

BILL C-39, THE YUKON ACT

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LEGISLATIVE HISTORY OF BILL C-39

HOUSE OF COMMONS

Bill Stage	Date
First Reading:	31 October 2001
Second Reading:	5 November 2001
Committee Report:	28 November 2001
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Third Reading:	3 December 2001

SENATE

Bill Stage	Date
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Report Stage:	
Third Reading:	27 March 2002

Royal Assent: 27 March 2002

Statutes of Canada 2002, c.7

N.B. Any substantive changes in this Legislative Summary which have been made since the preceding issue are indicated in **bold print**.

Legislative history by Peter Niemczak

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BILL C-39, THE YUKON ACT*

Bill C-39, legislation to replace the current *Yukon Act*, was introduced in the House of Commons on 31 October 2001 and adopted unamended on 3 December 2001 following an uneventful passage through the House. Introduced in the Senate on 4 December, the bill was considered by the Standing Senate Committee on Energy, the Environment and Natural Resources and reported back unamended on 7 March 2002. Bill C-39 was adopted by the Senate and received Royal Assent on 27 March.

BACKGROUND

A. Political Evolution and Devolution to Date

In 1870, the *Rupert's Land and North-Western Territory Order* effected the admission of Rupert's Land and the North-Western Territory to Canada, pursuant to section 146 of the *Constitution Act, 1867* and the *Rupert's Land Act, 1868*. The *Manitoba Act, 1870*, which created Manitoba out of part of Rupert's Land, also designated the remaining territories the Northwest Territories (NWT), over which Parliament was to exercise full legislative authority under the *Constitution Act, 1871*.

Yukon became a judicial district of the NWT in 1895. In 1898, during the gold rush boom, the Yukon Territory (Yukon) was carved out of the NWT and established as a separate territory by the *Yukon Territory Act, 1898*. Under that Act, the Yukon Government consisted of a Commissioner, appointed by the Governor in Council and charged with the

* Notice: For clarity of exposition, the legislative proposals set out in the Bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both Houses of Parliament, receive Royal Assent, and come into force.

This paper revises a document originally prepared in November 2001 under the title *Bill C-39: Summary Overview*.

administration of the territory – under the instructions of the Governor in Council or the then Minister of the Interior – and a Council of no more than six members, also appointed by the Governor in Council, to assist his administration. The 1898 statute granted the Commissioner in Council “the same powers to make ordinances...[as are] possessed by the Lieutenant Governor of the North-west Territories, acting by and with the advice and consent of the Legislative Assembly thereof.” In 1908, amendments to the *Yukon Act* transformed the Council into an elected body.

Although the Yukon administration has maintained the Commissioner structure, that office has evolved over time, as the territorial government became more responsible and exercised expanded functions. Relevant developments include the following:

- By the mid-1960s, schools, public works, welfare and various other matters of a local nature had come under territorial administration.
- Increased authority of elected Council members over the ensuing period contributed to significant changes in the Yukon Commissioner’s role. In 1979, instructions from the Minister of Indian Affairs and Northern Development (Minister) directed the Commissioner to allow elected members and the Executive Council to make important policy decisions, specifying that his actions should normally be based on the advice and taken with the consent of the elected Executive Council.
- The devolution or handing over of federal responsibilities to territorial governments developed into a federal priority in the 1980s. In 1987, federal government guidelines for the transfer of federal programs to the territories provided, among other things, that any transfers should reflect territorial priorities and consultation with Aboriginal peoples in the North.
- In 1988, the Minister and the Yukon Government Leader signed a Memorandum of Understanding committing the parties to smooth the progress of devolution of remaining province-like responsibilities to the Yukon Government. Responsibilities transferred since then include fisheries, mine safety, intra-territorial roads, hospitals and community health care and, most recently, oil and gas. As a result, among the three territories, devolution is most advanced in Yukon.

The current *Yukon Act*, as amended over the years, sets out ordinance-making powers of the Yukon Commissioner in Council that are similar in some respects – but not equivalent to – the law-making authority of provincial legislative assemblies under the

Constitution Act, 1867 (ss. 17-22, Appendix I). In virtually all cases, Yukon ordinance making is also subject to the *Yukon Act* and other federal legislation.

In particular, the Yukon Government lacks province-like legislative and administrative authority over land, resources and water in the Territory. And, although the *Yukon Act* has been modified on a number of occasions, it has not undergone major review since the early 1950s and in some respects does not accurately reflect government practice in the Territory. Bill C-39 is designed to address both issues.

B. Aboriginal Interests

In recent decades, various Aboriginal groups have pursued comprehensive land claims whose influence on the evolution of Yukon government structures is ongoing. To date, Yukon has been affected by the following settlements:

- Inuvialuit Final Agreement (1984), primarily involving settlement land in the NWT, but also setting out rights on the Yukon North Slope;
- Gwich'in Final Agreement (1992), involving the northwestern portion of the NWT as well as about 1,500 sq. km. of land in Yukon;
- Eight Final Agreements with Yukon First Nations (YFN) under the Umbrella Final Agreement (1993) concluded among the then Council of Yukon Indians – now the Council of Yukon First Nations (CYFN) – and the governments of Canada and Yukon.

The enumerated agreements benefit from constitutional protection as modern treaties under section 35 of the *Constitution Act, 1982*.

YFN with completed land claim agreements also have in place separate self-government agreements, as provided for in the Umbrella Final Agreement.⁽¹⁾ The Government of Yukon is signatory to both sets of accords, and both have been ratified by federal⁽²⁾ and

(1) A self-government Agreement in Principle initialled by representatives of the Gwich'in, the Inuvialuit and the governments of Canada and the NWT in October 2001 is intended to form the basis of negotiations toward a Final Agreement relating to regional public government for the NWT's Beaufort-Delta region.

(2) *Yukon First Nations Land Claims Settlement Act*, S.C. 1994, c.34; *Yukon First Nations Self-Government Act*, S.C. 1994, c. 35. The *Yukon Surface Rights Board Act* (S.C. 1994, c. 43) reflects the federal undertaking, in the Umbrella Final Agreement, to enact implementing legislation establishing a Surface Rights Board.

territorial⁽³⁾ legislation. To date, section 35 protection has not been extended to YFN's self-government powers.

Under their respective similar self-government agreements, YFN may exercise law-making jurisdiction in a number of areas (Appendix II). The agreements also provide for, among other things, the continued application of all laws of general application, for exceptions to that application, and for the resolution of conflict of laws.⁽⁴⁾

The Department of Indian and Northern Development's (DIAND) negotiating mandate for the finalization of outstanding agreements expired on 31 March 2002. On 1 April, the Minister announced that negotiations with four of six remaining YFN had been officially concluded with the signing of individual memoranda of understanding. The process for the two last groups is expected to be finalized by mid-April 2002.

C. Department of Indian Affairs and Northern Development:
Northern Affairs Program⁽⁵⁾

The DIAND Minister's responsibilities in the North under the *Department of Indian Affairs and Northern Development Act* are delivered principally through the Northern Affairs Program (NAP) under two headings: supporting northern development, both political and economic, through the management of federal interests; and promoting sustainable development of natural resources in the North.

NAP responsibilities include developing policies and legislation relevant to northern political development, as well as the negotiation of devolution arrangements with territorial governments. NAP's development role extends, in particular, to policies and legislation concerned with management of water, mineral, and other resources and to legislation to implement resource management provisions of northern land claims. NAP is also responsible for policy and operational aspects of offshore northern oil and gas management, and for policy and program development in matters relating to northern environment and conservation (hazardous waste site remediation, climate change and so forth).

(3) *First Nations (Yukon) Self-Government Act*, S.Y. 1993, c. 5; *An Act Approving Yukon Land Claims Final Agreements*, S.Y. 1993, c. 19.

(4) In this matter, federal and territorial self-government legislation respectively prevail in the event of inconsistency or conflict with other federal or territorial laws, while the final [land claim] agreement and related settlement laws prevail over inconsistent federal or territorial self-government legislation.

(5) Information under this heading is drawn largely from the Northern Affairs Program's page at the DIAND web site, at http://www.ainc-inac.gc.ca/ps/nap/intro_e.html.

NAP's regional and district offices carry out day-to-day management and operations in the above areas. Of particular interest is NAP's lead role in carrying out resource management operations, including issuance of rights and interests, conduct of resource assessments, inspections and enforcement activities, environmental assessments and monitoring, issuing regulatory approvals and ensuring that federal legislation and policies related to sustainable development are respected. In the Yukon, NAP also has authority over fire management. However, NAP is no longer solely responsible for matters of resource development and use. At present it is involved with resource and environmental management boards resulting from comprehensive land claims settlements and self-government agreement implementation in the North.

NAP staff includes over 550 employees, including 240 indeterminate or permanent employees in Yukon.

D. Yukon Northern Affairs Program Devolution Transfer Agreement

Canada and Yukon have long been discussing the transfer of responsibilities over natural resources in the Territory. Developments related to the present devolution initiative include the following:

- In 1996, the then Minister issued a consultation paper entitled *Devolution of the Northern Affairs Program to the Yukon Government*.
- In 1997, Yukon and the CYFN signed an Accord on the Devolution of Federal Programs, which outlined principles for a comprehensive devolution process.
- The same year, Canada tabled a Formal Proposal for the transfer of authority over lands and resources, including mines and minerals, forestry and inland waters, to the Yukon Government.
- In 1998, Canada, Yukon, the CYFN Grand Chief, on behalf of 11 of 14 YFN, and representatives of the 3 other YFN, signed the *Yukon Devolution Protocol Accord* (Accord), which provided a framework to both guide devolution negotiations and permit simultaneous negotiation of unresolved land claims.

On 29 October 2001, discussions based on principles set out in the Accord culminated in the signing of the *Yukon Northern Affairs Program Devolution Transfer*

Agreement (DTA) by Canada and Yukon. In it, Canada undertook to introduce legislation, i.e., Bill C-39, to repeal and replace the *Yukon Act* “to ensure that the [new] Legislature has the power to make laws with respect to Public Land, Waters, and the disposition of any right or interest in Public Land or of any right in Waters.” Canada is also to rescind the *Yukon Placer Mining Act*, the *Yukon Quartz Mining Act* and the *Yukon Waters Act* and related regulations; the *Yukon Surface Rights Board Act* will be repealed effective on a day to be fixed by the Governor in Council (Chapter 2: Transfer of Responsibilities).

In return, Yukon has undertaken to introduce legislation prior to the effective transfer date that mirrors federal legislation to be repealed, and to make regulations mirroring related regulations. Should the anticipated Development Assessment legislation not yet be fully in effect, Yukon will also introduce legislation to mirror the *Canadian Environmental Assessment Act*, and to have regulations prepared that mirror related regulations (Chapter 2).

Pursuant to the Canada-Yukon Formula Financing Agreement, Canada will provide annual ongoing funding of about \$34 million to the Yukon Government; this amount represents current funding for NAP in Yukon and related activities. Transitional funding will also be paid out over a number of years to cover various areas, including implementation of interim environmental legislation, fire suppression, remediation of contaminated sites, human resources, forest sector activities, computer integration, and so forth. In addition, the Yukon Government may retain \$3 million annually in resource revenues without any impact on its formula-financing grant; revenues exceeding that amount will reduce the annual grant dollar for dollar (Chapter 7: Financial Transfer).

Under its terms, the DTA took effect the day of its signing. The projected date for the effective transfer of NAP responsibilities to the Yukon Government is 1 April 2003. Reactions of YFN to the devolution process and its timing have been mixed.⁽⁶⁾

A selective summary of additional elements of the DTA can be found in Appendix III.

(6) A 4 October 2001 CYFN resolution stated each member’s conditional support for devolution, “subject to the ratification of its outstanding Final and Self-Government Agreements.”

DESCRIPTION AND ANALYSIS

Bill C-39 consists of a preamble, 285 clauses – most of which are consequential amendments to other acts – and 2 schedules. The following non-exhaustive outline highlights significant aspects of the bill, using its headings; it does not include transitional, co-ordinating and consequential amendments. The focus is on important new measures.

A. Government (clauses 4-37)

Some of the clauses under this heading modernize the statutory language relating to Yukon's governmental structures so as to better reflect the practice of responsible government in Yukon. Others provide for important substantive changes to the Territory's legislative powers, which will approximate those of the provinces under sections 92, 92A and 95 of the *Constitution Act, 1867*. Still others make adjustments to existing structures in the current Act.

1. Executive (clauses 4-9)

Under Bill C-39, as under the current Act, a Commissioner of Yukon (Commissioner) is appointed by the Governor in Council and must follow written instructions of the Governor in Council or the Minister (clause 4). This requirement is to be repealed after ten years (clause 68). Unlike the current Act, Bill C-39 does not designate the Commissioner the "CEO" of the Territory. Members of the Executive Council (the territorial Cabinet) are to be appointed by the Commissioner (clause 8).

2. Legislative (clauses 10-27)

Bill C-39 continues Yukon's current Council as the Legislative Assembly of Yukon (clause 10) without establishing the minimum or maximum number of Assembly members that is set out in the current Act; the current Act's Commissioner in Council is continued as the Legislature of Yukon (LY), consisting of the Commissioner and the Legislative Assembly (clause 17).

Bill C-39's principal enabling provision (clause 18) authorizes the LY to make laws – rather than the current "ordinances" – on enumerated classes of subjects (clause 18). Most reiterate those in the current Act, albeit in more modern language, and relate to most subjects over which the provinces have constitutional jurisdiction. In noteworthy additions to

these classes of subjects, the LY's legislative authority will extend to inland waters and waste deposits in waters (clause 18(1)(n)) and to "public real property" under the Commissioner's administration (clause 18(1)(q)), including the disposition of rights in waters and property. Other additions include wildlife conservation (clause 18(1)(m)), immigration (clause 18(1)(p)) and entering into intergovernmental agreements (clause 18(1)(u)).

Bill C-39 also greatly expands the LY's legislative authority over Yukon "non-renewable natural resources." Under a 1998 amendment to the current Act, Yukon acquired broad legislative authority over oil and gas in the Territory and the "adjoining area,"⁽⁷⁾ Bill C-39 extends this authority to all non-renewable natural resources, forestry resources and electrical energy, including their taxation (clause 19).

Like the current Act, Bill C-39 contains an explicit stipulation that provisions setting out the LY's legislative authority are not to be construed as conferring greater powers than those given to provincial legislatures under the *Constitution Act, 1867* (clause 20). By way of exception to this general rule, the LY will be empowered, when exercising its authority in order to implement agreements with YFN, to make laws relating to "Indians and Lands reserved for the Indians," an area of federal jurisdiction under subsection 91(24) that is beyond the provinces' reach (clause 21).

In a new "reservation" measure that parallels constitutional provisions applicable to the provinces, the proposed legislation authorizes the Governor in Council to direct the Commissioner not to assent to any bill adopted by the LY, in which case the bill may only become law with the former's assent, given within one year (clause 24). Like the current Act, Bill C-39 provides that the Governor in Council may disallow any LY law within a year of its adoption (clause 25). The bill also reformulates the current Act's paramountcy section, stating that in case of conflict, federal legislation prevails over territorial law (clause 26).

3. Yukon Public Accounts (clauses 31-37 [clauses 70-75])

Most provisions under this heading are largely based on and update sections of the current Act. Those relating to the functions of the Auditor General of Canada (AG), who remains Yukon's Auditor under Bill C-39, do include new elements. For instance, a new provision intended to ensure the Yukon Government's accountability for the management of public funds authorizes the AG to audit any aspect of governmental activities for that purpose (clause 35). Another empowers the AG, at the Commissioner's request, to make inquiries into

(7) The "adjoining area" is defined at clause 2 as "the area outside Yukon and landward of the northern limit described in Schedule 2." Schedule 1 sets out a description of Yukon.

and report to the Legislative Assembly on matters related to the Government's financial affairs, public property, or any person or body receiving or seeking funding from the Government (clause 36).

Bill C-39 also makes provision for future amendments to the legislation under which the AG would be replaced by an Auditor General of Yukon, appointed by the Commissioner with the consent of the Executive Council. The relevant sections, including provisions designed to ensure the independence of the office-holder, would come into effect at a date fixed by the Governor in Council [clauses 70-75, clause 285].

B. Real Property, Water, Oil and Gas (clauses 45-53)

1. Administration and Control (clauses 45-48)

These clauses, in particular clauses 45 and 48, are key to the devolution initiative.

Under the current Act, the Commissioner has the administration and control of certain prescribed lands and may both use or dispose of them and retain the proceeds. Bill C-39 expands that administration and control considerably to include (1) "public real property" – defined to mean "land in Yukon that belongs to Her Majesty in right of Canada," and "any estate, right, title or interest...held by [the federal Crown] in or to land in Yukon"⁽⁸⁾ – and (2) oil and gas in the adjoining area.⁽⁹⁾ Under the bill, the Commissioner may use or dispose of the property and retain the proceeds only with the consent of the Executive Council. The small amount of public real property to be excluded from the Commissioner's control will be listed by the Governor in Council (clause 45).

The current Act does not make provision for the Commissioner or the Commissioner in Council to exercise authority over Yukon waters. The *Yukon Waters Act*, however, does authorize the federal Minister to delegate a number of her or his functions under that Act to the territorial minister responsible for water resources. Bill C-39, stipulating that rights in respect of all Yukon "waters" – defined to mean "inland water...on or below the surface

(8) See clause 2.

(9) The Commissioner's administration is made subject to Bill C-39, and to section 37 of the *Northern Pipeline Act*. This statute creates a scheme for construction of a gas pipeline from Alaska and northern Canada under a Canada-U.S. agreement. Section 37 authorizes the Governor in Council to transfer any land that is under the Commissioner's control, but that is needed for the pipeline, to the federal pipeline minister.

of land”⁽¹⁰⁾ – remain vested in the federal Crown, gives the Commissioner administration and control of those rights. As in the case of public real property, the Commissioner may, with the consent of the Executive Council, either exercise them, or dispose of them and retain the proceeds (clause 48).⁽¹¹⁾

2. Restrictions (clauses 49-53)

Generally speaking, clauses under this heading – some referred to as “take-back” provisions – empower the federal government, in prescribed circumstances, to restrict the Commissioner’s administration and control of public real property, oil and gas in the adjoining area, and waters and waste deposit in waters. Some reflect aspects of the current Act (clauses 49(2) and 50(2)). Others continue the sorts of federal authority with respect to matters of special concern to the federal government – such as land claim settlements or the national interest, including national security – that are currently in the *Territorial Lands Act*, the *Yukon Placer Mining Act*, the *Yukon Quartz Mining Act* and the *Yukon Waters Act* (clauses 49(1), 50(1) and 51). The bill proposes to make the *Territorial Lands Act* inapplicable in the Yukon, and to repeal the last three laws. Under Bill C-39, the Minister is required to respect certain procedures when prohibition orders relating to interests in or activities on public real property or lands in the adjoining area, or to use of waters or waste deposit in waters, are being considered (clause 52). The bill provides that any such order must not exceed a 5-year maximum (clause 53).

C. Legislative Amendment (clause 56)

Bill C-39 requires the Minister to consult the Executive Council prior to introducing legislation that would amend or repeal the *Yukon Act*, and authorizes the Legislative Assembly to propose changes to the Act to the Minister.

(10) See clause 2.

(11) Waters in federal conservation areas are excluded. In addition, the Commissioner’s control is subject to Bill C-39 as well as to any rights granted in respect of waters under federal legislation, and is absent in respect to waters for producing or generating water power to which the *Dominion Water Power Act* applies.

D. Repeals (clauses 279-284)

In accordance with the DTA, Bill C-39 will repeal the present *Yukon Act*. It will also rescind the *Yukon Placer Mining Act*, the *Yukon Quartz Mining Act*, the *Yukon Surface Rights Board Act* and the *Yukon Waters Act*.

E. Coming into Force (clause 285)

Bill C-39 makes provision for the coming into force of three portions of the legislation on three dates, with the main portion replacing the present *Yukon Act* taking effect first. Provisions relating to the establishment of an Auditor General of Yukon and repeal of the *Yukon Surface Rights Board Act* may come into force subsequently, or not at all.

COMMENTARY

Bill C-39 marks a significant development in the legislative evolution of Yukon and the devolution of federal responsibilities to Yukon.

Little reaction to the bill was noted south of the 60th parallel. During its progress through Parliament, five of six YFN without land claim and self-government agreements in place did raise a number of legal and constitutional issues related to the legislation, concluding, in essence, that devolution ought not to occur until their agreements have been finalized.⁽¹²⁾

As previously mentioned, on 1 April 2002, four of the six YFN signed memoranda of understanding with the federal and territorial governments, thus officially concluding their land claim and self-government negotiations. The resulting agreements are to be drafted and ratified by all parties by March 2003, that is, prior to devolution. The process with the two remaining groups is expected to be completed by mid-April 2002.

In addition to the matters raised by YFN, Yukon's francophone community sought assurances that their language rights would be adequately protected following devolution.

(12) Those affiliated with the CYFN were the Carcross/Tagish First Nation and the White River First Nation; those unaffiliated with the CYFN were the Kaska Nation, representing the Ross River Dena Council and the Liard First Nation, and the Kwanlin Dun First Nation.

APPENDIX I
***YUKON ACT*, ss.17-22**

Yukon Act

CHAPTER Y-2

An Act respecting the Yukon Territory

SHORT TITLE

Short title

1. This Act may be cited as the *Yukon Act*.
R.S., c. Y-2, s. 1.

*Legislative
Powers of
Commissioner in
Council*

Legislative powers

17. (1) The Commissioner in Council may, subject to this Act and any other Act of Parliament, make for the government of the Territory in relation to the following classes of subjects:

- (a) direct taxation within the Territory in order to raise a revenue for territorial, municipal or local purposes;
- (b) the establishment and tenure of territorial offices and the appointment and payment of territorial officers;
- (c) municipal institutions in the Territory, including municipalities, school districts, local improvement districts and irrigation districts;
- (d) election of members of the Council and controverted elections;
- (e) the licensing of any business, trade, calling, industry, employment or occupation in order to raise a revenue for territorial, municipal or local purposes;
- (f) the incorporation of companies with territorial objects, including tramways and street railway companies but excluding railway, steamship, air transport, canal, telegraph, telephone or irrigation companies;
- (g) the solemnization of marriage in the Territory;
- (h) property and civil rights in the Territory;
- (i) the administration of justice in the Territory, including the constitution, maintenance and organization of territorial courts, both of civil and of criminal jurisdiction, and including procedure in civil matters in those courts;
- (j) the establishment, maintenance and management of prisons, jails or lock-ups designated as such by the Commissioner in Council under paragraph 43(b), the duties and conduct of persons employed therein or otherwise charged with the custody of prisoners, and all matters pertaining to the maintenance, discipline or conduct of prisoners including their employment outside as well as within a prison, jail or lock-up;
- (k) the issuing of licences or permits to scientists or explorers to enter the Territory or any part thereof and the prescription of the conditions under which those

licences or permits may be issued and used;

(l) the levying of a tax on furs or any portions of fur-bearing animals to be shipped or taken from the Territory to any place outside the Territory;

(m) the preservation of game in the Territory;

(n) education in the Territory, subject to the conditions that any ordinance respecting education shall always provide that

(i) a majority of the ratepayers of any district or portion of the Territory, or of any less portion or subdivision thereof, by whatever name the same is known, may establish such schools therein as they think fit, and make the necessary assessment and collection of rates therefor, and

(ii) the minority of the ratepayers in the area referred to in subparagraph (i), whether Protestant or Roman Catholic, may establish separate schools therein, in which case the ratepayers establishing Protestant or Roman Catholic separate schools are liable only to assessments of such rates as they impose on themselves in respect thereof;

(n.1) the management and sale of the properties referred to in subsection 47(1) and of the timber and wood thereon;

(o) the closing up, varying, opening, establishing, building, management or control of any roads, streets, lanes or trails on public lands;

(p) intoxicants;

(q) the establishment, maintenance and management of hospitals in and for the Territory;

(r) agriculture;

(s) the expenditure of territorial funds and such portion of any moneys appropriated by Parliament for the Territory as the Commissioner is authorized to expend by and with the advice of the Council;

(t) generally, all matters of a merely local or private nature in the Territory;

(u) the imposition of fines, penalties, imprisonment or other punishments in respect of the contravention of the provisions of any ordinance; and

(v) such other matters as may be designated by the

Governor in Council.

Oil and gas in
adjoining area

(2) Any powers of the Commissioner in Council under subsection (1) in respect of oil and gas extend to the adjoining area.

R.S., 1985, c. Y-2, s. 17; 1993, c. 41, s. 16; 1998, c. 5, s. 3.

Ordinances relating to
oil and gas

17.1 (1) The Commissioner in Council may, subject to this Act and any other Act of Parliament, make in relation to

(a) exploration for oil or gas in the Territory and the adjoining area;

(b) development, conservation and management of oil or gas in the Territory and the adjoining area, including ordinances in relation to the rate of primary production therefrom; and

(c) oil or gas pipelines, other than pipelines connecting the Territory with any other part of Canada or extending beyond the limits of the Territory.

Export of oil and gas

(2) The Commissioner in Council may, subject to this Act and any other Act of Parliament, make ordinances in relation to the export, from the Territory or the adjoining area to another part of Canada, of the primary production from oil or gas in the Territory or the adjoining area, but such ordinances may not authorize or provide for discrimination in prices or in supplies exported to another part of Canada.

Taxation of oil and
gas

(3) The Commissioner in Council may, subject to this Act and any other Act of Parliament, make ordinances in relation to the raising of money by any mode or system of taxation in respect of oil or gas in the Territory or the adjoining area and the primary production therefrom, whether or not such production is exported in whole or in part from the Territory or that area, but such ordinances may not authorize or provide for taxation that differentiates between production exported to another part of Canada and production not exported from the Territory or that area.

Meaning of primary
production

(4) For the purposes of this section, production of oil or gas is primary production if

(a) it is in a form in which it exists upon its recovery or severance from its natural state; or

(b) it is a product resulting from processing or refining the oil or gas and is not a manufactured product or a product resulting from refining crude oil, refining upgraded heavy crude oil or refining a synthetic equivalent of crude oil.

Existing powers or

rights

(5) Nothing in subsections (1) to (4) derogates from any powers or rights that the Commissioner in Council has under any other provision of this Act.

1998, c. 5, s. 4.

Restrictions on powers

18. Nothing in section 17 or 17.1 shall be construed as giving the Commissioner in Council greater powers with respect to any class of subjects described in those sections than are given to legislatures of the provinces under sections 92, 92A and 95 of the *Constitution Act, 1867* with respect to similar classes of subjects described in those sections.

R.S., 1985, c. Y-2, s. 18; 1998, c. 5, s. 5.

Game ordinances in respect of Indians and Inuit

19. (1) Notwithstanding section 18 but subject to subsection (3), the Commissioner in Council may make ordinances for the government of the Territory, in relation to the preservation of game in the Territory, that are applicable to and in respect of Indians and Inuit.

Presumption in respect of Indians and Inuit

(2) Any ordinances made by the Commissioner in Council in relation to the preservation of game in the Territory, unless the contrary intention appears therein, are applicable to and in respect of Indians and Inuit.

Hunting for food

(3) Nothing in subsections (1) and (2) shall be construed as authorizing the Commissioner in Council to make ordinances restricting or prohibiting Indians or Inuit from hunting for food, on unoccupied Crown lands, game other than game declared by the Governor in Council to be game in danger of becoming extinct.

Application of subsection (3)

(4) After a first nation's final agreement, within the meaning of the *Yukon First Nations Land Claims Settlement Act*, is given effect by or under that Act, subsection (3) does not apply in respect of

(a) hunting by persons eligible to be enrolled under the agreement; or

(b) hunting by any person in the first nation's traditional territory as identified in the agreement.

R.S., 1985, c. Y-2, s. 19; 1994, c. 34, s. 20

Agreements with Government of Canada

20. The Commissioner in Council may make ordinances authorizing the Commissioner to enter into an agreement with the Government of Canada under and for the purposes of any Act of Parliament that authorizes the Government of Canada to enter into agreements with the provinces, but no such agreement shall be entered into by the Commissioner without the approval of the Governor in Council.

R.S., c. Y-2, s. 18.

- Borrowing and lending** **21. (1)** The Commissioner in Council may make ordinances
- (a) for the borrowing of money by the Commissioner on behalf of the Territory for territorial, municipal or local purposes;
 - (b) for the lending of money by the Commissioner to any person in the Territory; and
 - (c) for the investment by the Commissioner of surplus money standing to the credit of the Yukon Consolidated Revenue Fund.
- Restriction** (2) No money shall be borrowed under the authority of this section without the approval of the Governor in Council.
- Charge on Yukon C.R.F.** (3) The repayment of all money borrowed under the authority of this section, and the payment of interest thereon, is a charge on and payable out of the Yukon Consolidated Revenue Fund.
- R.S., c. Y-2, s. 19; R.S., c. 48(1st Supp.), s. 7.
- Ordinances to be laid before Parliament** **22. (1)** A copy of every ordinance made by the Commissioner in Council shall be transmitted to the Governor in Council within thirty days after the passing thereof and shall be laid before both Houses of Parliament as soon as conveniently may be thereafter.
- Disallowance** (2) Any ordinance or any provision of any ordinance may be disallowed by the Governor in Council at any time within one year after its passage.
- R.S., c. Y-2, s. 20; R.S., c. 48(1st Supp.), s. 8.

APPENDIX II
YUKON FIRST NATIONS SELF-GOVERNMENT AGREEMENTS

YUKON FIRST NATIONS SELF-GOVERNMENT AGREEMENTS

Using the 1992 *Vuntut Gwich'in First Nation Self-Government Agreement* as an example, self-government agreements of Yukon First Nations provide for law-making authority that:

- Is exclusive in relation to the administration and internal management of First Nation affairs (section 13.1);
- Extends to First Nation citizens off settlement land and throughout the Yukon in over a dozen areas such as culture, language, provision of health care and social services, education, guardianship and adoption, marriage, dispute resolution, succession (section 13.2);
- Is of a local and private nature on settlement land, and applicable to all on the land, in relation to over twenty subject matters, including land and natural resource management, wildlife harvesting and protection, zoning and land development, regulation of businesses, intoxicants, traffic control, administration of justice, control of activities constituting a danger to public health or safety, sanitation (section 13.3);
- Enables taxation of interests in and occupants of settlement land, as well as other modes of direct taxation of First Nation citizens within settlement lands and, should agreement be reached with government, other persons (section 14).

APPENDIX III
YUKON NORTHERN AFFAIRS PROGRAM
DEVOLUTION TRANSFER AGREEMENT

YUKON NORTHERN AFFAIRS PROGRAM DEVOLUTION TRANSFER AGREEMENT

SELECTIVE SUMMARY

A. Chapter 1: General Provisions

- The parties intend to conclude outstanding land claim and self-government agreements as “a matter of the highest priority in the Yukon” (section 1.3). Non-derogation provisions related to Aboriginal and treaty rights are set out (sections 1.6 to 1.8). YFN land claim agreements and self-government agreements prevail over inconsistencies or conflicts with the DTA (section 1.36);
- Public land⁽¹⁾ and waters⁽²⁾ remain vested in the federal Crown, the latter subject to any rights granted by federal legislation (sections 1.25 and 1.26).

B. Chapter 2: Transfer of Responsibilities

- As of the date of repeal and replacement of the *Yukon Act*, the Yukon Commissioner shall have authority over Public Land and all rights in Waters, and may, among other things, use or dispose of interests in Public Land and retain the proceeds of the use or disposition, as well as exercise rights in respect of Waters, and retain the proceeds of their exercise or sale. The transfer of authority must not, however, affect any existing right or interest in Public Land or any existing right in Waters (section 2.8);
- Canada reserves the right to take administration of land from the Commissioner where it determines that such action is necessary “in the national interest” – such as for national security reasons – for the “welfare of Indians and Inuit,” or in order to conclude or implement a land claim agreement. In prescribed circumstances, Canada may also issue prohibition orders to prevent activities on land under the Commissioner’s control, or any use of water (sections 2.15, 2.17 – 2.18).

(1) Meaning any land and interest in land in Yukon that belongs to Canada, including forest resources, specified mines and minerals, beds of bodies of water.

(2) Meaning inland waters on or below land surface, excepting waters in national parks and other prescribed locations.

C. Chapter 3: Human Resources

- Six months before the effective date, the Yukon Government is to make a detailed written offer of employment to every “NAP Indeterminate Employee” (section 3.4), who will then have 60 days in which to respond (section 3.5).

D. Chapter 4: NAP Properties, Assets, Contracts and Records

- The Commissioner assumes control of listed NAP properties and assets, and listed moveable assets are to be transferred to the Yukon Government as of the effective date (sections 4.1 and 4.7). All records under DIAND’s control and necessary for the Yukon Government’s exercise of responsibilities under the DTA are loaned, copied or transferred as of the effective date (section 4.12), and remain subject to federal and territorial access to information and privacy statutes and related legislation (section 4.17).

E. Chapter 5: Forest Resources

- Canada will provide the Yukon Government with \$7.5 million over 5 years for fire suppression (section 5.1 and 7.13). Yukon is to maintain NAP’s fire suppression policies over the expense-sharing period (section 5.6), and undertakes to continue forest fire suppression of YFN settlement land (section 5.8).

F. Chapter 6: Environmental Matters

- Subject to DTA conditions, Canada is responsible for remediation of health, environmental or safety hazards created during its administration on public and YFN settlement lands (section 6.3). As of the effective date Canada is to have a NAP Waste Management Committee in place, which will manage \$2 million annual funding over a 10-year period for assessment and remediation (section 6.43).⁽³⁾

G. Chapter 8: Execution of Agreement

- Any YFN that signed the 1998 Accord may become a party to the DTA prior to the effective date by notifying Canada and Yukon, failing which the DTA is not binding on that YFN and DTA benefits do not inure to it (sections 8.3 and 8.4).

(3) According to the Inventory of sites at Appendix H of the DTA, 402 sites have been remediated, 244 sites require no remediation, 143 sites require assessment and 91 sites require remediation.