



Nunavut Waters and Nunavut Surface Rights Tribunal Act

2002, c. 10

N-28.8

[Assented to April 30th, 2002]

An Act respecting the water resources of Nunavut and the Nunavut Surface Rights Tribunal and to make consequential amendments to other Acts

Preamble

WHEREAS Her Majesty the Queen in right of Canada and the Inuit of the Nunavut Settlement Area have entered into a land claims agreement that was ratified by Her Majesty when it was signed on Her behalf and when the *Nunavut Land Claims Agreement Act* came into force and by the Inuit when it was signed on their behalf following a ratification vote;

WHEREAS the agreement came into force on July 9, 1993 on its ratification by both parties;

AND WHEREAS the Government of Canada has undertaken in the agreement to establish the Nunavut Water Board and the Nunavut Surface Rights Tribunal as institutions of public government and to set out by statute all of their substantive powers, functions, objectives and duties;

NOW, THEREFORE, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE

Short title

1. This Act may be cited as the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*.

INTERPRETATION

Definitions

2. (1) The definitions in this subsection apply in this Act. "Agreement"

«*Accord*»

"Agreement" means the land claims agreement between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in right of Canada that was ratified, given effect and declared valid by the *Nunavut Land Claims Agreement Act*, which came into force on July 9, 1993, and includes any amendments to that agreement made under the agreement.

"carving stone"
«*pierre à sculpter*»

"carving stone" means serpentinite, argillite or soapstone that is suitable for carving.

"designated Inuit organization"
«*organisation inuit désignée*»

"designated Inuit organization" means

(a) except in the case of the jointly owned lands referred to in section 40.2.8 of the Agreement,

(i) Tunngavik, or

(ii) in respect of a provision of this Act referred to in Schedule 1, any organization designated in the public record maintained by Tunngavik under the Agreement as being responsible for any function under the corresponding provision or provisions of the 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 Agreement, Makivik acting jointly with the organization determined under paragraph (a).

"Inuit"
«*Inuit*»

"Inuit" means those persons enrolled from time to time under the terms of Article 35 of the Agreement and includes, in the case of the jointly owned lands referred to in section 40.2.8 of the Agreement, the Inuit of northern Quebec.

"Inuit of northern Quebec"
«*Inuit du Nord québécois*»

"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*, S.C. 1976-77, c. 32.

"Inuit-owned land"
«*terre inuit*»

"Inuit-owned land" means any land that has the status of Inuit Owned Land under the Agreement, and includes the jointly owned lands referred to in section 40.2.8 of the Agreement.

"Inuktitut"
«*inuktitut* »

"Inuktitut" means the Inuktitut language and includes Inuinaqtuun.

"Makivik"
«*Makivik* »

"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.

"mineral right"
«*droit minier* »

"mineral right" means a right to explore for, develop, produce or transport minerals, other than specified substances.

"minerals"
«*minéraux* »

"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.

"Minister"
«*ministre* »

"Minister" means the Minister of Indian Affairs and Northern Development.

"specified substances"
«*matières spécifiées* »

"specified substances" means construction stone, sand, gravel, limestone, marble, gypsum, shale, clay, volcanic ash, earth, soil, diatomaceous earth, ochre, marl, peat and carving stone.

"Tunngavik"
«*Tunngavik* »

"Tunngavik" means Nunavut Tunngavik Incorporated, a corporation without share capital incorporated under Part II of the *Canada Corporations Act*, R.S.C. 1970, c. C-32, and any successor to that corporation.

Meaning of "Nunavut Settlement Area"

(2) In this Act, "Nunavut Settlement Area" has the meaning assigned to that expression by section 3.1.1 of the Agreement.

PRECEDENCE

Inconsistency with Agreement

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

Inconsistency with other Acts

(2) Where there is any inconsistency or conflict between this Act and any other Act of Parliament, except the *Nunavut Land Claims Agreement Act*, this Act prevails to the extent of the inconsistency or conflict.

PART 1

NUNAVUT WATERS

Interpretation

Definitions

4. The definitions in this section apply in this Part.

"appurtenant undertaking"
«*entreprise principale* »

"appurtenant undertaking" means an undertaking in relation to which a use of waters or a deposit of waste is permitted by a licence.

"Board"
«*Office* »

"Board" means the Nunavut Water Board established by section 14.

"domestic purpose"
«*domestique* »

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

(a) household requirements, including sanitation and fire prevention;

(b) the watering of domestic animals; or

(c) the irrigation of a garden that adjoins a dwelling-house and is not ordinarily used in the growth of produce for market.

"instream use"
«*ordinaire* »

"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.

"licence"
«*permis* »

"licence" means, unless the context otherwise requires, a type A or type B licence, in accordance with the criteria prescribed by the regulations, issued for the use of waters or the deposit of waste, or both, in Nunavut under section 42.

"licensee"
«*titulaire* »

"licensee" means a person to whom a licence is issued or assigned.

"marine area"
«*zones marines* »

"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.

"national park"
«*parc national* »

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

"Nunavut Impact Review Board"
«*Commission d'examen des projets de développement* »

"Nunavut Impact Review Board" means the Nunavut Impact Review Board referred to in section 12.2.1 of the Agreement.

"Nunavut Planning Commission"
«*Commission d'aménagement* »

"Nunavut Planning Commission" means the Nunavut Planning Commission referred to in section 11.4.1 of the Agreement.

"use"
«*utilisation* »

"use" , in relation to waters, 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.

However, it does not include navigation or any other use connected with shipping activities that are governed by the *Canada Shipping Act, 2001*.

"waste"
«*déchet*»

"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*, 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 the regulations; and
- (d) water that has been subjected to a treatment or change described by the regulations.

"waters"
«*eaux*»

"waters" means, except for the purposes of subsection 41(2), inland waters, whether in a liquid or solid state, on or below the surface of land.

2002, c. 10, ss. 4, 200.

Scope and Application

Other Acts

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

Rights preserved

6. Nothing in this Part, 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.

Her Majesty

Binding on Her Majesty

7. This Part is binding on Her Majesty in right of Canada or a province, except that Her Majesty in right of Canada is not required to pay any fee prescribed by the regulations.

Waters vested in Her Majesty

8. (1) Subject to any rights granted by or under any other Act of Parliament in respect of waters in Nunavut, the property in and the right to the use of all waters in Nunavut are vested in Her Majesty in right of Canada.

Rights of designated Inuit organization

(2) Despite subsection (1), the designated Inuit organization has, in respect of waters in Nunavut, the rights that are provided in the Agreement, including the exclusive right to the use of water on, in, or flowing through Inuit-owned land and the right to have water flow through that land substantially unaffected in quality, quantity and flow.

Delegation and Agreements

Delegation to territorial minister

9. The Minister may, in writing, delegate to the territorial minister responsible for water resources any of the Minister's functions under sections 14, 16, 17, 19 and 21, subsection 55(5), section 56, subsection 77(1) and section 84, 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 Agreement.

Agreements with provinces

10. The Minister and the territorial minister responsible for water resources shall, with the assistance of the Board, use their best efforts to negotiate an agreement, subject to any agreement entered into under section 5 or 11 of the *Canada Water Act*, with a provincial government providing for the management of any waters situated partially in Nunavut and partially in a province, or flowing between Nunavut and a province. The Minister shall not enter into an agreement without the approval of the Governor in Council.

Prohibitions

Use of waters

11. (1) Subject to subsection (2), no person shall use, or permit the use of, waters in Nunavut

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) Where a person diverts waters for a purpose referred to in subparagraph (2)(b)(ii), the person shall, 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

12. (1) Subject to subsection (2) and except in accordance with the conditions of a licence, no person shall deposit or permit the deposit of waste

(a) in waters in Nunavut; or

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

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) Where 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, shall, subject to the regulations, without delay report the deposit to an inspector.

Compensation

Right to compensation

13. (1) Except as otherwise provided by a compensation agreement referred to in this Part, 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 Part in respect of the adverse effect.

Division 1

Nunavut Water Board

Establishment and Organization of Board

Establishment of Board

14. (1) There is hereby established the Nunavut Water Board, the members of which are to be appointed by the Minister.

Number of members

(2) Subject to sections 16 and 17, the Board consists of nine members, including the Chairperson.

Proportions

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

(a) one half of the members shall be appointed on the nomination of the designated Inuit organization; and

(b) one quarter of the members shall be appointed on the nomination of

(i) the territorial minister responsible for renewable resources, and

(ii) the territorial minister or ministers designated, by an instrument of the Executive Council of Nunavut, for the purposes of this paragraph.

Appointment of Chairperson

(4) The Chairperson shall be appointed after consultation with the other members.

Term of office

15. (1) A member of the Board shall 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, 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.

Additional members

16. 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 14(3).

Inuit of northern Quebec

17. (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 shall 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 Agreement, the substitute members shall act in the place of such 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 15(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 shall not be considered to be members, except in respect of decisions referred to in subsection (2).

Oath of office

18. Before taking up their duties, members of the Board shall take and subscribe the oath of office set out in Schedule 2 before a person authorized by law to administer oaths.

Removal

19. 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 territorial ministers is removed, the Minister shall consult the designated Inuit organization, Makivik or the territorial ministers, as the case may be.

Reappointment

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

Vacancies

21. Where the office of a member becomes vacant, the Minister shall, without delay, appoint a new member to that office, and if the vacancy occurs during the term of a member, a replacement shall be appointed only for the remainder of that term.

Duties of Chairperson

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

Conflict of interest

23. (1) No member of the Board may participate in a decision on a matter in which that member has a material conflict of interest.

Status of Inuk or interest in land

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

Remuneration and expenses

24. (1) The members of the Board shall receive fair remuneration, as determined by the Minister, for the performance of their duties and shall be paid such travel and living expenses incurred while absent from their ordinary place of residence in the course of performing their duties as are consistent with Treasury Board directives for public servants.

Workers' compensation

(2) A member is deemed to be an employee for the purposes of the *Government Employees*

Compensation Act and to be employed in the public service of Canada for the purposes of any regulations made under section 9 of the *Aeronautics Act*.

Languages

Language of business

25. (1) The Board shall conduct its business in both of the official languages of Canada in accordance with the *Official Languages Act* and any directives of the Minister and, on request by a member, in Inuktitut.

Public hearings

(2) The Board shall conduct public hearings in both of the official languages of Canada in accordance with the *Official Languages Act* and any directives of the Minister and, on request by a member, an applicant or an intervenor, in Inuktitut.

Translation or interpretation

(3) Nothing in subsection (1) or (2) shall be construed to prevent the use of translation or interpretation services where a member is otherwise unable to conduct business in Inuktitut or in either official language.

Witnesses

(4) The Board has, in any proceedings before it, the duty to ensure that any person giving evidence before it may be heard in Inuktitut or in either 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.

Head Office and Meetings

Head office

26. The head office of the Board shall be at Gjoa Haven or at such other place in Nunavut as the Governor in Council may designate.

Business meetings

27. (1) The Board shall 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 Part to be present at that meeting.

Status and General Powers

Status

28. (1) The Board is an institution of public government but is not an agent of Her Majesty.

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

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

Composition

(2) Every panel shall 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

30. The Board may employ such officers and employees and engage the services of such agents, advisers and experts as 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.

Indemnification of Board members and employees

31. The members and employees of the Board shall 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

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

Accounts

(2) The Board shall maintain books of account and records in relation to them in accordance with accounting principles recommended by the Canadian Institute of Chartered Accountants or its successor.

Consolidated financial statements

(3) The Board shall, within such time after the end of each fiscal year as 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 shall 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 shall be audited annually by the auditor of the Board and, where the Minister requests, the Auditor General of Canada. The auditor and, where applicable, the Auditor General of Canada shall make a report of the audit to the Board and the Minister.

Rules and By-laws

Powers of Board

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

Principles to be applied

(2) The Board shall 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 shall be allowed, and appropriate weight shall be given to such evidence;

(b) due regard and weight shall be given to Inuit culture, customs and knowledge; and

(c) procedural fairness shall be observed.

Non-application of *Statutory Instruments Act*

(3) Sections 3, 5 and 11 of the *Statutory Instruments Act* do not apply in respect of rules and by-laws of the Board.

Pre-publication

34. (1) The Board shall 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 in Nunavut.

Representations invited

(2) The notice referred to in subsection (1) shall 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 shall

- (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 *Canada 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

35. The objects of the Board are to provide for the conservation and utilization of waters in Nunavut, 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

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

Conformity with the plan

(2) In order to avoid unnecessary duplication and to ensure that projects are dealt with in a timely manner, the Board shall cooperate and coordinate its consideration of applications with the Nunavut Planning Commission's review of projects under section 11.5.10 of the Agreement for conformity with any applicable land use plans approved in accordance with Part 5 of Article 11 of the Agreement.

Environmental screening and review of projects

37. (1) In order to avoid unnecessary duplication and to ensure that projects are dealt with in a timely manner, the Board shall cooperate and coordinate its consideration of applications with the Nunavut Impact Review Board or any federal environmental assessment panel referred to in section 12.4.7 of the Agreement 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: non-conformity with plan

38. (1) The Board may not issue, amend or renew a licence to use waters or deposit waste if there is an applicable land use plan approved in accordance with Part 5 of Article 11 of the Agreement unless the Nunavut Planning Commission, in accordance with section 11.5.10 of the Agreement,

(a) has determined that the use or deposit, or in the case of an amendment any change to the use or deposit, conforms to the land use plan; or

(b) has approved a variance in respect of the use, deposit or change.

Mandatory rejection of application

(2) The Board shall reject an application in relation to a licence where the Nunavut Planning Commission has informed the Board that the use, deposit or change to which the application relates does not conform to the land use plan and that the Commission will not be approving a variance.

Effect of rejection

(3) If the Board rejects an application under subsection (2),

(a) the Board shall not take any further action in respect of that application, including any action referred to in subsection 48(3), section 51 or subsection 52(1) or 55(1); and

(b) the applicant may, within one year after the date of the rejection, request an exemption in accordance with section 11.5.11 of the Agreement.

Reconsideration of application

(4) If an exemption referred to in paragraph (3)(b) is obtained, subsection (1) and paragraph (3)(a) no longer apply and the Board shall resume processing the application.

Date of application

(5) For the purposes of section 47, the date of an application that has been resumed under subsection (4) is the date on which the application was first made.

Restriction on powers: environmental review of projects

39. (1) The Board may not issue, amend or renew a licence to use waters or deposit waste where the use or deposit, or in the case of an amendment any change to the use or deposit, or the appurtenant undertaking requires screening in accordance with Part 4 of Article 12 of the Agreement, until the Nunavut Impact Review Board has completed the screening and, where a review under Part 5 or 6 of that Article is required, issued a project certificate referred to in section 12.5.12 or 12.6.17 of the Agreement.

Exception

(2) Notwithstanding subsection (1), where an appurtenant undertaking is required to be reviewed, the Board may, before the project certificate is issued, issue, amend or renew a licence to use waters or deposit waste in relation to exploration or developmental work related to the appurtenant undertaking, provided that

(a) the use or deposit falls within Schedule 12-1 of the Agreement or can, in the judgment of the Nunavut Impact Review Board, proceed without the review; or

(b) the licence is issued, amended or renewed for an interim, short-term period.

Other water authorities

40. Where 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

41. 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 Agreement,

acting as the Nunavut Marine Council referred to in section 15.4.1 of the Agreement, or on its own, advise and make recommendations respecting any marine area to any department or agency of the Government of Canada or the Government of Nunavut, and those governments shall consider that advice and those recommendations when making any decision that may affect that marine area.

Division 2

Licences

General Rules

Issuance

42. (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 11(2)(b) or (c) or a deposit of waste described in paragraph 12(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

43. (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) where the Board considers the amendment to be in the public interest; and

(c) cancel a licence

(i) on application by the licensee,

(ii) where the licensee, for three successive years, fails to exercise the licensee's rights under the

licence, or

(iii) where the Board considers the cancellation to be in the public interest.

Renewal and amendment

(2) Sections 57 to 76 apply in relation to the renewal or amendment of a licence.

Assignment of licences

44. (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 shall, 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 Part or the regulations.

Licence not otherwise assignable

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

Term

45. The term of a licence or any renewal shall not exceed twenty-five years.

Expiry or cancellation

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

Precedence

47. Subject to section 62, where 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

48. (1) An application in relation to a licence shall 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, shall 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; and

(g) the options available for the use of waters or the deposit of waste.

Delegation

49. 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 44(2), the assignment of a licence.

Procedure

Standing

50. In the exercise of its functions in relation to applications, the Board shall accord full standing

to the following:

- (a) Tunngavik, or any other Organization, within the meaning of section 1.1.1 of the Agreement, designated by Tunngavik, 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 Fort Churchill Indian Band and Northlands Indian Band to make representations respecting their interests in relation to the areas that those bands have traditionally used and continue to use; and
- (d) the councils of the Black Lake Indian Band, Hatchet Lake Indian Band and Fond du Lac Indian Band to make representations respecting their interests in relation to the areas that those bands have traditionally used and continue to use.

The Board shall take the representations into account.

Applications determined summarily

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

Exception

(2) Notwithstanding subsection (1), the Board may, where 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

52. (1) Subject to subsection 37(2), a public hearing shall 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 77.

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;

(b) before an application is rejected under subsection 38(2); or

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

Place of hearing

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

Powers at hearings

54. The Board has, in respect of public hearings, the powers of a commissioner appointed under Part I of the *Inquiries Act*.

Notice of applications

55. (1) The Board shall give notice of every application in relation to a licence to the council of each municipality in the area affected by the application and shall publish the notice in a newspaper of general circulation in the area affected or, if there is no such newspaper, in such other manner as the Board considers appropriate. The notice shall invite interested persons to make representations within a specified period and shall advise them of the consequences, as provided in section 59 and subsection 60(2), of any failure to respond to the notice.

Notice of hearings

(2) Where the Board decides or is required under this Part to hold a public hearing, it shall 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. The place, date and time of the hearing shall be chosen and the notice published by the Board in a manner that promotes public awareness and participation in that hearing.

Communication of information

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

Where public hearing not held

(4) Where a public hearing is not held in relation to an application, the Board shall 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 shall not be less than ten days.

Exception

(5) Subsections (1) and (4) do not apply in respect of an application for the amendment of a

licence where the Board, with the consent of the Minister, declares the amendment to be required on an emergency basis.

Conditions of Issuance

Approval of issuance

56. (1) The issuance, amendment, renewal and cancellation of a type A licence and, if a public hearing is held, a type B licence are subject to the approval of the Minister.

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 shall 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

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

Absence of decision

(2.2) If the Minister does not make a decision within the forty five or ninety days referred to in subsection (2) or (2.1) respectively, whichever is applicable, the Minister is deemed to have approved the issuance, amendment, renewal or cancellation, as the case may be.

Limitation

(3) The disagreement of the Minister with the amount of compensation determined under paragraph 63(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 land.

Copies of decisions to parties

(4) The Minister shall 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) where the affected waters are ones in respect of which section 63 applies, to the designated Inuit organization; and

(d) to any other person with a right to compensation under section 58 or 60.

Conditions for issuance of licence

57. 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 the regulations 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) such measures as 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

58. 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 47,

(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

59. In the circumstances described in paragraph 58(b), an applicant need not compensate the person under section 58 if the person fails to respond to the notice of application given under subsection 55(1) within the time period specified in the notice for making representations to the Board.

Compensation of other users

60. (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 the Northwest Territories or in Nunavut,
 - (ii) held a licence under this Act or the *Northwest Territories Waters Act* to deposit waste in the Northwest Territories or in Nunavut,
 - (iii) was an instream user in the Northwest Territories or in Nunavut,
 - (iv) was, as authorized by regulations made under this Act or the *Northwest Territories Waters Act*, using waters or depositing waste in the Northwest Territories or in Nunavut without a licence under either Act,
 - (v) was an owner or an occupier of land in the Northwest Territories or in Nunavut, or
 - (vi) was a holder of an outfitting concession, a registered trapline or other rights of a similar nature in the Northwest Territories or in Nunavut; 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 55(1) within the time period specified in that notice for making representations to the Board.

Inuit-owned land

(3) Where subsection 63(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 land, 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 63(1).

Factors in determining compensation

61. In determining whether compensation is appropriate for the purpose of paragraph 58(b) or subsection 60(1), the Board shall 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 Land

Priority of use

62. In relation to Inuit-owned land, any existing use of waters by Inuit has priority over any licensed use or deposit of waste by any person who has a mineral right.

Compensation agreements

63. (1) The Board shall 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 land, 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) where 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) shall 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) shall be paid by the applicant.

Use outside Nunavut

64. (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 land, the Board shall 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) shall be paid by the applicant.

Interpretation

65. For greater certainty, sections 63 and 64 apply where a body of water delineates a boundary between Inuit-owned land and other land and that body of water is not located entirely on Inuit-owned land.

Negotiation to be in good faith

66. A request referred to in paragraph 63(1)(b) or subsection 64(1) shall 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

67. (1) For the purpose of determining compensation under paragraph 63(1)(b) and subsection 64(1), the Board shall take into account the following factors:

- (a) the adverse effects of the change in the quality, quantity or flow of waters on Inuit-owned land;
- (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 land, including waters;
- (e) the peculiar and special value of the affected Inuit-owned land, including waters; and
- (f) any interference with Inuit rights derived from the Agreement or otherwise.

Periodic review and payment

(2) Unless otherwise agreed by the designated Inuit organization and the applicant, where the Board has made a determination of compensation under paragraph 63(1)(b) or subsection 64(1), the Board shall provide, where 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 in Nunavut

68. Sections 63 and 65 to 67 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 in Nunavut and

- (a) any reference in those provisions, except paragraph 63(1)(b), to the Board is deemed to be a

reference to that authority; and

(b) any reference in section 63 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

69. Where the Board has been notified under subsection 78(1) of the *Mackenzie Valley Resource Management Act*, 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

70. (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 Her Majesty in right of Canada.

Project certificate

(3) The Board shall, to the extent that it is authorized under this Act to do so, include in a licence the terms and conditions of any project certificate, referred to in section 12.5.12 or 12.6.17 of the Agreement, 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

71. In fixing the conditions of a licence, the Board shall 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 58 or 60;

(b) any interference by any person referred to in section 62 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 63.

Conditions of waste deposit

72. The conditions in a licence relating to the deposit of waste in waters shall

(a) be based on the water quality standards prescribed for those waters by the regulations, if any; and

(b) be at least as stringent as the effluent standards prescribed for those waters by the regulations, if any.

Regulations under *Fisheries Act*

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

Conditions relating to design of works

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

Licence conditions deemed amended

75. Where regulations referred to in sections 72 to 74 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

76. (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 such terms and conditions and in an amount prescribed by, or determined in accordance with, the regulations or that is 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 13 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) to reimburse Her Majesty in right of Canada, fully or partially, for reasonable costs incurred by Her Majesty in right of Canada under subsection 87(4) or, subject to subsection (3), under subsection 89(1).

Limitation

(3) Paragraph (2)(b) applies in respect of costs incurred under subsection 89(1) only to the extent that the costs were incurred in relation to a contravention referred to in subparagraph 89(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) Where 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) shall be returned to the licensee without delay.

Expropriation

Permission to expropriate

77. (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 in Nunavut, and the Minister may grant that permission where 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 such permission be granted.

Notice to appropriate minister

(2) Where the Minister grants permission under subsection (1), the applicant or licensee shall so

advise the appropriate minister in relation to Part I of 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, in the opinion of the appropriate minister in relation to Part I of the *Expropriation Act*, is required for a public work or other public purpose, and a reference to the Crown in that Act shall be read as a reference to the applicant or licensee.

Inuit-owned land

(4) When Inuit-owned land is expropriated and the designated Inuit organization and the applicant or licensee do not agree on the compensation to be paid, notwithstanding subsection (1), subsections 30(3) to (6) 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 Agreement, the Arbitration Board shall

(i) appoint a person who is acceptable to both parties to act as a negotiator for the purposes of section 30 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 shall, 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 shall, within sixty 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 31 to 33 of the *Expropriation Act* do not apply, and compensation shall be determined by arbitration as set out in Article 38 of the Agreement,

(ii) in section 35 and subsection 36(1) of that Act, the term “adjudged” shall be read as “determined”,

(iii) in section 35 and in subsections 36(1) and (5) of that Act, the term “the Court” shall be read as “the arbitration panel”, and

(iv) in subsections 36(2) and (3) of that Act, the term “judgment” shall 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 Agreement for the determination of the compensation.

Charges for services

(5) The appropriate minister in relation to Part I of 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 Her Majesty

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

Security

(7) The appropriate minister in relation to Part I of 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 the 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) Where the applicant or licensee, in mitigation of any injury or damage caused or likely to be caused to lands by an expropriation, undertakes

(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, and

(b) to construct and maintain any work for the benefit of the owner or interested person,

and the owner or interested person accepts the undertaking, the undertaking is deemed to be an undertaking referred to in paragraph 28(1)(b) of the *Expropriation Act* and it may be enforced by the Board as if it were a condition of the licensee’s licence.

Registration

(9) A copy of the document evidencing the permission granted by the Minister under subsection (1), certified as such by the Chairperson of the Board, shall be deposited with the registrar of land titles for the registration district in which the affected lands are situated.

Duties of registrars of deeds

(10) The provisions of section 43 of the *National Energy Board Act* relating to plans, profiles and books of reference deposited with registrars of deeds under that Act and the duties of registrars of deeds with respect thereto, in so far as they are reasonably applicable and not inconsistent with this Part, apply in respect of copies of documents deposited under subsection (9).

Exceptions

(11) This section does not apply in respect of lands in Nunavut that are vested in Her Majesty in right of Canada or of which the Government of Canada has power to dispose.

Expropriation subject to Agreement

(12) The expropriation of Inuit-owned land under this section is subject to the terms of Part 9 of Article 21 of the Agreement.

Public Register

Public register

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

Register to be open to inspection

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

Copies of contents of register

(3) The Board shall, 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

79. (1) The Board shall 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 shall send a copy of its decision and the reasons for it

(a) to the applicant or licensee;

(b) where the affected waters are ones in respect of which section 63 applies, to the designated Inuit organization; and

(c) to any other person with a right to compensation under section 58 or 60.

Decisions final

80. Except as provided in this Part, every decision of the Board is final.

Appeal to Federal Court

81. (1) An appeal may be taken from a decision of the Board to the Federal Court on a question of law, or a question of jurisdiction, on leave being obtained from that Court on application made within forty-five days after the making of that decision or within such further time as that Court or a judge of that Court allows under special circumstances.

Time limit

(2) No appeal may be proceeded with unless it is entered in the Federal Court within sixty days after the making of the order granting leave to appeal.

Division 3

General

Regulations and Orders

Regulations

82. (1) The Governor in Council may, on the recommendation of the Minister, make regulations

(a) establishing water management areas in Nunavut consisting of river basins or other geographical areas;

(b) for the purposes of paragraphs (b) to (d) of the definition “waste” in section 4,

(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 in Nunavut, 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 in Nunavut, 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 12(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 what constitutes a material conflict of interest for the purpose of subsection 23(1);

(i) in relation to the security referred to in subsection 76(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 in Nunavut, except in a national park;

(k) prescribing effluent standards in Nunavut, 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 78;

(n) prescribing the times at which and the manner in which the fees prescribed under paragraph (m) shall be paid;

(o) requiring persons who use waters or deposit waste in waters in Nunavut, except in a national park, to maintain books and records for the proper enforcement of this Part, 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 in Nunavut, 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 78 and the information to be entered in it;

(s) respecting the duties of persons designated as analysts under section 85; and

(t) generally, for carrying out the purposes and provisions of this Part.

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 shall 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

83. (1) The Governor in 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 82(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) where 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 Governor in 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

84. The Board may, and at the request of the Minister shall, make such recommendations to the Minister as it considers appropriate concerning any matter in respect of which the Governor in Council is authorized by section 82 or 83 to make regulations or orders.

Enforcement

Inspectors and analysts

85. (1) The Minister may designate any qualified person as an inspector or analyst for the purposes of this Part.

Certificate to be produced

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

Powers of inspection

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

- (a) enter any place in Nunavut 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 such inspections of a work described in paragraph (a) as 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 in Nunavut, 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,

and, in that place, 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 any such 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-place

(3) An inspector may not enter a place that is designed to be used and is being used as a permanent or temporary private dwelling-place.

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 shall give an inspector all reasonable assistance to enable the inspector to carry out the inspector's functions under this Part, and shall furnish the inspector with such information for purposes of the administration of this Part as the inspector may reasonably request.

Remedial measures

87. (1) An inspector may direct any person to take such reasonable measures as the inspector may specify, 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, where the inspector believes, on reasonable grounds,

(a) that

(i) waters have been or may be used in contravention of subsection 11(1) or of a condition of a licence,

(ii) waste has been or may be deposited in contravention of subsection 12(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 the regulations 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 shall advise the Minister and the Board of any direction given under subsection (1).

Review by Minister

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

Powers of inspector

(4) Where a person fails to comply with 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 in Nunavut, other than a place that is designed to be used and is being used as a permanent or temporary private dwelling-place.

Recovery of Her Majesty's costs

(5) Any portion of the reasonable costs incurred by Her Majesty in right of Canada under subsection (4) that is not recoverable from the security furnished and maintained under section 76 may be recovered as a debt due to Her Majesty from the person to whom the direction was given.

Obstruction

88. (1) No person shall wilfully obstruct or otherwise interfere with an inspector in the carrying out of functions under this Part.

False statements

(2) No person shall 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 Part.

Where work closed or abandoned

89. (1) Where 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 in Nunavut, except in a national park, and

(b) either

(i) the person has contravened any condition of a licence or any provision of this Part 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,

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 in Nunavut, other than a place that is designed to be used and is being used as a permanent or temporary private dwelling-place.

Recovery of Her Majesty's costs

(2) Any portion of the reasonable costs incurred by Her Majesty in right of Canada under subsection (1) that is not recoverable from the security furnished and maintained under section 76 may be recovered as a debt due to Her Majesty 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).

Offences and Punishment

Principal offences

90. (1) Any person who contravenes subsection 11(1) or section 12, or fails to comply with subsection 11(3) or with a direction given by an inspector under subsection 87(1), is guilty of an offence and liable on summary conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding one year, or to both.

Type A licences

(2) A licensee holding a type A licence who

(a) contravenes any condition of the licence, where the contravention does not constitute an offence under section 91, or

(b) fails, without reasonable excuse, to furnish or maintain security as required under subsection 76(1)

is guilty of an offence and liable on summary conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding one year, or to both.

Type B licences

(3) A licensee holding a type B licence who

(a) contravenes any condition of the licence, where the contravention does not constitute an offence under section 91, or

(b) fails, without reasonable excuse, to furnish or maintain security as required under subsection 76(1)

is guilty of an offence and liable on summary conviction to a fine not exceeding \$15,000 or to

imprisonment for a term not exceeding six months, or to both.

Continuing offences

(4) Where an offence under this section is committed on or continued for more than one day, it is deemed to be a separate offence for each day on which it is committed or continued.

Other offences

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

(a) contravenes subsection 86(4) or section 88, or any regulations made under paragraph 82(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 Part, except as authorized under this or any other Act of Parliament.

Limitation period

92. Proceedings in respect of an offence under this Part may not be instituted later than two years after the time when the subject-matter of the proceedings arose.

Action to enjoin not prejudiced by prosecution

93. (1) Notwithstanding that a prosecution has been instituted in respect of an offence under section 90, the Attorney General of Canada may commence and maintain proceedings to enjoin conduct that constitutes an offence under that section.

Civil remedy not affected

(2) No civil remedy for any act or omission is affected because the act or omission is an offence under this Part.

Certificate of analyst

94. (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 Part; 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) No certificate shall 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.

PART 2

NUNAVUT SURFACE RIGHTS TRIBUNAL

Interpretation

Definitions

95. The definitions in this section apply in this Part.

"flora"

«*espèces végétales* »

"flora" means terrestrial and aquatic flora and any of their parts or products. It does not include trees suitable for commercial production of lumber or other building materials except where such trees are required by Inuit for local use, land-based activities or handicraft production.

"harvesting"

«*exploitation* »

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

"Tribunal"

«*Tribunal* »

"Tribunal" means the Nunavut Surface Rights Tribunal established by section 99.

"wildlife"

«*ressources fauniques* »

"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 152(2), includes flora.

General Provisions

Review

96. The Minister shall review the provisions of this Part, except those provisions that implement obligations under the Agreement, with the representatives of any aboriginal 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.

Access with consent

97. (1) For greater certainty, except where otherwise provided in the Agreement, no persons, other than Inuit, may enter, cross or remain on Inuit-owned land 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 such an entry order has the effect of exempting the person to whom the entry order is issued from any obligation, restriction or prohibition imposed by an Act of Parliament, including an obligation, restriction or prohibition set out in the Agreement, or by an instrument made or issued under an Act of Parliament.

Her Majesty

Binding on Her Majesty

98. This Part is binding on Her Majesty in right of Canada or a province.

Division 1

Establishment and Organization of Tribunal

Tribunal Established

Establishment

99. (1) There is hereby established the Nunavut Surface Rights Tribunal consisting of a Chairperson and not fewer than two nor more than ten other members to be appointed by the Minister.

Odd number

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

Residency qualification

100. (1) At least two of the members shall 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

101. (1) A member shall 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

102. A member is eligible to be reappointed to the Tribunal in the same or another capacity.

Duties of Chairperson

103. The Chairperson is the chief executive officer of the Tribunal and has such powers, duties and functions as are prescribed by the by-laws of the Tribunal.

Remuneration and expenses

104. (1) The members of the Tribunal shall receive fair remuneration, as determined by the Minister, for the performance of their duties and shall be paid such travel and living expenses incurred while absent from their ordinary place of residence in the course of performing their duties as are consistent with Treasury Board directives for public servants.

Workers' compensation

(2) A member is deemed to be an employee for the purposes of the *Government Employees Compensation Act* and to be employed in the public service of Canada for the purposes of any regulations made under section 9 of the *Aeronautics Act*.

Indemnification of Tribunal members and employees

105. The members and employees of the Tribunal shall 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

106. (1) The Tribunal shall conduct its business in both of the official languages of Canada in accordance with the *Official Languages Act* and any directives of the Minister and, on request by any designated Inuit organization, in Inuktitut.

Translation or interpretation

(2) Subject to subsections 16(1) and (2) of the *Official Languages Act*, nothing in subsection (1) shall be construed to prevent the use of translation or interpretation services where a member of the Tribunal is otherwise unable to conduct business in Inuktitut or in either 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 Inuktitut or in either 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 Inuktitut into one of the official languages, from one of the official languages into Inuktitut or from one of the official languages into the other.

Translation of documents

(5) The Tribunal has, in any proceedings before it, the duty to provide a translation of any document prepared in Inuktitut or in one of the official languages for the purpose of the proceedings by a party to the proceedings into one or both of the official languages or into Inuktitut or the other official language where necessary to enable another party to the proceedings to understand and deal with the document.

Translation of orders

(6) The Tribunal shall, 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.

Head Office and Meetings

Head office

107. The head office of the Tribunal shall be at Iqaluit or at such other place in Nunavut as the Governor in Council may designate.

Business meetings

108. (1) The meetings of the Tribunal shall be held at such times and at such places as 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 Part to be present at that meeting.

By-laws

By-laws

109. 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

110. The Tribunal may employ such officers and employees and engage the services of such agents, advisers and experts as 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.

Government facilities and information

111. In exercising its powers or performing its duties or functions, the Tribunal may, where 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 of Parliament, obtain from any such department, board or agency any information that is required to exercise those powers or perform those duties or functions.

Property and contracts

112. (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

113. The Tribunal is an institution of public government but is not an agent of Her Majesty.

Financial Provisions

Annual budget

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

Accounts

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

Consolidated financial statements

(3) The Tribunal shall, within such time after the end of each fiscal year as 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 shall 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 shall be audited annually by the Auditor General of Canada. The Auditor General of Canada shall make a report of the audit to the Tribunal and the Minister.

Annual Report

Annual report

115. The Tribunal shall, within three months after the end of each fiscal year, submit to the Minister a report on its activities in that year, and shall 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; and
- (d) such other matters as the Minister may specify.

Publication

116. The Tribunal shall publish the annual report.

Jurisdiction of Tribunal

Negotiations

117. (1) No person may 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 130 or, until such 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

118. 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

119. An application before the Tribunal shall 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) shall give due weight to Inuit knowledge of wildlife and the environment; and
- (d) shall, in hearing an application under Division 5, take into account the social, cultural and

economic importance of wildlife to Inuit.

General powers of Tribunal

120. 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

121. 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; and
- (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

122. 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 such notice, in a manner satisfactory to the Tribunal.

Location of hearing

123. Unless the parties agree otherwise,

- (a) an application under section 155 or 167 in relation to an order made under section 155 shall be heard in a community that is convenient to the claimant; and
- (b) any other application shall be heard in the community that is closest to the land involved.

Hearing of applications

124. (1) An application to the Tribunal shall be heard by a panel consisting of three members or, if the parties consent, by one member. 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 shall be reheard by another panel or member.

Disposition of application

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

Residency requirement

(3) Where an application involves Inuit-owned land, 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, shall be resident in Nunavut.

Assignment of members

125. (1) Members shall 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 shall 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 Agreement of an Inuk or has an interest in land in Nunavut.

Powers, duties and functions

126. (1) A panel, or member hearing an application, has all of the powers, and shall 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

127. Before disposing of an application, the Tribunal shall 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 Federal Court

128. The Tribunal may, at any stage of its proceedings, refer to the Federal Court 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 Agreement.

Records

Records

129. (1) The Tribunal shall

- (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 such fee as 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

130. (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 Part, 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 shall make rules establishing procedures to be followed in the conduct of negotiations for the purposes of subsection 117(1), either generally or with respect to any class of applications.

Non-application of *Statutory Instruments Act*

131. Sections 3, 5 and 11 of the *Statutory Instruments Act* do not apply in respect of the rules of the Tribunal.

Pre-publication

132. (1) The Tribunal shall 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 in Nunavut.

Representations invited

(2) The notice referred to in subsection (1) shall 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 shall

(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 *Canada Gazette* that the rule has been made, indicating the newspaper or periodical in which it has been published.

Division 2

Entry Orders for Inuit-owned Lands

Exercise of Mineral Rights

Use and occupation

133. On application by any person

(a) who has a mineral right granted by Her Majesty 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,

the Tribunal shall make an entry order setting out the terms and conditions for the use and occupation of that land to the extent necessary for the purpose of exercising the mineral right.

Prospecting right

134. (1) A person who has a right to prospect for minerals and who applies under section 133 for an entry order to exercise that right on Inuit-owned land shall 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 shall 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 Agreement, used for the purposes of conveying title to Inuit-owned land.

Access to other land

135. (1) Subject to subsection (2), on application by any person

(a) who requires access to Inuit-owned land in order to exercise a mineral right, granted under an Act of Parliament, in relation to any other land, and

(b) who has been unable to obtain the consent of the designated Inuit organization,

the Tribunal shall make an entry order setting out the terms and conditions for access to that Inuit-owned land to the extent necessary for the purpose of exercising the mineral right.

Restriction

(2) The Tribunal shall not make an entry order under subsection (1) unless the applicant satisfies the Tribunal that the access is reasonably required.

Other Commercial Purposes

Right to cross

136. (1) Subject to subsection (2), on application by any person

- (a) who requires access across Inuit-owned land for a commercial purpose, and
 - (b) who has been unable to obtain the consent of the designated Inuit organization,
- the Tribunal shall make an entry order setting out the terms and conditions for the access.

Restriction

(2) The Tribunal shall not make an entry order under subsection (1) unless an arbitration panel established under Article 38 of the Agreement has, in accordance with the 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 land and interference with Inuit use of that land.

Terms and conditions

(3) An entry order made under subsection (1) shall include terms and conditions to minimize any damage to the Inuit-owned land and interference with Inuit use of that land.

Compensation dispute

(4) Where the designated Inuit organization has consented to permit a person to cross Inuit-owned land for commercial purposes but that organization and that person are unable to agree on appropriate compensation, the Tribunal shall, on application by that organization or person, make an order resolving the matter.

Construction Materials

Right to remove materials

137. (1) Subject to subsection (2), on application by the Minister or the territorial minister designated by an instrument of the Executive Council of Nunavut, in any case where the designated Inuit organization has refused entry on Inuit-owned land to remove sand, gravel or other like construction materials, the Tribunal shall 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 Canada or of the Government of Nunavut to remove those construction materials.

Restriction

(2) The Tribunal shall 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) shall include terms and conditions to minimize any damage to the Inuit-owned land and interference with Inuit use of that land and shall 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 shall not take into account any amount that is payable for the construction materials.

General Rules for Orders

Offer of compensation

138. An applicant for an entry order shall 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

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

(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

140. (1) Subject to subsection (2), in determining the amount of compensation that is payable under an order, the Tribunal may consider such factors as it considers appropriate and, without limiting the generality of the foregoing, shall 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 land;
- (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 139(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 shall 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

141. 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

142. (1) Subject to subsection (2), a person to whom an entry order is issued and every successor of that person referred to in section 163 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) No person may 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* 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 138.

Division 3

Entry Orders for Non-Inuit-owned Land

Interpretation

Definitions

143. The definitions in this section apply in this Division.

"non-Inuit-owned land"
«*terre non inuit* »

"non-Inuit-owned land" means land in Nunavut that is not Inuit-owned land and that is owned or occupied by a person other than Her Majesty in right of Canada.

"occupant"
«*occupant* »

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

Exercise of Mineral Rights

Applications for entry orders

144. On application by any person

(a) who has a mineral right granted by Her Majesty in right of Canada,

(b) who has, under another Act of Parliament, 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,

the Tribunal shall 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

145. An applicant for an entry order shall 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

146. 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

147. (1) Subject to subsection (2), in determining the amount of compensation that is payable

under an entry order, the Tribunal may consider such factors as it considers appropriate and, without limiting the generality of the foregoing, shall 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 146(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 shall 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

148. 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

149. (1) Subject to subsection (2), a person to whom an entry order is issued and every successor of that person referred to in section 163 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) No person may 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 145.

Division 4

Mineral Rights and Carving Stone

Specified Substances on Inuit-owned Land

Determinations about specified substances

150. On application by the designated Inuit organization or any person who has a mineral right granted by Her Majesty in right of Canada in relation to Inuit-owned land, the Tribunal shall

(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 Crown Lands

Conflicts

151. (1) On application by a designated Inuit organization that holds a permit or a lease for the quarrying of carving stone on Crown lands or by a person who has a mineral right granted by Her Majesty in right of Canada in relation to those lands, the Tribunal shall 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, "Crown lands" means any lands in the Nunavut Settlement Area belonging to Her Majesty in right of Canada or of which the Government of Canada or the Government of Nunavut has power to dispose.

Division 5

Wildlife Compensation

Interpretation

Definitions

152. (1) The definitions in this subsection apply in this Division. "claimant"

«réclamant »

"claimant" means an Inuk or Inuit.

"developer"
«*entrepreneur* »

"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.

"development activity"
«*activités de développement* »

"development activity" means 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 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; and
- (c) marine transportation directly associated with an undertaking described in paragraph (a) or (b).

It does not include any wildlife measure or use approved in accordance with Article 5 of the Agreement.

"Inuk"
«*Inuk* »

"Inuk" means an individual member of the group of persons referred to in the definition of “Inuit” in subsection 2(1).

Wildlife

(2) In this Division, “wildlife” does not include flora.

Definitions from *Marine Liability Act*

(3) For the purposes of the definition “developer” in subsection (1) and for the purposes of sections 153 and 154, the words “discharge”, “oil”, “owner” and “ship” have the meanings assigned to them by section 47 of the *Marine Liability Act*.

Liability of Developers

Loss or damage

153. (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; and
- (c) present and future loss of wildlife harvested for personal use by claimants.

Exceptions

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

- (a) where 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) where 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 170(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 Agreement, acting on behalf of the claimant, for loss or damage described in subsection (1) shall 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; and
 - (b) in general, compensation shall not be a guaranteed annual income in perpetuity.

Liability of Minister

154. (1) Without limiting the liability of the Minister where 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 “development activity” in subsection 152(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 153(2)(b) and for which no other person is liable.

Liability of Fund

(2) In relation to loss or damage resulting from a discharge of oil from a ship that is engaged in marine transportation as described in paragraph (c) of the definition “development activity” in subsection 152(1), the Ship-source Oil Pollution Fund established under Part 6 of the *Marine Liability Act* is liable to the same extent that a developer would be liable under section 153 if paragraph 153(2)(b) did not apply.

Subrogation

(3) The Administrator of the Ship-source Oil Pollution Fund is subrogated, to the extent of any payment made by the Fund under subsection (2), to any rights of the claimant in respect of the loss or damage for which that payment was made and, for that purpose, the Administrator may maintain an action in the Administrator’s name or in the name of the claimant.

Applications to Tribunal

Application for order

155. On application, made not less than thirty days after the making of a claim in accordance with subsection 153(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 Agreement, on behalf of the claimant,

(b) by a developer, or

(c) by the Minister or the Administrator of the Ship-source Oil Pollution Fund, where the Minister, under subsection 154(1), or the Fund, under subsection 154(2), may be liable,

the Tribunal shall make an order determining liability for loss or damage and the amount of compensation payable in respect of it.

Minimization of loss or damage

156. (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 153(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, 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, where the limit referred to in paragraph 153(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 shall apportion liability in accordance with generally accepted legal principles.

Deadline

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

Other Remedies

Developer, Minister and Ship-source Oil Pollution Fund

158. (1) Nothing in this Division shall be construed as limiting or restricting any remedy that a developer, the Minister or the Ship-source Oil Pollution Fund may have against any person other than the claimant.

Claimant

(2) Subject to section 166, this Division is without prejudice to any other right or remedy that a claimant may have under a law of general application.

Division 6

General

Decisions of the Tribunal

Costs

159. 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 such costs on or before the final disposition of the application.

Reasons for decisions

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

Copies

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

Proof of orders

162. 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 such 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

163. 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

164. (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 shall file a certified copy of an order made under section 155 with the registrar of the Nunavut Court of Justice.

Assistance by Tribunal

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

155.

Review of Orders

Findings of fact

166. Subject to sections 167 to 169 and the *Federal Courts Act*, a determination of the Tribunal on the following questions is final and binding:

- (a) on any question of fact within its jurisdiction; and
- (b) in an application under section 155, on any question in relation to loss or damage described in subsection 153(1).

2002, c. 10, ss. 166, 201.

Review by Tribunal

167. 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 such a party referred to in section 163, review any of its orders, including an order made under this section, where 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 shall

- (a) where 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 land 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

168. The Tribunal shall, on application made by any person who was a party to the hearing held in respect of the order or any successor to such a party referred to in section 163, terminate an entry order under this Part 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

169. (1) Except where every person to whom notice is given under subsection (2)

- (a) waives the requirement for a review, or

(b) is deemed, under subsection (3), to have waived that requirement,

the Tribunal shall 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.

Notice

(2) The Tribunal shall, 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 such a person referred to in section 163 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

(3) Every person who does not make representations in the manner described in paragraph (2)(b) is deemed to have waived the requirement for a review.

Regulations

Regulations

170. The Governor in Council may make regulations

(a) prescribing what constitutes a material conflict of interest for the purposes of subsection 125(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 Part 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 140(3) and 147(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 153(2)(c), limits of liability of developers, or the method for determining such 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 Part.

PART 3

TRANSITIONAL PROVISIONS, CONSEQUENTIAL AND COORDINATING AMENDMENTS AND COMING INTO FORCE

Transitional Provisions

Continuation of Nunavut Water Board

171. (1) The Board established by section 14 and the Nunavut Water Board established under the Agreement before the day on which this Act is assented to are hereby declared for all purposes to be one and the same body.

Acts and decisions of the Board

(2) Any act of the Board taken, or any decision made by it under the Agreement, before the day on which this Act is assented to 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

(3) Any approval to the issuance of a licence by the Board that was given by the Minister before the day on which this Act is assented to 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 56(2) to (2.2).

Actions of inspectors

(4) Any actions taken in Nunavut by inspectors under the *Northwest Territories Waters Act*, for the period beginning on July 9, 1996 and ending on the day before the day on which this Act is assented to, are deemed, to the extent that the actions would have been valid under this Act, to have been validly taken under this Act.

Licences

172. (1) This Act does not affect licences for the use of waters or the deposit of waste in Nunavut issued under the *Northwest Territories Waters Act* that were in force immediately before the day on which this Act is assented to. The licences are deemed to have been issued by the Nunavut Water Board under this Act.

Pending applications

(2) The Nunavut Water Board shall dispose of any application respecting a licence in relation to a use of waters or a deposit of waste to which Part 1 applies that was made to the Northwest Territories Water Board and was pending on July 9, 1996.

Existing regulations

173. (1) 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* that were in force on July 9, 1996 are binding on the Nunavut Water Board from that date, and continue to apply from that date in Nunavut, except in a national park, and the Board shall exercise the powers of the Northwest Territories Water Board under those regulations and orders in relation to Nunavut.

Instream use

(2) The regulations made under paragraph 33(1)(m) of the *Northwest Territories Waters Act* are deemed to authorize the unlicensed instream use of waters in Nunavut, except in a national park.

Powers of Board

(3) During the period of one year following the day on which this Act is assented to, the Nunavut Water Board may, by order, provide that any provision of the regulations made under paragraph 33(1)(m) or (n) of the *Northwest Territories Waters Act* ceases to apply in relation to Nunavut.

Applications not requiring public hearings

174. (1) The regulations made under paragraph 33(1)(c) of the *Northwest Territories Waters Act* are deemed, in relation to the use of waters or the deposit of waste in Nunavut, to prescribe, as classes of applications that are exempted from the requirement of a public hearing, the classes of applications in relation to the following:

(a) in the case of a Type A licence,

(i) any amendment that does not affect the use, flow or quality of waters or alter the term of the licence,

(ii) any amendment that affects the use, flow or quality of waters or alters the term of the licence, where the Nunavut Water Board, with the consent of the Minister, is of the opinion that an emergency exists that requires the amendment, or

(iii) one or several renewals of a total duration not exceeding sixty days; and

(b) in the case of a Type B licence, its issuance, amendment, renewal or cancellation.

Consultation

(2) Within one year after the day on which this Act is assented to, the Minister shall, unless regulations have been made under paragraph 82(1)(f) before that time to replace the regulations referred to in subsection (1), consult the Board on the application of subsection (1).

Continuation of Nunavut Surface Rights Tribunal

175. The Tribunal established by section 99 and the Nunavut Surface Rights Tribunal established under the Agreement before this Act is assented to are hereby declared for all purposes to be one and the same body.

Consequential Amendments

176. to 199. [Amendments]

Coordinating Amendments

200. to 202. [Amendments]

Coming into Force

Coming into force

***203.** Subsections 171(2) to (4), section 172 and subsections 173(1) and (2) and 174(1) are deemed to have come into force on July 9, 1996.

* [Note: Act, except subsections 171(2) to (4), section 172 and subsections 173(1) and (2) and 174(1), in force on assent April 30, 2002.]

SCHEDULE 1

(Subsection 2(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 8, sections 20.2.2, 20.2.4 and 20.3.1;
- (b) section 13, sections 20.2.4 and 20.3.1;
- (c) subsection 14(3), section 13.3.1;
- (d) subsections 17(1) and (2), sections 13.3.1 and 40.2.14;
- (e) section 19, section 13.3.1;
- (f) subsection 29(2), sections 13.3.1 and 13.3.6;
- (g) paragraph 48(3)(d), section 20.2.4;
- (h) paragraph 56(4)(c), section 20.3.1;
- (i) section 63, section 20.3.1;

- (j) section 64, section 20.4.1;
- (k) subsection 67(2), sections 20.3.1 and 20.4.1;
- (l) paragraph 76(2)(a), section 20.2.4;
- (m) subsection 77(4), section 21.9.8;
- (n) paragraph 79(2)(b), section 20.3.1;
- (o) subsection 97(1), section 21.2.1;
- (p) subsection 106(1), section 21.8.8;
- (q) section 133, section 21.7.11;
- (r) paragraph 135(1)(b), section 21.2.1;
- (s) paragraph 136(1)(b), section 21.7.15;
- (t) subsection 136(4), section 21.7.14;
- (u) subsection 137(1), section 21.6.1;
- (v) section 138, section 21.8.4;
- (w) subparagraph 139(a)(viii), subsection 21.8.3(i);
- (x) paragraph 140(1)(b), subsection 21.8.3(b);
- (y) paragraph 140(1)(f), subsection 21.8.3(f);
- (z) paragraph 140(1)(i), subsection 21.8.3(i);
- (z.1) paragraph 140(1)(j), subsection 21.8.3(j);
- (z.2) section 141, section 21.8.5;
- (z.3) subsection 142(1), section 19.3.1;
- (z.4) section 150, sections 19.2.3 and 19.2.4;
- (z.5) subsection 151(1), section 19.9.5;
- (z.6) subsection 153(3), section 6.4.1; and
- (z.7) paragraph 155(a), section 6.4.1.

SCHEDULE 2

(Section 18)

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.)