. (1) In order to avoid unnecessary duplication and to ensure that projects are dealt with in a timely manner, the Board must cooperate and coordinate its consideration of applications with

the Nunavut Impact Review Board or any federal environmental assessment panel or joint panel established under subsection 115(1) or paragraph 160(1)(a) or (b) of the *Nunavut Planning and Project Assessment Act* (Canada) in relation to the screening of projects by that Board and the review of projects by that Board or panel.

Joint hearings

(2) The Board may, in lieu of conducting a separate public hearing in respect of a licence in connection with a project for which a public hearing is to be held by the Nunavut Impact Review Board or the panel referred to in subsection (1), as the case may be, conduct, in relation to the project, a joint hearing with that Board or panel or participate in the hearing of that Board or panel.

Restriction on powers

35. (1) The Board may not issue, renew or amend a licence to use waters or deposit waste in relation to a use or deposit, or appurtenant undertaking, that is a project within the meaning of subsection 2(1) of the *Nunavut Planning and Project Assessment Act* (Canada) if

- (a) the assessment of the project under Part 3 of that Act has not been completed;
- (b) the assessment of the project has been terminated under subsection 141(2), 142(2), 143(4) or (6) or 144(3) of that Act;
- (c) the Nunavut Planning Commission has determined, under section 77 of that Act, that the project is not in conformity with any applicable land use plan, and no minor variance or exemption has been granted in respect of the project under paragraph 81(2)(a) or 82(2)(a) of that Act, as the case may be;
- (d) the responsible Minister, within the meaning of subsection 73(1) of that Act, has decided that the project could be modified and an amended project proposal submitted to the Nunavut Planning Commission, or that it is not to proceed; or
- (e) the responsible authority, within the meaning of section 163 of that Act, has determined, under section 165 of that Act, that the project is not in conformity with the requirements set out by or under any law for which it has responsibility.

Exception

(2) Despite paragraph (1)(a), the Board may issue, renew or amend a licence in relation to exploration or developmental activities referred to in subsection 154(1) of the *Nunavut Planning and Project Assessment Act* (Canada) or exploration or development activities referred to in paragraph 155(1)(a) or (b) of that Act.

Non-renewal, etc.

(3) Licences issued under subsection (2) must not be renewed or amended if the responsible Minister, as defined in subsection 73(1) of the *Nunavut Planning and Project Assessment Act* (Canada), has come to a decision under Part 3 of that Act that the project to which the activities in question relate either is not to proceed or could be modified and an

amended project proposal submitted to the Commission or the responsible authority within the meaning of section 163 of that Act, as the case may be.

Other water authorities

36. If the use of waters or the deposit of waste that is the subject of an application to the Board would have a significant impact on a use of waters or a deposit of waste in a national park or any place outside Nunavut, the Board may collaborate with any body exercising powers of water management for that park or place.

Marine areas

37. (1) The Board may, either jointly with the Nunavut Planning Commission, the Nunavut Impact Review Board and the Nunavut Wildlife Management Board, as established by the Nunavut Agreement, acting as the Nunavut Marine Council referred to in section 15.4.1 of the Nunavut Agreement, or on its own, advise and make recommendations respecting any marine area to any department or agency of the Government of Nunavut or the Government of Canada.

Consideration

(2) The Government of Nunavut must consider advice and recommendations provided under subsection (1) when making any decision that may affect a marine area subject to the advice or recommendation.

LICENCES

GENERAL RULES

Issuance

38. (1) Subject to this Act and on application, the Board may issue the appropriate licence.

Exception

(2) The Board may not issue a licence in respect of a use of waters described in paragraph 9(2)(b) or (c) or a deposit of waste described in paragraph 10(2)(b).

Refusal to issue licence

(3) The Board may not refuse to issue a licence merely because the regulations authorize the use of waters or the deposit of waste without a licence.

Renewal, amendment and cancellation

39. (1) Subject to this Act, the Board may

- (a) on application by the licensee, renew a licence, with or without changes to the conditions of the licence;
- (b) amend, for a specified term or otherwise, any condition of a licence
 - (i) on application by the licensee,
 - (ii) to deal with a water shortage, or
 - (iii) if the Board considers the amendment to be in the public interest;
- and
- (c) cancel a licence

- (i) on application by the licensee,
- (ii) if the licensee, for three successive years, fails to exercise the licensee's rights under the licence, or
- (iii) if the Board considers the cancellation to be in the public interest.

Renewal and amendment

(2) Sections 61 to 80 apply in relation to the renewal or amendment of a licence.

Notice — on Board's initiative

40. (1) The Board must give notice of its intention to consider, on its own initiative, the amendment of a condition of a licence under subparagraph 39(1)(b)(ii) or (iii) or the cancellation of a licence under subparagraph 39(1)(c)(ii) or (iii), by publishing a notice on its website, in the public registry, in the *Nunavut Gazette* or in a newspaper or other periodical that, in its opinion, has a large circulation in Nunavut.

Exception

(2) Subsection (1) does not apply if the Board, with the consent of the Minister, declares the amendment or the cancellation to be required on an emergency basis.

Assignment of licences

41. (1) A sale or other disposition by a licensee of any right, title or interest in an appurtenant undertaking constitutes, subject to the authorization of the Board, an assignment of the licence to the person to whom the sale or other disposition is made.

Authorization of assignment

(2) The Board must, on application, authorize the assignment of a licence if it is satisfied that the assignment and the operation of the appurtenant undertaking would not be likely to result in a contravention of any condition of the licence or any provision of this Act or the regulations.

Licence not otherwise assignable

(3) Except as provided in this section, a licence is not assignable.

Term of licence

42. The term of a licence or any renewal must not exceed

- (a) 25 years, in the case of a type A licence respecting a class of appurtenant undertakings that is prescribed by regulation or in the case of a type B licence; or
- (b) the anticipated duration of the appurtenant undertaking, in the case of a type A licence other than one described in paragraph (a).

Expiry or cancellation

43. The expiry or cancellation of a licence does not relieve the holder from any obligations imposed by the licence.

Precedence

44. Subject to section 66, if two persons hold licences or other authorizations to use waters issued by any authority responsible for the management of waters in the Northwest Territories or in Nunavut, the person who first applied is entitled to the use of the waters in accordance with that person's licence or authorization in precedence to the other person.

APPLICATIONS IN RELATION TO LICENCES

Requirements

45. (1) An application in relation to a licence must contain the information and be in the form required by the rules or by-laws of the Board, and be accompanied by the fees required by the regulations.

Information and studies to be provided to Board

(2) An application, except in relation to a cancellation, must be accompanied by the information and studies concerning the use of waters or the deposit of waste that are required for the Board to evaluate the qualitative and quantitative effects of the use or the deposit on waters.

Guidelines for applicant

(3) On the filing of an application, the Board may provide guidelines to the applicant respecting the information to be provided by the applicant in respect of any matter that the Board considers relevant, including the following:

- (a) the description of the use of waters, deposit of waste or appurtenant undertaking, as the case may be;
- (b) the qualitative and quantitative effects of the use of waters or the deposit of waste on the drainage basin where the use is to be undertaken or the deposit is to be made, and the anticipated impact of the use or deposit on other users;
- (c) the measures the applicant proposes to take to avoid or mitigate any adverse impact of the use of waters or the deposit of waste;
- (d) the measures the applicant proposes to take to compensate persons, including the designated Inuit organization, who are adversely affected by the use of waters or the deposit of waste;
- (e) the program the applicant proposes to undertake to monitor the impact of the use of waters or the deposit of waste;
- (f) the interests in and rights to lands and waters that the applicant has obtained or seeks to obtain;
- (g) the options available for the use of waters or the deposit of waste.

Delegation

46. The Board may delegate to its chief administrative officer the power

- (a) to issue, amend, renew or cancel a licence in relation to which no public hearing is required; and
- (b) to authorize, in accordance with subsection 41(2), the assignment of a licence.

PROCEDURE

Standing

47. (1) In the exercise of its functions in relation to applications, the Board must accord full standing to the following:

- (a) Nunavut Tunngavik Incorporated, or any other Organization, within the meaning of section 1.1.1 of the Nunavut Agreement, designated by Nunavut Tunngavik Incorporated, to make representations on behalf of the Inuit of Nunavut;
- (b) Makivik to make representations respecting the interests of the Inuit of northern Quebec in relation to islands and marine areas of the Nunavut Settlement Area traditionally used and occupied by those Inuit;
- (c) the councils of the Sayisi Dene First Nation and Northlands Denesuline First Nation to make representations respecting their interests in relation to the areas that those bands have traditionally used and continue to use;
- (d) the councils of the Black Lake First Nation, Hatchet Lake Denesuline First Nation and Fond Du Lac Denesuline First Nation to make representations respecting their interests in relation to the areas that those bands have traditionally used and continue to use.

Representations

(2) The Board must take into account the representations made by the organizations referred to in subsection (1).

Applications determined summarily

48. (1) Applications in relation to licences for which no public hearing is required must be dealt with summarily by the Board.

Exception

(2) Despite subsection (1), the Board may, if satisfied that it would be in the public interest to do so, hold a public hearing in connection with any matter relating to its objects.

Public hearing required

49. (1) Subject to subsection 34(2), a public hearing must be held by the Board before it disposes of

- (a) any application in relation to a licence, unless the application is of a class that is exempted by the regulations from the requirement of a public hearing; and
- (b) an application for permission to expropriate under section 82.

Exception

(2) A public hearing need not be held

- (a) if the applicant or licensee consents in writing to the disposition of a matter without a public hearing, provided that no other person informs the Board by the tenth day before the day of the proposed hearing of the person's intention to make representations; or

- (b) in the case of an application for the amendment of a licence if the Board, with the consent of the Minister, declares the amendment to be required on an emergency basis.

Place of hearing

50. A public hearing that is held by the Board must take place in the community or communities within Nunavut most affected by the application before the Board.

Powers at hearings

51. The Board has, in respect of public hearings, the powers of a Board established under the *Public Inquiries Act*.

Notice of applications

52. (1) The Board must give notice of every application in relation to a licence to the council of each municipality in the area affected by the application and must publish the notice in a newspaper of general circulation in the area affected or, if there is no such newspaper, in another manner that the Board considers appropriate.

Content of notice

(2) A notice under subsection (1) must invite interested persons to make representations within a specified period and must advise them of the consequences, as provided in section 63 and subsection 64(2), of any failure to respond to the notice.

Notice of hearings

(3) If the Board decides or is required under this Act to hold a public hearing, it must give notice, in the manner described in subsection (1), at least sixty days before the commencement of the hearing, of the place, date and time of the hearing.

Place, date and time of hearing

(4) The place, date and time of a hearing must be chosen and the notice published by the Board in a manner that promotes public awareness and participation in that hearing.

Communication of information

(5) If a public hearing is held in relation to an application, the information provided to the Board in relation to the application must be made available to the public within a reasonable period of time before the commencement of the hearing.

If public hearing not held

(6) If a public hearing is not held in relation to an application, the Board must not act on the application until at least thirty days after notice of the application has been published under subsection (1) unless, in the opinion of the Board, there are urgent circumstances that justify the Board acting on that application in a shorter period, but that shorter period must not be less than ten days.

Exception

(7) Subsections (1) and (6) do not apply in respect of an application for the amendment of a licence if the Board, with the consent of the Minister, declares the amendment to be required on an emergency basis.

TIME LIMITS

AUTHORITY TO ACT

Authority and validity

53. The failure of the Minister or the Board to exercise a power or perform a duty or function within a period provided for under this Act does not terminate their authority to do so nor does it invalidate any document prepared or submitted or any decision or action taken in the exercise or performance of their powers, duties or functions.

DECISIONS BY BOARD AND APPROVALS

Type A licence and type B licence if public hearing held

54. In the case of an application for the issuance, renewal or amendment of a type A licence, or a type B licence in connection with which a public hearing is held, or in the case where the Board intends to consider, on its own initiative, the amendment of such a licence, the Board, subject to section 56, must make a decision within a period of nine months after the day on which the application is made or on which notice of the Board's intention is published under subsection 40(1).

Day on which application is made

55. An application is considered to be made on the day on which the Board is satisfied that the application meets all the requirements under subsections 45(1) and (2).

CALCULATION OF TIME LIMIT

Commencement of time limit

56. If the Board is cooperating and coordinating with the Nunavut Planning Commission under subsection 33(2) or with the Nunavut Impact Review Board, a federal environmental assessment panel or a joint panel under subsection 34(1), the time limit referred to in section 54 does not begin to run until the Nunavut Planning Commission, Nunavut Impact Review Board, federal environmental assessment panel or joint panel, as the case may be, has completed its screening or review of the project.

Excluded period — information or studies required

57. If the Board requires an applicant or a licensee to provide information or studies, the period that, in the Board's opinion, is taken by the applicant or licensee to comply with that requirement is not included in the calculation of the time limit under section 54 or its extension.

Suspension of time limit

- 58.** The Board may suspend the time limit referred to in section 54 or its extension
- (a) if the Board ceases to process or rejects an application under section 35 or 36, until it resumes processing the application;
 - (b) if the Board determines that an applicant is required to pay the compensation referred to in paragraph 62(b) or to enter into a compensation agreement referred to in paragraph 62(c), until the requirements of paragraph 62(b) or (c), as the case may be, are met;
 - (c) if the Board determines that an applicant is required to pay the compensation referred to in paragraph 64(1)(a) or to enter into a compensation agreement referred to in paragraph 64(1)(b), until the requirements of paragraph 64(1)(a) or (b), as the case may be, are met;
 - (d) if the Board determines that an applicant is required to enter into a compensation agreement referred to in paragraph 67(1)(a) or to pay the compensation referred to in paragraph 67(1)(b), until the requirements of paragraph 67(1)(a) or (b), as the case may be, are met; or
 - (e) if the Board receives notice under subsection 78(1) or 79.2(1) of the *Mackenzie Valley Resource Management Act* (Canada), until the requirements of subsection 78(3) or 79.2(3) of that Act, as the case may be, have been met.

EXTENSIONS

Extension of time limit by Minister

- 59.** (1) The Minister may, at the request of the Board, extend the time limit referred to in section 54 by a maximum of two months to take into account circumstances that are specific to the issuance, renewal or amendment of the licence.

Extension of time limit by Commissioner in Executive Council

- (2) Subject to subsection (3), the Commissioner in Executive Council may, by order, on the recommendation of the Minister, further extend the time limit any number of times by periods of any length.

Extension of time limit by Governor in Council

- (3) With respect to federal areas, the Governor in Council may, by order, on the recommendation of the federal Minister, further extend the time limit any number of times by periods of any length.

CONDITIONS OF ISSUANCE

Referral to Minister for approval

- 60.** (1) The Board's decision with respect to the issuance, amendment, renewal or cancellation of a type A licence or, if a public hearing is held, a type B licence is to be immediately referred to the Minister for approval.

Reasons

(2) Within 45 days after the Minister receives a licence that has been issued, amended or renewed or a notice of cancellation of a licence, the Minister must make a decision on whether to approve the issuance, amendment, renewal or cancellation of the licence and, if the decision is not to approve, give written reasons for the decision.

Extension

(3) The Minister may extend the 45 days referred to in subsection (2) for a further consecutive 45 days, for a total of 90 days, by notifying the Board of the extension within the first 45 days.

Absence of decision

(4) If the Minister does not make a decision within the 45 or 90 days referred to in subsection (2) or (3) respectively, whichever is applicable, the Minister is deemed to have approved the issuance, amendment, renewal or cancellation, as the case may be.

Limitation

(5) The disagreement of the Minister with the amount of compensation determined under paragraph 67(1)(b) is not sufficient reason for the Minister to withhold approval in respect of a licence for a use of waters or deposit of waste that may substantially affect the quality, quantity or flow of waters flowing through Inuit Owned Lands.

Copies of decisions to parties

(6) The Minister must send a copy of the Minister's decision and, in the case of a decision to withhold approval, the reasons for the decision

- (a) to the Board;
- (b) to the applicant or licensee;
- (c) when the affected waters are ones in respect of which section 67 applies, to the designated Inuit organization; and
- (d) to any other person with a right to compensation under section 62 or 64.

Conditions for issuance of licence

61. The Board may not issue a licence unless the applicant satisfies the Board that

- (a) any waste produced by the appurtenant undertaking will be treated and disposed of in a manner that is appropriate for the maintenance of the water quality standards and effluent standards that are prescribed by regulation or, in the absence of such regulations, that the Board considers acceptable; and
- (b) the financial responsibility of the applicant, taking into account the applicant's past performance, is adequate for
 - (i) the completion of the appurtenant undertaking,
 - (ii) measures that may be required in mitigation of any adverse impact, and
 - (iii) the satisfactory maintenance and restoration of the site in the event of any future closing or abandonment of that undertaking.

Compensation of existing users

62. The Board may not issue a licence unless the applicant, with respect to any person, other than an instream user, who would be entitled to use waters in precedence to the applicant under section 44,

- (a) satisfies the Board that the use of waters or the deposit of waste would have no adverse effects on the use of waters by that person;
- (b) satisfies the Board that any adverse effects caused by the use of waters or the deposit of waste would not be significant, and has paid or undertaken to pay the compensation that the Board considers appropriate to that person; or
- (c) has entered into an agreement to compensate that person for any adverse effects.

Failure to respond

63. In the circumstances described in paragraph 62(b), an applicant need not compensate the person under section 62 if the person fails to respond to the notice of application given under subsection 52(1) within the time period specified in the notice for making representations to the Board.

Compensation of other users

64. (1) The Board may not issue a licence unless

- (a) the applicant satisfies the Board that compensation that the Board considers appropriate has been or will be paid by the applicant to any person who would be adversely affected by the proposed use of waters or deposit of waste and who, at the time the application was filed,
 - (i) used waters for a domestic purpose in Nunavut or the Northwest Territories,
 - (ii) held a licence that was issued under this Act, the *Mackenzie Valley Resource Management Act* (Canada) or an Act of the Northwest Territories to deposit waste in Nunavut or the Northwest Territories,
 - (iii) was an instream user in the Northwest Territories or in Nunavut,
 - (iv) was, as authorized by regulations made under this Act or an Act of the Northwest Territories, using waters or depositing waste in Nunavut or the Northwest Territories without a licence that was issued under this Act, the *Mackenzie Valley Resource Management Act* (Canada) or an Act of the Northwest Territories,
 - (v) was an owner or an occupier of land in Nunavut or the Northwest Territories, or
 - (vi) was a holder of an outfitting concession, a registered trapline or other rights of a similar nature in Nunavut or the Northwest Territories; or
- (b) the applicant has entered into an agreement to compensate any person described in subparagraphs (a)(i) to (vi) who would be adversely affected.

Failure to respond

(2) Subsection (1) does not apply in respect of a person referred to in that subsection who fails to respond to the notice of application given under subsection 52(1) within the time period specified in that notice for making representations to the Board.

Inuit Owned Lands

(3) If subsection 67(1) applies in respect of adverse effects on any person described in subparagraphs (1)(a)(i) to (vi) that are caused by a use of waters or a deposit of waste that may substantially alter the quality, quantity or flow of waters flowing through Inuit Owned Lands, subsection (1) does not apply in respect of those effects for which compensation has already been paid, has been agreed to be paid or has been determined by the Board pursuant to subsection 67(1).

Factors in determining compensation

65. In determining whether compensation is appropriate for the purpose of paragraph 62(b) or subsection 64(1), the Board must consider all relevant factors, including

- (a) provable loss or damage;
- (b) potential loss or damage;
- (c) any adverse effect on the quality, quantity or flow of waters;
- (d) the extent of the use of waters by persons who would be adversely affected;
- (e) any nuisance, inconvenience or disturbance, including noise; and
- (f) the cumulative effects of the use of waters or deposits of waste proposed by the applicant and any existing uses of waters and deposits of waste.

INUIT OWNED LANDS

Priority of use

66. In relation to Inuit Owned Lands, any existing use of waters by Inuit has priority over any licensed use or deposit of waste by any person who has a right to explore for, develop, produce or transport minerals, other than

- (a) construction stone;
- (b) sand;
- (c) gravel;
- (d) limestone;
- (e) marble;
- (f) gypsum;
- (g) shale;
- (h) clay;
- (i) volcanic ash;
- (j) earth;
- (k) soil;
- (l) diatomaceous earth;
- (m) ochre;
- (n) marl;

- (o) peat; or
- (p) serpentinite, argillite or soapstone that is suitable for carving.

Compensation agreements

67. (1) The Board must not issue a licence in respect of a use of waters or a deposit of waste that may substantially affect the quality, quantity or flow of waters flowing through Inuit Owned Lands, unless

- (a) the applicant has entered into an agreement with the designated Inuit organization to pay compensation for any loss or damage that may be caused by the change; or
- (b) if there is no agreement referred to in paragraph (a), the Board has, on the request of the applicant or the designated Inuit organization, made a determination of the appropriate compensation.

Payment of compensation

(2) The payment of compensation referred to in paragraph (1)(b) must be a condition of the licence.

Costs

(3) Unless otherwise determined by the Board, costs incurred by the designated Inuit organization as a result of a request referred to in paragraph (1)(b) must be paid by the applicant.

Use outside Nunavut

68. (1) On request by the designated Inuit organization or a person who has applied to the water authority responsible for the management of waters outside Nunavut, but within the Northwest Territories, for a licence or other authorization in relation to a use of waters or a deposit of waste that may substantially affect the quality, quantity or flow of waters flowing through Inuit Owned Lands, the Board must collaborate with that authority to reach a joint determination on the compensation to be paid.

Costs

(2) Unless determined otherwise by the Board, costs incurred by the designated Inuit organization as a result of a request referred to in subsection (1) must be paid by the applicant.

Interpretation

69. For greater certainty, sections 67 and 68 apply if a body of water delineates a boundary between Inuit Owned Lands and other land and that body of water is not located entirely on Inuit Owned Lands.

Negotiation to be in good faith

70. A request referred to in paragraph 67(1)(b) or subsection 68(1) must not be considered by the Board unless the requester has negotiated in good faith and has been unable to reach an agreement.

Factors in determining compensation

71. (1) For the purpose of determining compensation under paragraph 67(1)(b) and subsection 68(1), the Board must take into account the following factors:

- (a) the adverse effects of the change in the quality, quantity or flow of waters on Inuit Owned Lands;
- (b) the nuisance, inconvenience or disturbance, including noise, caused by the change;
- (c) the cumulative effects of the change and of any existing uses of waters and deposits of waste;
- (d) the cultural attachment of Inuit to the affected Inuit Owned Lands, including waters;
- (e) the peculiar and special value of the affected Inuit Owned Lands, including waters;
- (f) any interference with Inuit rights derived from the Nunavut Agreement or otherwise.

Periodic review and payment

(2) Unless otherwise agreed by the designated Inuit organization and the applicant, when the Board has made a determination of compensation under paragraph 67(1)(b) or subsection 68(1), the Board must provide, if the nature and duration of the use or deposit of waste warrant it, for the periodic review and periodic payment of that compensation.

National parks

72. Sections 67 and 69 to 71 apply in respect of a use of waters or a deposit of waste that is within the jurisdiction of the authority responsible for the management of waters in a national park and

- (a) any reference in those provisions, except paragraph 67(1)(b), to the Board is deemed to be a reference to that authority; and
- (b) any reference in section 67 to a licence is deemed to be a reference to an authorization to use waters or deposit waste given by the authority.

MACKENZIE VALLEY

Gwich'in Sahtu lands

73. If the Board has been notified under subsection 78(1) of the *Mackenzie Valley Resource Management Act* (Canada), it may not issue a licence for a use of waters or deposit of waste referred to in that subsection unless the requirements of subsection 78(3) of that Act are satisfied.

CONDITIONS OF LICENCES

Powers of Board

74. (1) Subject to this Act and the regulations, the Board may include in a licence any conditions that it considers appropriate, including conditions relating to

- (a) the manner in which waters may be used;
- (b) the quantity, concentration and types of waste that may be deposited and the manner of depositing waste;

- (c) the studies to be undertaken, works to be constructed, plans, including contingency plans, to be submitted, and monitoring programs to be undertaken; and
- (d) any future closing or abandonment of the appurtenant undertaking.

Monitoring programs

(2) The monitoring programs referred to in paragraph (1)(c) may specify responsibilities of the applicant, the Nunavut Impact Review Board or the Government of Nunavut.

Terms and Conditions

(3) The Board must, to the extent of its jurisdiction and authority under this Act to do so, incorporate the terms and conditions referred to in subsection 136(1) of the *Nunavut Planning and Project Assessment Act* (Canada) in a licence that is issued in respect of the use of waters or deposit of waste or the appurtenant undertaking to which that use or deposit relates.

Purpose of conditions

75. In fixing the conditions of a licence, the Board must make all reasonable efforts to minimize

- (a) any adverse effects of the licensed use of waters or deposit of waste on aquatic ecosystems and on the persons who are entitled to be paid compensation under section 62 or 64;
- (b) any interference by any person referred to in section 66 with the existing use of waters by the Inuit, whether that use is or is not licensed; and
- (c) any loss or damage described in section 67.

Conditions of waste deposit

76. The conditions in a licence relating to the deposit of waste in waters must

- (a) be based on the water quality standards prescribed by regulation for those waters, if any; and
- (b) be at least as stringent as the effluent standards prescribed by regulation for those waters, if any.

Regulations under *Fisheries Act* (Canada)

77. If the Board issues a licence in respect of any waters to which regulations made under subsection 36(5) of the *Fisheries Act* (Canada) apply, any conditions in the licence relating to the deposit of waste in those waters must be at least as stringent as the conditions prescribed by those regulations.

Conditions relating to design of works

78. A licence must include conditions that are at least as stringent as any standards prescribed by regulation for the design, construction, operation and maintenance of works used in relation to appurtenant undertakings.

Licence conditions deemed amended

79. If regulations referred to in sections 76 to 78 are made or amended after the issuance of a licence, the conditions of the licence are from that time deemed to be amended to the extent, if any, necessary in order to comply, or remain in compliance, with those sections.

SECURITY

Security

80. (1) The Board may require an applicant, a licensee or a prospective assignee to furnish and maintain security with the Minister in the form, of the nature, subject to terms and conditions and in an amount prescribed by, or determined in accordance with, the regulations or that are satisfactory to the Minister.

Application of security

(2) The security provided by a licensee may be applied by the Minister

- (a) to compensate, fully or partially, a person, including the designated Inuit organization, who is entitled to compensation under section 11 and who has been unsuccessful in recovering that compensation, if the Minister is satisfied that the person has taken all reasonable measures to recover it; and
- (b) except in relation to federal areas, to reimburse the Government of Nunavut, fully or partially, for reasonable costs incurred by the Government of Nunavut under subsection 90(4) or, subject to subsection (3), under subsection 92(1).
- (c) in relation to federal areas, to reimburse the Crown in right of Canada, fully or partially, for reasonable costs incurred by the Crown in right of Canada under subsection 90(4) or, subject to subsection (3), under subsection 92(1).

Limitation

(3) Paragraph (2)(b) applies in respect of costs incurred under subsection 92(1) only to the extent that the costs were incurred in relation to a contravention referred to in subparagraph 92(1)(b)(i).

Limitation of security

(4) The amount of the security applied by the Minister under subsection (2) in respect of a particular incident or matter may not exceed the total amount of the security required to be furnished and maintained by the licensee under subsection (1).

Refund of security

(5) If the Minister is satisfied that an appurtenant undertaking has been permanently closed or permanently abandoned or the licence has been assigned, any portion of the security that, in the Minister's opinion, will not be applied under subsection (2) must be returned to the licensee without delay.

Arrangements relating to security

81. (1) If a licence is in respect of an appurtenant undertaking that is situated, partially or wholly, on Inuit Owned Lands, the Minister may enter into a written arrangement with the designated Inuit organization and the applicant, licensee or prospective assignee of the license that provides for

- (a) the amount of security to be furnished and maintained by the applicant, licensee or prospective assignee, as well as the form and nature and any conditions of the security, for the purpose mentioned in paragraph 80(2)(b) or (c) or for the purpose of reimbursing the designated Inuit organization for the costs specified in the arrangement; and
- (b) the periodic review of the security, including by taking into account any material changes to the undertaking or the risk of environmental damage, and the adjustment of the amount of the security as a result of the review.

Copy of arrangement to be provided to Board

(2) The Minister must, as soon as possible after entering into the written arrangement described in subsection (1), provide a copy of it to the Board.

Arrangement to be taken into account under subsection 80(1)

(3) The Board must take into account the written arrangement when it determines the amount of the security required to be furnished and maintained by the applicant, licensee or prospective assignee under subsection 80(1).

EXPROPRIATION

Permission to expropriate

82. (1) An applicant for a licence, or a licensee, may apply to the Board for permission from the Minister to expropriate, in accordance with the *Expropriation Act*, land or an interest in land, and the Minister may grant that permission if the Minister, on the recommendation of the Board, is satisfied that

- (a) the land or interest is reasonably required in relation to an appurtenant undertaking by the applicant or licensee;
- (b) the applicant or licensee has been unable to acquire the land or interest despite reasonable efforts to do so; and
- (c) it is in the public interest that the permission be granted.

Notice to appropriate minister

(2) If the Minister grants permission under subsection (1), the applicant or licensee is an expropriating authority under the *Expropriation Act*.

Expropriation Act

(3) For the purposes of the *Expropriation Act*, land or an interest in land in respect of which the Minister has granted permission to expropriate is deemed to be an interest in land that is required for the lawful purposes of the applicant or licensee as expropriating authority.

Inuit Owned Lands

(4) When Inuit Owned Lands is expropriated and the designated Inuit organization and the applicant or licensee do not agree on the compensation to be paid, despite subsection (1), subsections 38(1) to (4) of the *Expropriation Act* do not apply and

- (a) if both parties make a request to the Arbitration Board established under Article 38 of the Nunavut Agreement, the Arbitration Board must
 - (i) appoint a person who is acceptable to both parties to act as a negotiator for the purposes of section 38 of the *Expropriation Act*, and
 - (ii) fix the remuneration and expenses, to be paid in equal shares by both parties to that person, for the period, not to exceed eight hours unless the parties agree to an extension of the number of hours, that the person performs the duties described in paragraphs (b) and (c);
- (b) the negotiator must, on reasonable notice to the parties, meet with them or their authorized representatives, make any inspection of the land that the negotiator believes necessary, receive and consider appraisals, valuations or other written or oral evidence on which the parties rely for their estimation of the amount of compensation payable, whether or not the evidence would be admissible in proceedings before a court, and endeavour to effect a settlement;
- (c) the negotiator must, within 60 days after the service of the notice to negotiate, report in writing to each of the parties and to the Arbitration Board concerning the success or failure in the matter of the negotiation;
- (d) if the negotiation is not successful, or if there are no negotiations,
 - (i) sections 41 to 44 of the *Expropriation Act* do not apply, and compensation is to be determined by arbitration as set out in Article 38 of the Nunavut Agreement,
 - (ii) in section 46 and subsection 47(1) of that Act, the phrase "adjudged by the Court" is to be read as "determined by the arbitration panel",
 - (iii) in subsection 47(5) of that Act, the term "the Court" is to be read as "the arbitration panel", and
 - (iv) in subsections 47(2) and (3) of that Act, the term "judgment" is to be read as "the arbitration determination"; and
- (e) evidence of anything said or of any admission made in the course of a negotiation under this subsection is not admissible in any proceedings before a court for the recovery of the compensation payable to the designated Inuit organization, or before an arbitration panel established under Article 38 of the Nunavut Agreement for the determination of the compensation.

Charges for services

(5) The Minister responsible for the *Expropriation Act* may make regulations prescribing fees or charges to be paid by an applicant or a licensee in respect of an expropriation referred to in subsection (1), and rates of interest payable in respect of those fees and charges.

Debt due to Government

(6) The fees or charges referred to in subsection (5) are a debt due to the Government of Nunavut by the applicant or licensee, and bear interest at the rate prescribed by regulation from the date they are payable.

Security

(7) The Minister responsible for the *Expropriation Act* may require the applicant or licensee to provide security, in an amount determined by that Minister and subject to any terms and conditions that that Minister may specify, for the payment of any fees or charges that are or may become payable under this section.

Mitigation of damages — enforcement of undertaking

(8) If the applicant or licensee, in mitigation of any injury or damage caused or likely to be caused to lands by an expropriation, undertakes to do the following and the owner or interested person accepts the undertaking, the undertaking is deemed to be an undertaking referred to in paragraph 35(2)(b) of the *Expropriation Act* and it may be enforced by the Board as if it were a condition of the licensee's licence:

- (a) to abandon or grant, to the owner of the lands or a person interested in the lands, any portion of its lands or of the land being taken or any easement, servitude or privilege over or in respect of the lands;
- (b) to construct and maintain any work for the benefit of the owner or interested person.

Registration

(9) A copy of the document evidencing the permission granted by the Minister under subsection (1), certified by the Chairperson of the Board, must be deposited with the Registrar of Land Titles for the registration district in which the affected lands are situated.

Duties of registrars

(10) The provisions of section 210 of the *Canadian Energy Regulator Act* (Canada) relating to plans, profiles and books of reference deposited with land registrars under that Act and the duties of land registrars with respect to those plans, profiles and books, in so far as they are reasonably applicable and not inconsistent with this Act, apply in respect of copies of documents deposited under subsection (9).

Exceptions

- (11) This section does not apply in respect of lands
- (a) that are vested in the Crown in right of Canada; or
 - (b) of which the Government of Canada or the Government of Nunavut has power to dispose.

Expropriation subject to Nunavut Agreement

(12) The expropriation of Inuit Owned Lands under this section is subject to the terms of Part 9 of Article 21 of the Nunavut Agreement.

PUBLIC REGISTER

Public register

83. (1) The Board must maintain at its main office, in the form prescribed by regulation, a register convenient for use by the public, in which must be entered, with respect to each application filed with the Board and with respect to each licence issued by it, the information that is prescribed by regulation.

Register to be open to inspection

(2) The register must be open to inspection by any person, during normal business hours of the Board, on payment of the fee prescribed by regulation.

Copies of contents of register

(3) The Board must, on request and on payment of the fee fixed by the Board, make available copies of information contained in the register.

DECISIONS

Reasons for decisions

84. (1) The Board must issue, and make available to the public, written reasons for its decisions relating to any licence or application.

Copies of decisions to parties

- (2) The Board must send a copy of its decision and the reasons for it
- (a) to the applicant or licensee;
 - (b) if the affected waters are ones in respect of which section 67 applies, to the designated Inuit organization; and
 - (c) to any other person with a right to compensation under section 62 or 64.

Decisions final

85. Except as provided in this Act, every decision of the Board is final.

Appeal to Nunavut Court of Justice

86. (1) An appeal may be taken from a decision of the Board to the Nunavut Court of Justice on a question of law, or a question of jurisdiction, on leave being obtained from the Court on application made within 45 days after the making of that decision or within a further time that the Court or a judge allows under special circumstances.

Time limit

(2) An appeal may not be proceeded with unless it is entered in the Nunavut Court of Justice within 60 days after the making of the order granting leave to appeal.

COST RECOVERY

Obligation to pay costs

87. (1) For the Minister to recover costs that are incurred in relation to the consideration of an application for a licence or for the renewal, amendment or cancellation of a licence, the applicant or a licensee must pay to the Minister

- (a) any amounts that are prescribed by regulation and that are related to the exercise of the powers and performance of the duties and functions of the Board or of its members;
- (b) any costs incurred by the Board for services that are prescribed by regulation and that are provided to it by a third party; and
- (c) any amounts that are prescribed by regulation and that are related to the exercise of the powers and performance of the duties and functions of the Minister.

Debt due to Government

(2) The amounts and costs that the applicant or a licensee must pay under subsection (1) constitute a debt due to the Government of Nunavut and may be recovered in any court of competent jurisdiction.

GENERAL

ENFORCEMENT

Inspectors and analysts

88. (1) The Minister may appoint any qualified person as an inspector or analyst for the purposes of this Act.

Certificate to be produced

(2) The Minister must furnish every inspector with a certificate of appointment as an inspector, and an inspector must, if so requested, produce the certificate to the person in charge of any place entered by the inspector.

Powers of inspection

89. (1) For the purpose of ensuring compliance with this Act, the regulations or a licence, an inspector may, subject to subsection (3), at any reasonable time,

- (a) enter any place in which the inspector believes, on reasonable grounds,
 - (i) a work is being constructed that, on completion, will form part of an appurtenant undertaking, or
 - (ii) any alteration or extension is being carried out on a work that forms part of an appurtenant undertaking;
- (b) conduct inspections of a work described in paragraph (a) that the inspector considers necessary in order to determine
 - (i) whether plans and specifications forming part of an application for a licence, filed with the Board by the person constructing the work, are being complied with, or

- (ii) whether the alteration or extension of the work is likely to result in a contravention of any condition of a licence; and
- (c) enter any place, except in a national park, in which the inspector believes, on reasonable grounds, that
 - (i) waters are being used,
 - (ii) there is being or has been carried out any process that may produce or has produced waste, or
 - (iii) there is any waste that may be added to waters;
- (d) in a place referred to in paragraph (c), examine any works, waters or waste, open any container that the inspector believes, on reasonable grounds, contains any waters or waste, and take samples of the waters or waste.

Books, records or documents

(2) An inspector who enters any place under subsection (1) may examine and copy any books, records or documents in that place that the inspector believes, on reasonable grounds, contain any information relating to the object of the inspection or examination under that subsection.

Exception for dwelling

(3) An inspector may not enter a dwelling.

Assistance to inspectors

(4) The owner or person in charge of any place referred to in this section and every person found in the place must give an inspector all reasonable assistance to enable the inspector to carry out the inspector's functions under this Act, and must furnish the inspector with information for purposes of the administration of this Act that the inspector may reasonably request.

Remedial measures

90. (1) An inspector may direct any person to take reasonable measures specified by the inspector, including the cessation of an activity, to prevent the use of waters or the deposit of waste or the failure of a work related to the use of waters or the deposit of waste, or to counteract, mitigate or remedy the resulting adverse effects, if the inspector believes, on reasonable grounds,

- (a) that
 - (i) waters have been or may be used in contravention of subsection 9(1) or of a condition of a licence,
 - (ii) waste has been or may be deposited in contravention of subsection 10(1) or of a condition of a licence, or
 - (iii) there has been, or may be, a failure of a work related to the use of waters or the deposit of waste, whether or not there has been compliance with any standards prescribed by regulation or imposed by a licence; and
- (b) that the adverse effects of that use, deposit or failure are causing, or may cause, a danger to persons, property or the environment.

Report to Minister

(2) The inspector must advise the Minister and the Board of any direction given under subsection (1).

Review by Minister

(3) If an inspector gives a direction to a person under subsection (1), the Minister may, and, if so requested by the person, must, review the direction without delay, and after completion of the review may alter or revoke the direction.

Powers of inspector

(4) If a person contravenes a direction given under subsection (1), the inspector may take the measures referred to in that subsection and may, for that purpose, enter any place other than a dwelling.

Recovery of Government's costs

(5) Any portion of the reasonable costs incurred by the Government of Nunavut under subsection (4) that is not recoverable from the security furnished and maintained under section 80 may be recovered as a debt due to the Government of Nunavut from the person to whom the direction was given.

Recovery of Crown's costs

(6) In relation to federal areas, any portion of the reasonable costs incurred by the Crown in the right of Canada under subsection (4) that is not recoverable from the security furnished and maintained under section 80 may be recovered as a debt due to the Crown in right of Canada from the person to whom the direction was given.

Obstruction

91. (1) A person must not wilfully obstruct or otherwise interfere with an inspector in the carrying out of functions under this Act.

False statements

(2) A person must not knowingly make a false or misleading statement, either orally or in writing, to an inspector or other person engaged in carrying out functions under this Act.

If work closed or abandoned

92. (1) The Minister may take any reasonable measures to prevent, counteract, mitigate or remedy any resulting adverse effect on persons, property or the environment and may, for that purpose, enter any place, other than a dwelling, if the Minister believes, on reasonable grounds, that

- (a) a person has closed or abandoned, temporarily or permanently, a work related to the use of waters or the deposit of waste, except in a national park; and
- (b) either

- (i) the person has contravened any condition of a licence or any provision of this Act or the regulations, whether or not the condition or provision relates to the closure or abandonment, or
- (ii) the past operation of the work or its closure or abandonment may cause a danger to persons, property or the environment.

Recovery of Government's costs

(2) Any portion of the reasonable costs incurred by the Government of Nunavut under subsection (1) that is not recoverable from the security furnished and maintained under section 80 may be recovered as a debt due to the Government of Nunavut from the person who closed or abandoned the work, to the extent that the incurring of those costs resulted from a contravention of a condition or provision referred to in subparagraph (1)(b)(i).

Recovery of Crown's costs

(3) In relation to federal areas, any portion of the reasonable costs incurred by the Crown in the right of Canada under subsection (1) that is not recoverable from the security furnished and maintained under section 80 may be recovered as a debt due to the Crown in the right of Canada from the person who closed or abandoned the work, to the extent that the incurring of those costs resulted from a contravention of a condition or provision referred to in subparagraph (1)(b)(i).

VIOLATIONS

Function of inspectors

93. Persons who are appointed as inspectors under subsection 88(1) are authorized to issue notices of violation.

Commission of violation

94. (1) Every person who contravenes a provision, order, direction, decision, term or condition designated under paragraph 125(1)(a) commits a violation and is liable to a penalty in the amount that is determined in accordance with the regulations.

Purpose of penalty

(2) The purpose of the penalty is to promote compliance with this Act and not to punish.

Liability of directors, officers, etc.

95. If a corporation commits a violation, any director, officer or agent or mandatary of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the violation is a party to the violation and is liable to a penalty in the amount that is determined in accordance with the regulations, whether or not the corporation has been proceeded against in accordance with this Act.

Proof of violation

96. In any proceedings under this Act against a person in relation to a violation, it is sufficient proof of the violation to establish that it was committed by an employee or agent or

mandatory of the person, whether or not the employee or agent or mandatory is identified or proceeded against in accordance with this Act.

Issuance and service of notice of violation

97. (1) If an inspector believes on reasonable grounds that a person has committed a violation, the inspector may issue a notice of violation and cause it to be served on the person.

Contents

(2) The notice of violation must

- (a) name the person that is believed to have committed the violation;
- (b) set out the relevant facts surrounding the violation;
- (c) set out the amount of the penalty;
- (d) inform the person of their right to request a review with respect to the violation or the amount of the penalty, and of the period within which that right must be exercised;
- (e) inform the person of the time and manner of paying the penalty; and
- (f) inform the person that, if they do not pay the penalty or exercise their right referred to in paragraph (d), they are considered to have committed the violation and are liable to the penalty.

RULES ABOUT VIOLATIONS

Certain defences not available

98. (1) A person named in a notice of violation does not have a defence by reason that they

- (a) exercised due diligence to prevent the commission of the violation; or
- (b) reasonably and honestly believed in the existence of facts that, if true, would exonerate them.

Common law principles

(2) Every rule and principle of the common law that renders any circumstance a justification or excuse in relation to a charge for an offence under this Act applies in respect of a violation to the extent that it is not inconsistent with this Act.

Continuing violation

99. A violation that is committed or continued on more than one day constitutes a separate violation for each day on which it is committed or continued.

Violations or offences

100. (1) Proceeding with any act or omission as a violation under this Act precludes proceeding with it as an offence under this Act, and proceeding with it as an offence under this Act precludes proceeding with it as a violation under this Act.

Violations not offences

(2) For greater certainty, a violation is not an offence.

Limitation period or prescription

101. A notice of violation may not be issued more than two years after the day on which the Minister becomes aware of the acts or omissions that constitute the alleged violation.

REVIEWS

Right to request review

102. A person who is served with a notice of violation may, within 30 days after the day on which it is served or within any longer period that is prescribed by regulation, make a request to the Minister for a review of the amount of the penalty or the facts of the violation, or both.

Correction or cancellation of notice of violation

103. At any time before a request for a review in respect of a notice of violation is received by the Minister, an inspector may cancel the notice of violation or correct an error in it.

Review

104. On receipt of a request for a review in respect of a notice of violation, the Minister must conduct the review.

Object of review

105. (1) The Minister must determine, as the case may be, whether the amount of the penalty was determined in accordance with the regulations or whether the person committed the violation, or both.

Determination

- (2) The Minister must render a written determination, with reasons, and cause
- (a) the person who requested the review to be served with a copy; and
 - (b) the Board to be provided with a copy without delay.

Correction of penalty

(3) If the Minister determines that the amount of the penalty was not determined in accordance with the regulations, the Minister must correct it.

Responsibility to pay penalty

(4) If the Minister determines that the person who requested the review committed the violation, that person is liable to the penalty as set out in the determination.

Determination final

(5) A determination made under this section is final and binding and, except for judicial review to the Nunavut Court of Justice, is not subject to appeal or to review by any court.

Burden of proof

106. If the facts of a violation are reviewed, the inspector who issued the notice of violation must establish, on a balance of probabilities, that the person named in it committed the violation identified in it.

RESPONSIBILITY

Payment

107. If a person pays the penalty,

- (a) the person is considered to have committed the violation and proceedings in respect of it are ended; and
- (b) the Minister must immediately notify the Board of the violation.

Failure to act

108. If person neither pays the penalty within the period set out in the notice of violation nor requests a review within the period referred to in section 102,

- (a) they are is considered to have committed the violation and are liable to the penalty; and
- (b) the Minister must immediately notify the Board of the violation.

RECOVERY OF PENALTIES

Debts to Government

109. (1) A penalty constitutes a debt due to the Government of Nunavut and may be recovered in any court of competent jurisdiction.

Limitation period or prescription

(2) Proceedings to recover the debt may not be instituted more than five years after the day on which the debt becomes payable.

Certificate

110. (1) The Minister may issue a certificate of non-payment certifying the unpaid amount of any debt referred to in subsection 108(1).

Registration of certificate

(2) Registration of a certificate of non-payment in any court of competent jurisdiction has the same effect as a judgment of that court for a debt of the amount specified in the certificate and all related registration costs.

GENERAL PROVISIONS

Authenticity of documents

111. In the absence of evidence to the contrary, a document that appears to be a notice issued under subsection 97(1) is presumed to be authentic and is proof of its contents in any proceeding in respect of a violation.

Publication

112. The Board must make public the nature of a violation, the name of the person who committed it and the amount of the penalty.

OFFENCES AND PUNISHMENT

Principal offences

113. A person who contravenes subsection 9(1) or (3), section 10 or section 91 or a direction given by an inspector under subsection 90(1) is guilty of an offence and liable on summary conviction,

- (a) for a first offence, to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding one year, or to both; and
- (b) for a second or subsequent offence, to a fine not exceeding \$500,000 or to imprisonment for a term not exceeding one year, or to both.

Offences — type A licences

114. (1) A type A licensee must not

- (a) contravene any condition of the licence, if the contravention does not constitute an offence under section 118; or
- (b) fail, without reasonable excuse, to furnish or maintain security as required under subsection 80(1).

Punishment

(2) Every licensee who contravenes subsection (1) is guilty of an offence and liable on summary conviction,

- (a) for a first offence, to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding one year, or to both; and
- (b) for a second or subsequent offence, to a fine not exceeding \$500,000 or to imprisonment for a term not exceeding one year, or to both.

Offences — type B licences

115. (1) A type B licensee must not

- (a) contravene any condition of the licence, if the contravention does not constitute an offence under section 118; or
- (b) fail, without reasonable excuse, to furnish or maintain security as required under subsection 80(1).

Punishment

(2) Every licensee who contravenes subsection (1) is guilty of an offence and liable on summary conviction

- (a) for a first offence, to a fine not exceeding \$37,500 or to imprisonment for a term not exceeding six months, or to both; and
- (b) for a second or subsequent offence, to a fine not exceeding \$75,000 or to imprisonment for a term not exceeding six months, or to both.

Continuing offences

116. An offence under section 113 to 115 that is committed or continued on more than one day constitutes a separate offence for each day on which it is committed or continued.

Deeming — second or subsequent offence

117. (1) For the purposes of paragraphs 113(b), 114(2)(b) and 115(2)(b), a conviction for a particular offence under this Act is deemed to be a conviction for a second or subsequent offence if the court is satisfied that the offender has been previously convicted of a substantially similar offence under an Act of Nunavut, Canada, a province or another territory that relates to environmental or wildlife conservation or protection.

Application

(2) Subsection (1) applies only to previous convictions on indictment, to previous convictions on summary conviction and to previous convictions under any similar procedure under any Act of a province or another territory.

Other offences

118. Any person is guilty of an offence punishable on summary conviction who

- (a) contravenes subsection 89(4) or any regulations made under paragraph 122(1)(o), (p) or (q); or
- (b) wilfully obstructs or otherwise interferes with a licensee or any person acting on behalf of a licensee in the exercise of the licensee's rights under this Act, except as authorized under this Act, another Act, or an Act of Canada.

Limitation period or prescription

119. Proceedings in respect of an offence under this Act may not be instituted more than five years after the day on which the Minister becomes aware of the acts or omissions that constitute the alleged offence.

Action to enjoin not prejudiced by prosecution

120. (1) Despite the fact that a prosecution has been instituted in respect of an offence under section 113, 114 or 115, the Attorney General may commence and maintain proceedings to enjoin conduct that constitutes an offence under any of those sections.

Civil remedy not affected

(2) A civil remedy for any act or omission is not affected because the act or omission is an offence under this Act.

Certificate of analyst

121. (1) Subject to this section, a certificate purporting to be signed by an analyst, stating that the analyst has analysed or examined a sample submitted by an inspector and giving the results of the analysis or examination,

- (a) is admissible in evidence in any prosecution under this Act; and
- (b) in the absence of evidence to the contrary, is proof of its contents without proof of the signature or the official character of the signatory.

Attendance of analyst

(2) A party against whom a certificate of an analyst is produced under subsection (1) may, with leave of the court, require the attendance of the analyst for the purposes of cross-examination.

Notice

(3) A certificate must not be admitted in evidence under subsection (1) unless the party intending to produce it has given to the party against whom it is intended to be produced reasonable notice of that intention, together with a copy of the certificate.

REGULATIONS AND ORDERS

Regulations

122. (1) The Commissioner in Executive Council, on the recommendation of the Minister, may make regulations

- (a) establishing water management areas consisting of river basins or other geographical areas;
- (b) for the purposes of paragraphs (b) to (d) of the definition of "waste" in section 1,
 - (i) specifying substances and classes of substances,
 - (ii) prescribing quantities or concentrations of substances and classes of substances, and
 - (iii) describing treatments of or changes to water;
- (c) authorizing the use without a licence of waters, except in a national park, for the purpose, in the quantity, at the rate, during the period and subject to the conditions specified in the regulations;
- (d) authorizing the deposit of waste without a licence, except in a national park, and specifying the conditions of the deposit, including the quantities, concentration and types of waste that may be deposited;
- (e) prescribing the manner in which a report under subsection 10(3) is to be made;
- (f) on the advice of the Board or after consultation with the Board, exempting any class of applications in relation to licences from the requirement of a public hearing;
- (g) prescribing the criteria to be applied by the Board in determining, on an application for a licence, whether the proposed use of waters or deposit of waste requires a type A or a type B licence;
- (h) prescribing classes of appurtenant undertakings for the purposes of a type A licence described in paragraph 42(a);
 - (i) in relation to the security referred to in subsection 80(1),
 - (i) prescribing the form and nature of the security and the terms and conditions on which it is to be furnished and maintained, and
 - (ii) prescribing the amount of the security or the manner of determining the amount of the security or authorizing the Board to fix that amount in accordance with the regulations;
- (j) prescribing water quality standards, except in a national park;

- (k) prescribing effluent standards, except in a national park;
- (l) prescribing standards for the design, construction, operation and maintenance of works used in relation to appurtenant undertakings;
- (m) prescribing the fees to be paid
 - (i) for the right to use waters or deposit waste in waters under a licence,
 - (ii) for the filing of any application with the Board, and
 - (iii) for inspection of the register maintained under section 83;
- (n) prescribing the times at which and the manner in which the fees prescribed under paragraph (m) must be paid;
- (o) requiring persons who use waters or deposit waste in waters, except in a national park, to maintain books and records for the proper enforcement of this Act, and to submit to the Board, on a monthly, quarterly, semi-annual or annual basis, reports containing specified information on any of their operations;
- (p) requiring persons who deposit waste in waters, except in a national park, to submit representative samples of the waste to the Board for analysis or to analyse representative samples and submit the results to the Board;
- (q) respecting the taking of representative samples of waters or waste and respecting the method of analysing those samples;
- (r) prescribing the form of the register to be maintained under section 83 and the information to be entered in it;
- (s) respecting the recovery of amounts and costs for the purposes of section 87, including prescribing amounts and services for the purposes of that section and exempting any class of applicants or licensees from the application of that section;
- (t) respecting the duties of persons appointed as analysts under section 88; and
- (u) generally, for carrying out the purposes and provisions of this Act.

Concurrence of Board

(2) For the purposes of paragraphs (1)(a), (c) and (d), the recommendation of the Minister is subject to the concurrence of the Board.

Consultation with the Board

(3) For the purposes of paragraph (1)(b), the recommendation of the Minister may only be made after consultation with the Board.

Variation in regulations

(4) Regulations made under subsection (1) may vary, among water management areas established under paragraph (1)(a), according to the use of waters, the purpose of that use and the quantity and rate of flow of waters used, and the quantities, concentrations and types of waste deposited or any other criteria.

Reservation of water rights

123. (1) The Commissioner in Executive Council may, by order, direct the Board not to issue licences permitting the use of, or the deposit of waste directly or indirectly into, any waters specified in the order, or may prohibit a use of waters or a deposit of waste that would otherwise be authorized under paragraph 122(1)(c) or (d)

- (a) in order to enable comprehensive evaluation and planning to be carried out with respect to those waters, including planning by the Nunavut Planning Commission; or
- (b) if the use of those waters or the maintenance of their quality is required in connection with an undertaking that is, in the opinion of the Commissioner in Executive Council, in the public interest.

Licences of no effect

(2) A licence issued in contravention of an order made under subsection (1) is of no force or effect.

Recommendations to Minister

124. The Board may, and at the request of the Minister must, make any recommendations to the Minister that it considers appropriate concerning any matter in respect of which the Commissioner in Executive Council is authorized by section 122 or 123 to make regulations or orders.

Ministerial regulations

125. (1) The Minister may, with the approval of the Executive Council, make regulations for the purposes of sections 93 to 112, including regulations

- (a) designating as a violation that may be proceeded with in accordance with this Act
 - (i) the contravention of any specified provision of this Act or of the regulations,
 - (ii) the contravention of any order, direction or decision, or of any order, direction or decision of a specified class, made or given under this Act, or
 - (iii) the failure to comply with a term or condition of any licence or a term or condition of a specified class of licences;
- (b) providing for the determination of or the method of determining the amount payable as the penalty, which may be different for individuals and other persons, for each violation;
- (c) establishing the form and content of notices of violations;
- (d) respecting the service of documents required or authorized under this Act, including the manner and proof of service and the circumstances under which documents are considered to be served; and
- (e) respecting reviews by the Minister in respect of a notice of violation.

Maximum amount of penalty

(2) The amount that may be determined under any regulations made under paragraph (1)(b) as the penalty for each violation must not be more than

- (a) \$25,000, in the case of an individual; and
- (b) \$100,000, in the case of any other person.

TRANSITIONAL

Definition

126. (1) In this section, "federal Act" means the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* (Canada), as it read immediately before the coming into force of this Act.

Board continued in Nunavut

(2) The Nunavut Water Board continued under subsection 12(1) is the Nunavut Water Board established under Part 1 of the federal Act.

Designated Inuit organization Board members

(3) The members of the Nunavut Water Board appointed under paragraph 14(3)(a) of the federal Act who are in office on the coming into force of this Act are deemed to have been appointed under paragraph 12(3)(a) of this Act.

Board members appointed by Minister

(4) The members of the Nunavut Water Board appointed under paragraph 14(3)(b) of the federal Act who are in office on the coming into force of this Act are deemed to have been appointed under paragraph 12(3)(b) of this Act.

Board members appointed by federal minister

(5) The other members of the Nunavut Water Board appointed section 14 of the federal Act, other than the Chairperson, who are in office on the coming into force of this Act are deemed to have been appointed under paragraph 12(3)(c) of this Act.

Chairperson of the Board

(6) The Chairperson of the Nunavut Water Board appointed under subsection 14(4) of the federal Act who is in office on the coming into force of this Act is deemed to have been appointed under subsection 12(4) of this Act.

Other members of the Board

(7) Members of the Nunavut Water Board appointed under section 16 or 17 of the federal Act who are in office on the coming into force of this Act are deemed to have been appointed under section 14 or 15 of this Act, as the case may be.

Terms of office

(8) Despite any other provision of this Act, the terms of office of all members deemed to be appointed under this section end of the same day they would have ended under the federal Act if the federal Act had not been repealed.

Acts and decisions of the Board

127. (1) Any act of the Nunavut Water Board taken, or any decision or declaration made by it, under the federal Act before this Act comes into force is deemed, to the extent that the act or

decision would have been valid under this Act, to have been validly taken or made under this Act.

Ministerial approval

(2) Any approval to the issuance of a licence by the Nunavut Water Board that was given by the federal minister before this Act comes into force is deemed to have been validly given under this Act, to the extent that the approval would have been validly given under this Act with the exception of subsections 60(2) to (4).

Actions of inspectors

(3) Any actions taken or deemed to have been taken by inspectors under the federal Act, for the period beginning on July 9, 1996 and ending immediately before this Act comes into force, are deemed, to the extent that the actions would have been valid under this Act, to have been validly taken under this Act.

Licences

128. (1) Licences issued or deemed to have been issued under the federal Act before the coming into force of this Act that are in effect on the coming into force of this Act are deemed to have been issued by the Board under this Act.

Pending applications

(2) The Board must dispose of any application respecting a licence in relation to a use of waters or a deposit of waste that was made to the Nunavut Water Board under the federal Act and was pending on the coming into force of this Act.

Pending Ministerial decision

(3) If, on the coming into force of this Act, there is a pending decision of the federal Minister under sections 55.6, 60, 77 or 94.11 to 94.14 of the federal Act as it read immediately prior to the coming into force of this Act, the Minister has the authority and responsibility to make a decision on the matter in accordance with this Act.

Existing regulations

129. Until they have been replaced or repealed under this Act, the regulations and orders made under sections 33 and 34 of the *Northwest Territories Waters Act* (Canada) that applied in Nunavut immediately before the coming into force of this Act are binding on the Board, and continue to apply in Nunavut, except in a national park, and the Board must exercise the powers of the Northwest Territories Water Board under those regulations and orders.

CONSEQUENTIAL AMENDMENT

130. The following is added after paragraph (s) of Schedule B to the *Public Service Act*:

- (s.1) members, officers and employees of the Nunavut Water Board continued under the *Waters Act*;

COMING INTO FORCE

131. This Act comes into force on April 1, 2027.

SCHEDULE 1

(Section 1)

For the purposes of the definition "designated Inuit organization", the following are the provisions of the Act and the corresponding provisions of the Agreement:

- (a) section 11, sections 20.2.4 and 20.3.1;
- (b) subsection 12(3), section 13.3.1;
- (c) subsections 15(1) and (2), sections 13.3.1 and 40.2.14;
- (d) section 17, section 13.3.1;
- (e) subsection 26(2), sections 13.3.1 and 13.3.6;
- (f) paragraph 45(3)(d), section 20.2.4;
- (g) paragraph 60(6)(c), section 20.3.1;
- (h) section 67, section 20.3.1;
- (i) section 68, section 20.4.1;
- (j) subsection 71(2), sections 20.3.1 and 20.4.1;
- (k) paragraph 80(2)(a), section 20.2.4;
- (l) subsection 82(4), section 21.9.8;
- (m) paragraph 84(2)(b), section 20.3.1.

SCHEDULE 2

(Section 16)

I, _____, do solemnly affirm (or swear) that I will faithfully, truly, impartially and honestly and to the best of my judgment, skill and ability, execute and perform the duties required of me as a member of the Nunavut Water Board. (So help me God.)