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LEGISLATIVE SUMMARY

Bill C-25:
Nunavut Planning and Project Assessment Act

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Legislative Summary of Bill C-25

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

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LEGISLATIVE SUMMARY OF BILL C-25: NUNAVUT PLANNING AND PROJECT ASSESSMENT ACT

1 BACKGROUND

Bill C-25, An Act respecting land use planning and the assessment of ecosystemic and socio-economic impacts of projects in the Nunavut Settlement Area and making consequential amendments to other Acts (short title: Nunavut Planning and Project Assessment Act) was introduced and received first reading in the House of Commons on 12 May 2010.

The bill sets out processes for land use planning and for environmental assessment of proposed development projects in Nunavut. According to a Department of Indian Affairs and Northern Development news release, it "fulfills Canada's final legislative obligation under the Nunavut Land Claims Agreement of 1993." [1]

1.1 Aboriginal Land Claims Agreements

In a landmark ruling in 1973,[2] the Supreme Court of Canada "confirmed that Aboriginal peoples' historic occupation of the land gave rise to legal rights in the land that had survived European settlement." [3] In 1982, the Constitution was amended to "recognize and affirm" the "existing aboriginal and treaty rights of the aboriginal peoples of Canada." [4] "Treaty rights" include rights under land claims agreements.[5]

Following these legal developments, the government revised its comprehensive land claims policy. By 1993, the government had adopted a Federal Policy for the Settlement of Native Claims[6] that set out the objective of the comprehensive claim process as being "to negotiate modern treaties which provide clear, certain and long-lasting definition of rights to land resources, [exchanging] undefined Aboriginal rights for a clearly defined package of rights and benefits codified in constitutionally protected settlement agreements" that "cannot be altered without the concurrence of the claimant group." [7] On 9 July 1993, the Nunavut Land Claims Agreement between Canada and the Inuit of the Nunavut Settlement Area came into force.[8]

1.2 The Nunavut Land Claims Agreement of 1993

The Nunavut Land Claims Agreement is almost 300 pages long and took years to negotiate.

> Reflecting their overwhelming majority status in the eastern Arctic, Inuit conceived the Nunavut project as a combination of land rights and self government, through division of the Northwest Territories (NWT), to establish a Nunavut territory with its own public government.
>
> The 25-year Nunavut campaign involved negotiation, litigation, political action, community consultation, appeals to the Canadian public, two NWT-wide plebiscites on the concept of dividing the NWT and on the actual dividing line, an Inuit-wide ratification vote in 1992 and parliamentary votes in 1993. Pursuant to article 4 of the Nunavut Agreement, the Government of Nunavut came into being on April 1, 1999.[9]

The objectives of the agreement are:

> - to provide for certainty and clarity of rights to ownership and use of lands and resources and of rights for Inuit to participate in decision-making concerning the use, management and conservation of land, water and resources, including the offshore,
> - to provide Inuit with wildlife harvesting rights and rights to participate in decision-making concerning wildlife harvesting,
> - to provide Inuit with financial compensation and means of participating in economic opportunities, [and]
> - to encourage self-reliance and the cultural and social well-being of Inuit.[10]

1.3 Provisions in the Nunavut Land Claims Agreement Requiring the Enactment of Bill C-25

Among many other things, the Nunavut Land Claims Agreement provides for the federal government and the Inuit to establish a joint regime for land and resource management (articles 10 to 12). Article 10 sets out the criteria for the land and resource institutions to be created, while article 11 sets out the parameters for land use planning within the Nunavut Settlement Area, and article 12 details how development impact is to be evaluated.

Under article 10, the federal government undertakes to establish the following government institutions to administer the regime:

- Surface Rights Tribunal;
- Nunavut Planning Commission (NPC);
- Nunavut Impact Review Board (NIRB); and
- Nunavut Water Board.

Article 10 further specifies that "[a]ll substantive powers, functions, objectives and duties of the [above] institutions ... shall be set out in statute." Articles 10 goes on to explicitly list the permitted and prohibited content of the anticipated statute(s).

Canada partially fulfilled its obligations by establishing the first and fourth of these institutions when Parliament enacted the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* [11] in 2002. Bill C-25 fulfills the government's obligations with regards to the other two institutions, the NPC and the NIRB. Note, however, that both of these institutions already exist. They came into being in 1997 under the Nunavut Settlement Agreement. Bill C-25 formalizes their establishment in legislation and sets out how they will continue to operate.

1.4 Genesis of Bill C-25

Work on the *Nunavut Planning and Project Assessment Act* began in 2002. To fulfill its obligation for close consultation with Inuit, the Government of Canada established the Nunavut Legislative Working Group, consisting of the Government of Canada

(represented by Indian and Northern Affairs Canada), Nunavut Tunngavik Incorporated, and the Government of Nunavut, and supported by the participation of the NPC and the NIRB.

The Working Group met regularly through to 2007 to discuss and resolve policy issues, gaps the bill should address, and resolve questions and legal interpretation of the agreement and how these solutions should be reflected in the bill. When these issues were satisfactorily advanced in 2007, drafting of the bill began with oversight and direction from the Working Group.[12]

2 DESCRIPTION AND ANALYSIS

Bill C-25 consists of some introductory provisions followed by six main parts. The following description highlights selected aspects of the bill; it does not describe every clause.

2.1 INTRODUCTORY PROVISIONS (CLAUSES 1 TO 9)

Bill C-25's short title is the *Nunavut Planning and Project Assessment Act* (clause 1). Clause 2 sets out a number of definitions. Of note are the terms "Nunavut Settlement Area" and "Outer Land Fast Ice Zone" (which definitions are set out in Nunavut Land Claims Agreement) because together they form the "designated area" to which the bill applies (clause 5(1)) and in respect of which the *Canadian Environmental Assessment Act* does not apply (clause 7).

The "Nunavut Settlement Area" comprises practically all of Nunavut. The "Outer Land Fast Ice Zone" refers to an area representing the maximum limit of land fast ice (ice anchored to the coast or the sea floor) extending beyond the Nunavut Settlement Area off the east coast of Baffin Island.

Also of note is the term "designated Inuit organization," which means either Tunngavik, another organization designated by Tunngavik, or Makivik acting jointly with Tunngavik or its designate. "Tunngavik" means Nunavut Tunngavik Incorporated, a corporation that represents the Inuit of Nunavut. "Makivik" means Makivik Corporation, which represents the Inuit of northern Quebec for the land claim regarding Nunavik in northern Quebec. Makivik is included in the planning process to coordinate issues relating to rights on the shared border between the two land claims agreements (such as fishing rights, etc.).

The bill also applies to projects carried out wholly or partly outside the designated area and to impacts outside that area when so specified in certain sections of the bill (clause 5(2)).

In the event of an inconsistency or conflict between this legislation or a regulation made under it and the Nunavut Land Claims Agreement, the agreement prevails (clause 3(1)). However this legislation and its regulations prevail in the event of an inconsistency or conflict between it and any other law or regulations (federal or territorial), other than the *Nunavut Land Claims Agreement Act* (clause 3(2)).

The federal Minister of Indian Affairs and Northern Development may delegate any of his powers, duties or functions under this legislation to the Minister of Environment for Nunavut as long as the delegation does not abrogate or derogate from any Inuit rights under the agreement (clause 9(1)). With respect to any amendment to the legislation, the federal Minister must consult closely with the territorial Minister, the designated Inuit organization, the NPC and the NIRB (clause 8).

2.2 PART 1 – COMMISSION AND BOARD (CLAUSES 10 TO 39)

Part I of the bill formally provides for the continuance of both the NPC (clause 10) and the NIRB (clause 18). This part describes their powers, duties and functions, and how members will be appointed. "Land Use Planning" is the process of deciding how lands, waters, marine areas and resources will be protected, developed or conserved.[13]

2.2.1 NUNAVUT PLANNING COMMISSION

As it exists today, the NPC has the responsibility for developing land use plans, which are approved by the federal Cabinet and the Executive Council of the Government of Nunavut. Federal and territorial government departments and agencies are responsible for the implementation of land use plans, and the NPC monitors compliance. The NPC is established under articles 10 and 11 of the Nunavut Land Claims Agreement.[14] It is a co-management organization with distinct authority and decision-making responsibilities protected under the agreement. The NPC consults with government, Inuit organizations and many other organizations, but it is the NPC's responsibility to make the final decisions on how land use plans will be developed and how the plans will manage the land in Nunavut.[15]

2.2.1.1 APPOINTMENT OF MEMBERS

The federal Minister of Indian Affairs and Northern Development (federal Minister) is responsible for appointing members and the Chairperson to the NPC (clause 11(1)). The size of the NPC is not specified, but its membership comprises at least one member appointed on the nomination of the federal Minister, at least one member appointed on the nomination of the Nunavut environment minister, and at least half the members appointed on the nomination of Tunngavik or its designate (clause 11(2)). In order to provide appropriate representation in respect of a land use plan for a specific region, Tunngavik or its designate may nominate substitutes for one or more of the members appointed upon its nomination (clause 11(3)). Similarly, in respect of certain decisions relating to an area of equal use and occupancy (as between the Inuit of northern Quebec and the Inuit of Nunavut),[16] Makivik may nominate substitutes for up to half of the Tunngavik-nominated members (clause 11(4)). At least half of the NPC members must live in the designated area, and none may be an employee of a federal or Nunavut department or agency (clauses 11(5) and (6), respectively). The NPC nominates the Chairperson, whom the federal Minister appoints after consulting the Nunavut environment minister. If the Chairperson was already a member of the NPC, the membership position must be filled by someone else (clause 12).

2.2.1.2 Powers, Duties and Functions

The NPC has a number of responsibilities. Some of its main functions include:

- monitoring projects to verify that they are carried out in conformity with the land use plan;
- reporting annually to government on the implementation of the land use plan;
- contributing to the development and review of marine policy in the Arctic;
- identifying the requirement to clean up waste sites and prioritizing the sites to be addressed; and
- exercising any powers, or performing any duties and functions that may be agreed upon by the federal and/or territorial government (clause 14).

Bill C-25 incorporates by reference principles enumerated in section 11.2.1 of the Nunavut Land Claims Agreement that the NPC must follow when exercising its powers and performing its duties and functions related to land planning (clause 15). Some of those principles set out the purposes and priorities of land use planning.

2.2.1.3 By-laws and Rules

Bill C-25 gives the NPC broad powers to make by-laws and rules respecting the conduct and management of its business (clause 17(1)). It specifically anticipates that NPC meetings may be held by teleconference (clause 16). By-laws and rules must give due regard to Inuit traditions regarding oral communications and decision making (clause 17(2)). Such by-laws and rules are not statutory instruments (clause 17(3)).

2.2.2 Nunavut Impact Review Board

As it exists today, the NIRB is an environmental assessment agency, established under articles 10 and 12 of the Nunavut Land Claims Agreement. The NIRB determines whether development projects proposed for the Nunavut Settlement Area should proceed and, if so, under what terms and conditions.[17] Using both traditional knowledge and recognized scientific methods, the NIRB assesses the biophysical and socio-economic impact of proposals and makes recommendations and decisions about which projects may proceed. The NIRB may also monitor the impacts of projects that have been reviewed and approved to proceed.[18]

2.2.2.1 Appointment of Members

The NIRB consists of nine members, including the Chairperson (clause 19(1)). Other than the Chairperson, the members are appointed in the following way. The federal Minister appoints six members, four of whom are nominated by Tunngavik or its designate. The Nunavut environment minister appoints one member, and the final member is appointed by one or more territorial ministers (clause 19(2)). Additional members may be appointed according to the same proportions for a specific purpose (clause 19(3)). As is the case for the NPC, in respect of an area of equal use and

occupancy between the Inuit of northern Quebec and the Inuit of Nunavut, Makivik-nominated members may be substituted for half of the Tunngavik-nominated members (clause 19(4)). The federal Minister appoints the Chairperson from candidates nominated by the NIRB. If there are equally qualified nominees, the federal Minister must give preference to nominees residing in the designated area (clause 20(1)). If an NIRB member is appointed Chairperson, that person's regular member position on the NIRB must be filled by someone nominated by the same person/group as the prior member (clause 20(2)).

2.2.2.2 Powers, Duties and Functions

The bill does not explicitly list the powers, duties and functions of the NIRB. Rather, it sets out primary objectives in accordance with which the NIRB must act:

- to protect and promote the existing and future well-being of residents and communities in the designated area (taking into account the well-being of Canadians outside the designated area [clause 23(2)]), and without establishing requirements relating to socio-economic benefits (clause 24); and
- to protect the ecosystemic integrity of the designated area (clause 23(1)).

The NIRB may delegate any of its powers, duties and functions to any panels it may establish. Any such panel must include a chairperson and must consist of an even number of government-nominated members and Tunngavik-nominated members (clause 27).

2.2.2.3 By-laws, Rules and Meetings

Bill C-25 gives the NIRB fairly broad powers to make by-laws and rules respecting the conduct and management of its business (clause 26(1)). However, by-laws or rules relating to the collection of information and opinions must give due regard to Inuit traditions regarding oral communications and decision-making (clause 26(2)). By-laws and rules relating to the conduct of public hearings must emphasize flexibility and informality, and must allow a designated Inuit organization full standing to make submissions on behalf of the Inuit groups they represent (clause 26(3)). By-laws and rules are not statutory instruments (clause 26(4)).

The bill anticipates that meetings will be held within the Nunavut Settlement Area, and that teleconferencing will be permitted (clauses 25(1) and (2)). NIRB quorum is set at five members (clause 25(5)). Five members may require the Chairperson to convene a board meeting (clause 25(3)). NIRB decisions are made by a majority of member votes with the Chairperson casting a vote only to break a tie (clause 25(4)).

2.2.3 General Provisions – Nunavut Planning Commission and Nunavut Impact Review Board

Bill C-25 includes a number of provisions applicable to both the NPC and NIRB.

2.2.3.1 Members and Staff

Members are appointed to the NPC or NIRB for a three-year, renewable term (clause 29). Vacancies must be filled as soon as practicable upon the nomination of a new member by the same person or group that nominated the departing member (clause 28). Members are paid fair remuneration (as determined by the federal Minister) for their service as well as travel and living expenses. They are considered government employees for the purposes of workers' compensation and compensation payable upon death resulting from a business flight (clause 31). A member may be removed for cause by the minister who appointed the member (clause 32).

The NPC and the NIRB may hire staff, advisors or experts; fix the terms of their employment or engagement; and pay their remuneration. Such persons are deemed to be government workers for the purposes of workers' compensation and compensation payable upon death resulting from a business flight (clause 33).

No member or other person employed/engaged by the NPC or NIRB may participate in a decision or act in a matter in which they have a conflict of interest. A conflict of interest does not result solely because a person is an Inuk (Inuit person). The NPC and NIRB may, subject to Treasury Board rules, issue guidelines regarding conflicts of interest (clause 34).

2.2.3.2 Status and General Powers

The NPC and NIRB are institutions of public government. They may acquire and dispose of property, enter into contracts and be involved in legal proceedings in their own names (clause 35).

2.2.3.3 Languages

The NPC and NIRB must conduct their business in English and French and, on the request of a member or of a proponent or intervenor in a public hearing or review, also in Inuktitut. Translation or interpretation services may be provided for members. Witnesses must not be disadvantaged by being heard in any of the three languages (clause 37).

2.2.3.4 By-laws and Rules

The head offices of the NPC and the NIRB must be in the Nunavut Settlement Area (clause 36). The NPC and the NIRB may make by-laws or rules after providing a 60-day review and comment period. The bill sets out specific requirements for publicizing a by-law or rule when it is proposed and when it is made (clause 38).

2.2.3.5 Financial Provisions

The NPC and the NIRB must each submit an annual budget to the federal Minister for review and approval. In addition, they must maintain books of account and financial records, and they must prepare consolidated annual financial statements that are audited by their own auditors or by the Auditor General of Canada, upon the request of the federal Minister (clause 39).

2.3 PART 2 – LAND USE PLANNING (CLAUSES 40 TO 72)

Part 2 defines how, and by whom, land use plans will be prepared, amended, reviewed and implemented in Nunavut. Any development proposed in Nunavut is examined for its potential impact and benefits.[19]

2.3.1 INTERPRETATION

"Land" includes land, water, land covered by water, whether in the onshore or offshore, and resources, including wildlife (clause 40).

2.3.2 POLICIES, PRIORITIES AND OBJECTIVES

Part 2 of Bill C-25 relates to the work of the NPC, which (along with the federal and territorial government) is responsible for planning policies, priorities and objectives for the use and management of land in the designated area (clause 41). The NPC must identify planning regions and may, after consulting with stakeholders, set specific objectives for each region, consistent with the broad objectives for the whole designated area (clauses 42 and 43). In developing broad policies and specific objectives, the NPC must be guided by certain principles set out in the Nunavut Land Claims Agreement (clause 44), including those relating to wildlife and outpost camps (clause 48(5)). It may also hold a public hearing on the matter (clause 45).

2.3.3 LAND USE PLANS

2.3.3.1 GENERAL PROVISIONS

The NPC must work to ensure that the entire designated area is subject to one or more land use plans, without overlap. Land use plans may be merged without changing them (clause 46). The purposes of a land use plan are to protect and promote the existing and future well-being of residents and communities of the designated area, taking into account the interests of all Canadians; and to protect and, if necessary, restore the environmental integrity of the land (clause 47). A land use plan must provide for the conservation and use of land, guide and direct resource use and development, and provide a strategy to implement the plan (clause 48(1)). It may set out prohibited and permitted uses for the land, and it may authorize the NPC to grant minor variances (clauses 48(2) and (3)).

2.3.3.2 DEVELOPMENT

After concluding appropriate consultations, the NPC must prepare a draft land use plan, publicize it, solicit comments from stakeholders, and then, after a reasonable period, hold a public hearing about it (clauses 49, 50 and 51(1)). The NPC must take all necessary steps to promote public participation in the hearing (clause 51(2)). In conducting the public hearing, it must give "great weight" to the Inuit traditions regarding oral communication and decision-making. It must give a designated Inuit organization full standing to make submissions at the hearing (clause 51(3)).

After the public hearing, the NPC may revise and publicize the draft land use plan before submitting it to the federal Minister, the Nunavut environment minister and the designated Inuit organization for joint acceptance or rejection (with written reasons). If the draft plan is rejected, the NPC may hold another public hearing if necessary, and it may revise the plan and re-submit it for joint acceptance or rejection (clauses 52 to 54). In preparing and revising a draft land use plan, the NPC must consult with the Nunavut Water Board, and it must give great weight to the views and wishes of municipalities in the area to which the plan will apply (clauses 56 and 57). Once a land use plan is finally accepted, the ministers must recommend its approval to the Governor in Council as well as to the Executive Council of Nunavut (clause 54(4)). The land use plan comes into effect upon their approval. The NPC must make the land use plan public. It is not a statutory instrument (clause 55).

2.3.3.3 AMENDMENT

Clauses 59 through 65 set out the process for amending a land use plan. The federal Minister, territorial Minister, designated Inuit organization or any person affected by a land use plan may propose to the NPC that the plan be amended. The NPC must consider this recommendation and conduct a public review if it determines that such a review would be appropriate.

If the NPC itself proposes an amendment to a land use plan. a public review must be conducted (clause 59). The NPC must consider the submissions made during a public review (clause 60), and must then submit the amendment to the federal Minister, the territorial Minister and the designated Inuit organization with a written report of any public review and its recommendation as to whether the amendment should be accepted or rejected in whole or in part (clause 61). As soon as practicable, the federal Minister, territorial Minister and designated Inuit organization must jointly accept or reject the NPC's recommendation in whole or in part with written reasons (clause 62). When considering submissions made during a public review, the NPC must consult with the Nunavut Water Board (clause 63), and must give great weight to the views of the municipalities in the area (clause 64). The NPC, the federal Minister, the territorial Minister and the designated Inuit organization must take into account all relevant factors as per clauses 47 and 48 (such as the well-being of residents and communities, the environmental integrity of the area, the various planning policies, priorities and objectives, and Inuit objectives) (clause 65).

2.3.3.4 PERIODIC REVIEW

The NPC may periodically review a land use plan to verify whether it continues to meet the objectives set out in clauses 47 and 48 (clause 66), and may hold a public hearing as part of its review (clause 67).

2.3.3.5 IMPLEMENTATION

Each federal or territorial minister, each department or agency and each municipality must implement any land use plan that is in effect and act in conformity with it (clause 68), and each regulatory authority must ensure that the licences and permits that it issues implement any applicable requirements of an applicable land use plan. The authority can also impose more stringent requirements (clause 69).

2.3.4 Parks and Conservation Areas

Part 2 of the bill does not apply to an existing park or a historic place administered by the Parks Canada Agency. It does apply to any initiative undertaken in order to establish a park or historic place in the future, and it does apply to conservation areas other than historic places after they are established, as well as to any initiative to establish them (clause 70).

2.3.5 Municipalities

Article 11 of the Nunavut Land Claims Agreement must guide the development of municipal land use plans (clause 71), and the NPC and municipalities must cooperate to ensure compatibility between municipal land use plans and plans established under Part 2 of the bill (clause 72).

2.4 Part 3 – Assessment of Projects to be Carried Out in the Designated Area (Clauses 73 to 183)

Part 3 sets out the process by which the NPC and the NIRB will examine, consult, and respond to development proposals, and assess how land use activities and specific projects will affect the territory of Nunavut.[20]

2.4.1 Interpretation

In this part, “responsible Minister” means either the federal or territorial Minister who has jurisdiction to authorize a project to proceed, or, if there is no such Minister, the Minister of Indian Affairs and Northern Development. “Traditional knowledge” means the accumulated body of knowledge, observations and understandings about the environment, and about the relationship of living beings with one another and with the environment, that is rooted in the traditional way of life of Inuit of the designated area (clause 73). This definition of traditional knowledge is also found in the *Yukon Environmental and Socio-economic Assessment Act*.[21]

2.4.2 Compliance

A project can be carried out only if it has been proposed to the NPC, assessed under Part 3 of the bill, and approved to proceed as set out in the bill (clause 74). A regulatory authority can only issue a licence, permit or other authorization in respect of a project if it is in compliance with the requirements to proceed (clause 75).

2.4.3 Review by the Nunavut Planning Commission

A proponent of a project in the designated area must submit a proposal to the NPC containing a description of the project, and the NPC must then publish a notice of receipt of the proposal (clause 76). The NPC must determine if the project is in conformity with the applicable land use plan or plans (clause 77).

Once the NPC determines that the project conforms to the land use plan, it must determine whether it is exempt from screening (exempt works or activities are set out in items 1 to 6 of Schedule 12-1 to the Nunavut Land Claims Agreement or in

Schedule 3 of the bill and are not otherwise prescribed). The NPC can consult the NIRB to determine if a project is exempt from screening (clause 78). If a project requires screening, the NPC sends the proposal to the NIRB (clause 79). Even if the project is exempt from screening, the NPC can send it to the NIRB if it is concerned about any cumulative ecosystemic and socio-economic impacts that could result from the project (clause 80).

If the NPC finds that a project does not conform to the applicable land use plan, it must check to see if the land use plan allows for a minor variance to be granted, in which case the NPC can grant a minor variance subject to certain requirements. If the NPC intends to grant a minor variance it must first make this intention public, and an interested person may oppose the minor variance. The NPC must take any reasons given into account in granting the minor variance (clause 81). If granting a minor variance is not an option for a proposal not in conformity with a land use plan, the NPC can request a ministerial exemption, in accordance with certain requirements (clause 82). The NPC must exercise its review functions under clauses 77 to 80 within a 45-day time limit upon receiving a project proposal (clause 83). If there is no applicable land use plan, the NPC must still verify whether a project proposal is exempt from screening within applicable time limits (clause 85).

2.4.4 Screening By Nunavut Impact Review Board

The NIRB must determine the scope of a project proposal referred to it by the NPC (clause 86). The purpose of screening a project is to determine whether the project could result in significant ecosystemic or socio-economic impacts, and thus whether it requires a review by the NIRB or by a federal environmental assessment panel (clause 88). In deciding whether a review is required, the NIRB must be guided by the following considerations: possible significant adverse ecosystemic or socio-economic impacts or significant adverse impacts on wildlife habitat or Inuit harvest activities, public concern, and technological innovations with unknown effects (clause 89). When determining the significance of a project's impacts, the NIRB must take into account a variety of factors, including the size of the geographic area likely to be affected, and the historical and cultural significance of the area (clause 90). A project with the potential to result in unacceptable adverse impacts must be modified or abandoned (clause 91).

The NIRB must submit a written report to the responsible Minister describing the project and its scope and indicating whether a review is required or whether the project should be modified or abandoned (clause 92). If the NIRB determines that a review of the project is not required, the responsible Minister has 15 days to agree or disagree (and can request more time to make the determination as necessary) (clause 93). In a case where the NIRB calls for a review, the responsible Minister can agree and send the project proposal to the proper panel for review, or reject the NIRB's determination. In both cases certain steps must be followed (clause 94).

Clause 95 sets out the ministerial responsibilities where the NIRB determines that a project should be modified or abandoned. When sending a project proposal to the NIRB for review, the responsible Minister may identify particular issues for the NIRB to consider (clause 96). When sending a project proposal to a federal environmental

assessment panel for review, the responsible Minister may identify particular issues for the panel to consider (clause 97). The ecosystemic and socio-economic impacts of the project both inside and outside of the designated area must be taken into account for the purposes of sections 88 to 97 (screening by the NIRB) (clause 98).

2.4.5 Review

2.4.5.1 Nunavut Impact Review Board

When the NIRB is called on to conduct a review, it must determine the scope of the project to be reviewed (clause 99). The NIRB must issue guidelines to the project proponent for the preparation of an impact statement on the project. These guidelines must specify what type of information must be included in the impact statement (clause 101). The NIRB must review the project in a manner appropriate to the project, including via correspondence or by holding a public hearing (clause 102). Clause 103 sets out the factors that the NIRB must take into account when conducting a review of a project, such as the purpose and need of the project, and the project's anticipated ecosystemic and socio-economic impacts. The NIRB must submit a written report to the responsible Minister assessing the project within 45 days after the end of its review of the project (clause 104).

If the NIRB determines that a project should proceed, the responsible Minister must, within 120 days, either agree with the determination and accept or reject the terms and conditions recommended in the report, or reject the determination if the project is deemed by the responsible Minister to not be in the national or regional interest (clause 105). If the NIRB determines that a project should not proceed, the responsible Minister must, within 120 days, either agree with the determination or disagree if of the opinion that the project is in the national or regional interest (clause 106). Should the responsible Minister reject the recommended terms and conditions, the NIRB has 30 days (or another agreed-upon period) to make changes and submit a revised report with the terms and conditions that it recommends (clause 107). The responsible Minister may reject or vary any terms or conditions that are related to the socio-economic impacts of the project and that are not related to the project's ecosystemic impacts (clause 108).

The responsible Minister must consult with any departments or agencies that have indicated that the project involves an interest within their jurisdiction before determining whether to proceed with a project (clause 109). The responsible Minister must notify the NIRB in writing as soon as practicable of the terms and conditions that are to apply in respect of a project (clause 110). The NIRB then must issue a project certificate stating the terms and conditions (clause 111). The NIRB can reconsider, on its own initiative or at the request of the designated Inuit organization, the terms and conditions set out in a project certificate if they are not achieving their desired purpose, if the circumstances have significantly changed, or if technological developments or new information provides a more efficient method to achieve the intended purpose of the terms and conditions (clause 112). The ecosystemic and socio-economic impacts of the project both inside and outside the designated area must be taken into account for the purposes of the NIRB's review, as described in clauses 101 to 112 (clause 113). A responsible Minister may prioritize one review over another (clause 114).

2.4.5.2 Federal Environmental Assessment Panel

If the responsible Minister sends a project proposal to the Minister of the Environment for a federal environmental assessment panel to conduct a review (as stipulated in clause 94), then the Minister of the Environment must set up a panel with the following membership, in addition to the chair: at least one quarter of the members must be appointed on the nomination of the territorial Minister, and at least one quarter of the members must be appointed on the nomination of Tunngavik. The members must be impartial (being Inuk does not place a panel member in a conflict of interest) and have special knowledge or experience related to the anticipated technical, environmental, or social impacts of the project (clause 115). The primary objectives of the federal environmental assessment panel are to protect and promote the well-being of residents and communities in the designated area, and to protect the ecosystemic integrity of the designated area (clause 116). The Minister of the Environment and the responsible Minister fix the terms of reference for the panel (clause 117).

The Minister of the Environment must, in consultation with the responsible Minister, determine the scope of the project (clause 118). The federal environmental assessment panel then reviews the project (clause 119), and issues guidelines for the preparation of a statement by the proponent on the ecosystemic and socio-economic impacts of the project (clause 120). The panel must then hold a public hearing about the project. Among other requirements, the proceedings should emphasize flexibility and informality, giving due weight to Inuit traditions regarding oral communication and decision-making (clause 121).

In conducting a review of a project, a federal environmental assessment panel must consider, for example: the purpose and need for the project; whether and how the project would protect and enhance the well-being of residents in the designated area; whether the project reflects the priorities and values of the residents of the designated area; the anticipated environmental, ecosystemic and socio-economic impacts of the project and their significance, impacts on renewable resources, and land and water interests (clause 122).

The federal environmental assessment panel must submit a written assessment of the project to the responsible Minister and the Minister of the Environment within 120 days of completing its review. The ministers must then send the panel's report to the NIRB and make it public (clause 123). Within 60 days of receiving the panel's report, the NIRB must provide the responsible Minister with its findings and conclusions regarding the ecosystemic and socio-economic impacts of the project (clause 124).

If the panel determines that a project should proceed, the responsible Minister must, within 180 days and after considering the panel's report and the NIRB's findings, either agree with the determination and accept or reject the terms and conditions, or reject it if the Minister is of the opinion that the project is not in the national or regional interest (clause 125). If the panel determines that a project should not proceed, the responsible Minister must, after considering the panel's report and the NIRB's findings, either agree with or reject that determination (clause 126). Where the responsible Minister agrees that a project should proceed but rejects the terms

and conditions, the NIRB must reconsider the terms and conditions that had been recommended by the panel and make any changes that it considers appropriate, given the Minister's reasons. The Minister then determines whether to accept, reject or vary the revised terms and conditions (clause 127). The responsible Minister may reject or vary any terms or conditions recommended by the panel or the NIRB related to the socio-economic (though not ecosystemic) impacts of the project (clause 128). The responsible Minister must consult with any departments or agencies that have indicated that the project involves an interest within their jurisdiction before determining whether to proceed with a project (clause 129).

Any decision of the responsible Minister to proceed or not proceed with a project proposal referred to a federal environmental assessment panel requires the approval of the Governor in Council (clause 130). The responsible Minister must notify the NIRB, as soon as practicable, of the terms and conditions that are to apply to a project (clause 131). The NIRB must then issue a project certificate stating the terms and conditions set out in that notice (clause 132). The federal environmental assessment panel's review of a project under clauses 120 to 132 must take into account the ecosystemic and socio-economic impacts of the project both inside and outside the designated area (clause 133).

2.4.6 Project Terms and Conditions

2.4.6.1 Compatibility

The responsible Minister must not impose terms and conditions on a project that would be inconsistent with any standard established by or under federal or territorial environmental law or socio-economic law of general application (clause 134).

2.4.6.2 Monitoring Programs

The responsible Minister may require the establishment of a monitoring program of a project's ecosystemic and socio-economic impacts (clause 135).

2.4.6.3 Implementation

Each federal or territorial minister, each department or agency and each municipality must, to the extent of their jurisdiction and authority, implement the terms and conditions set out in a project certificate (clause 136). Each regulatory authority must, to the extent of its jurisdiction and authority, incorporate a project certificate's terms and conditions into any licence or permit that it issues (clause 137). Terms and conditions set out in a project certificate implemented by a minister, department, agency or municipality prevail over any conflicting terms and conditions set out in any decision of a regulatory authority (clause 138). If there is an inconsistency between the terms and conditions implemented by a minister, department, agency or municipality and those set out in a decision of an independent regulatory agency, that agency must communicate the reasons for the inconsistency to the responsible Minister, the NIRB and the Governor in Council (clause 139). Any Inuit Impact and Benefit Agreement [22] entered into by a project proponent and the designated Inuit organization under article 26 of the Nunavut Land Claims Agreement must be consistent with the terms and conditions set out in a project certificate (clause 140).

2.4.7 General Provisions

2.4.7.1 Modifications to Project During Assessment

A proponent must notify the NPC as soon as practicable of any significant modification to a project that is under assessment under Part 3 of the bill (clause 141). If the NPC, the NIRB, a federal environmental assessment panel or a joint panel, in the course of performing its duties, determines that a proponent has made a significant modification to a project under assessment under this part, it must notify the proponent of the duty to notify the NPC as stipulated in clause 141 (clause 142).

2.4.7.2 Suspension of Assessment

A proponent may request in writing that the assessment of a project be suspended. This request can be made to any body exercising powers or performing duties or functions with respect to the project under Part 3 of the bill (clause 143). The assessment will be terminated should the proponent fail to request the resumption of the assessment within three years from the request for suspension (clause 143(3)).

A project assessment will also be terminated if a proponent fails to provide, within three years of the request, any additional information the NPC, NIRB or any federal environmental assessment panel considers necessary to carry out its review or screening or determination of the scope of a project (clause 144(3)).

A proponent can always submit a new proposal relating to the project (clauses 143(4) and 144(4)).

2.4.7.3 Modifications to Project After Assessment

If the work or activity being carried out as a project is a significant modification to the original project, it is subject to an assessment under Part 3 of the bill (clauses 145 and 146).

2.4.7.4 Projects Not Carried Out

If a project is not started within five years of the day on which it was approved under Part 3 of the bill (with certain exceptions), it cannot be carried out, though a new project proposal can be submitted by the proponent, and the project is subject to a new assessment under this part (clause 147).

2.4.7.5 Consultations

The responsible Minister must consult with the relevant regulatory authorities before making any decision (other than a time period extension) under Part 3 of the bill (clause 148).

2.4.7.6 Multiple Responsible Ministers

If there is more than one responsible Minister for a project, the ministers must jointly exercise their powers, duties and functions under Part 3 of the bill. However, if there

are a mix of federal and territorial responsible ministers, then the federal ministers must make joint decisions and are deemed the responsible Minister (clause 149).

2.4.7.7 Reasons for Decisions

Clause 150 sets out the circumstances where written reasons for decisions must be provided. This can include decisions made under various sections of the bill for reasons such as non conformity with an applicable land use plan, decisions that have the effect of expanding or restricting the scope of a project, or a determination in an original or amended report that is prepared by the NIRB, a federal environmental assessment panel or a joint panel.

2.4.8 Special Cases

2.4.8.1 National Security

The Minister of National Defence may exempt a project required for the purpose of national defence from the application of Part 3 if the Minister certifies in the decision that, due to confidentiality or urgency, an exemption is required for national security (clause 151).

2.4.8.2 Emergency Situations

Part 3 does not apply to any project carried out in response to a national emergency or state of emergency as specified in the bill (clause 152).

2.4.8.3 Community Resupply and Ship Movements

Clauses 87 through 140 (screening by the NIRB) do not apply to any project whose purpose is to provide normal community resupply or consists of individual ship movements not relating to another project (clause 153).

2.4.8.4 Exploration or Development Activities

A proponent may carry out exploration or development activities that relate to a project that is subject to review under Part 3 of the bill when certain criteria are satisfied (clause 154). The Nunavut Water Board may issue licences to use waters or deposit waste for an interim, short-term period in respect of exploration or development activities that relate directly to a project subject to review under this part (clause 155).

2.4.8.5 Transboundary Projects

If a project is to be carried out partly outside the designated area, the provisions on project proposals (clause 76) and the option for the NPC to refer a proposal to the NIRB to consider cumulative ecosystemic and socio-economic impacts (clause 80) apply for the entire area. However, other clauses, such as the NPC's determination of whether a project is in conformity with a land use plan, if it requires screening, or can be granted a minor variance, only apply to the portion of the project inside the

designated area (clause 156). Clauses 86 to 98, regarding screening by the NIRB, apply to the whole of a project located partly outside the designated area (clause 157). Clause 158 sets out the parameters for NIRB review of a project located partly outside the designated area (such as determination of the scope of the project), while clause 159 allows the NIRB to enter into an agreement with any authority having powers regarding the review of the impacts of the project to be undertaken outside the designated area, in order to coordinate their reviews. Clauses 160, 161 and 162 set out the parameters for a federal environmental assessment panel or joint panel review of a project located partly outside the designated area.

2.4.8.6 Parks and Conservation Areas

In clauses 164 to 170, “responsible authority” means either the Parks Canada Agency or other authority having management and control of a park, or the Parks Canada Agency administering a designated historic place (clause 163).

The proponent of a project to be carried out within a park or historic place must submit a project proposal to the responsible authority (clause 164), who must determine if the project is in conformity with any requirements set out by any law for which it has responsibility (clause 165). If the responsible authority determines that the project is indeed in conformity per clause 165, it must then determine whether a project is exempt from screening, and can request the NIRB’s opinion about it (clause 166). If the project is not exempt from screening, the responsible authority must send the project proposal to the NIRB so that it may conduct a screening (clause 167). If a project is exempt from screening but the responsible authority has concerns about any cumulative ecosystemic and socio-economic impacts that could result, it must send the project proposal to the NIRB for screening.

If there are no concerns about cumulative impacts, and the project is exempt from screening, the responsible authority must indicate that the assessment of the project has been completed and the proponent may carry out the project, subject to any licences, etc., that may be needed (clause 168). The responsible authority has 45 days to determine whether a project requires screening after finding that it conforms to applicable law (clause 169). Clause 170 sets out how certain provisions in the bill, such as those relating to review by the NIRB and reference to the NPC, apply to projects in parks and historic places. Clause 171 sets out what provisions apply, as modified by this clause, to a project to be carried out partly outside a park or a historic place. Per clause 172, clauses 73 to 162 of the bill apply to projects carried out in whole or in part within a conservation area (other than a historic place) located within a designated area and administered by the Parks Canada Agency.

If a department or agency (or federal or territorial minister, as stated in clause 173) proposes the establishment or abolition of a park or conservation area in whole or in part inside the designated area, it must submit a proposal to the NPC (clause 174). The NPC must determine if the initiative is in conformity with any applicable land use plan (clause 175). If it is in conformity, the NPC must send the proposal relating to the initiative to the NIRB for screening (clause 176).

If the NPC determines that the initiative is not in conformity with an applicable land use plan, it must verify whether a minor variance can be granted, and, if so, either grant or refuse to grant the variance (clause 177). If the NPC determines that the initiative is not in conformity with an applicable land use plan, the department or agency proposing the initiative may request an exemption from the federal or territorial Minister (or both, depending on jurisdiction), in which case the Minister or Ministers must determine whether to grant the exemption (clause 178).

The NPC must determine if an initiative conforms with an applicable land use plan and send it for screening (if applicable) within 45 days (clause 179), though time required for the department or agency to provide certain information does not count as part of the time period (clause 180). If there is no applicable land use plan, the NPC must send the proposal to the NIRB for screening within 10 days of receiving it (clause 181). Clause 182 sets out what provisions of the bill apply, as modified by this clause, to an initiative to establish or abolish a park or conservation area in whole or in part within a designated area (for example a reference to a project in a provision would be a reference to an initiative, and a reference to a proponent would be a reference to the department or agency proposing the initiative). In order to ensure efficiency and avoid duplication of work, the person or body exercising functions under clauses 174 to 182 can rely on any information collected or any study or analysis carried out with respect to a department or agency's initiative (clause 183).

2.5 Part 4 – Review of Projects to be Implemented Outside the Designated Area (Clauses 184 to 188)

Part 4 of the bill ensures the right of the Government of Nunavut and the Government of Canada to review and assess projects outside the territory that may nevertheless have an adverse impact on Nunavut.[23]

In this part, "project" includes an initiative to establish or abolish a park or conservation area (clause 184). The NIRB may conduct a review of a project to be carried out entirely outside of the designated area that may have significant adverse ecosystemic or socio-economic impacts in the designated area, at the request of the Government or Canada or the Government of Nunavut, or the designated Inuit organization, with the consent of both governments (clause 185). Following the review of such a project, the NIRB must submit a written report to the Government of Canada and the Government of Nunavut and to the designated Inuit organization, if the review was conducted at its request, containing its assessment of the project's impacts, its determination as to whether the project should proceed, and, if so, any recommended terms and conditions (clause 186). The Government of Canada and the Government of Nunavut must each respond to the report as it considers appropriate in the circumstances (clause 187). Clauses 185 to 187 do not limit the jurisdiction of any other authority having power related to the review of the impacts of the project (clause 188).

2.6 PART 5 – GENERAL PROVISIONS (CLAUSES 189 TO 230)

Part 5 of the bill contains general provisions for coordinating the activities of public government institutions, the use of information, monitoring, the establishment and maintenance of public registries, grandfathering, administration and enforcement, judicial matters and regulations.[24]

2.6.1 INTERPRETATION

In Part 5, where an initiative to establish or abolish a park or conservation area in whole or in part inside the designated area is under discussion, a reference to a "project" is a reference to an initiative and a reference to a "proponent" is a reference to the department or agency proposing the initiative (clause 189).

2.6.2 STANDING DURING ASSESSMENT

In the exercise of their powers and the performance of their duties under Parts 2 to 4 of the bill, the NPC, the NIRB, and any panel must accord full standing to the councils of the Fort Churchill Indian Band, the Northlands Indian Band, the Black Lake Indian Band, the Hatchet Lake Indian Band and the Fond du Lac Indian Band to make submissions regarding their respective bands' interests regarding areas within the designated area that they have traditionally used and continue to use. The NPC, the NIRB, and the panel, if any, must take those submissions into account (clause 190). In the same vein, when the NPC, the NIRB and any panel exercise their duties and functions in relation to islands and marine areas of the Nunavut Settlement Area that are traditionally used and occupied by the Inuit of Northern Quebec, they must accord full standing to Makivik Corporation to make submissions regarding the Inuit of Northern Quebec and must take those submissions into account (clause 191).

2.6.3 COORDINATION OF ACTIVITIES

Clauses 192 through 196 detail how various bodies, such as the NPC, the NIRB, the federal environmental assessment panels, the Nunavut Water Board, and governments of Canada and Nunavut, should coordinate their respective activities regarding the review of relevant projects, so as to ensure efficiency and avoid duplication.

2.6.4 INFORMATION AND DOCUMENTS

2.6.4.1 OBTAINING INFORMATION

Generally regulatory authorities, departments, agencies and municipalities possessing specialist or expert information or knowledge, including traditional knowledge, must make that information or knowledge available to the NPC, a responsible authority, the NIRB, a federal environmental assessment panel or joint panel, or the responsible Minister, as the case may be, upon request, unless a territorial law or Act of Parliament does not require such disclosure (clause 197). Such regulatory authorities, departments, agencies and municipalities are not

required to provide any information whose disclosure is restricted under any other Act of Parliament or any territorial law (clause 198).

2.6.4.2 Use of Information

Members and employees of any of the bodies mentioned above are prohibited from using any information received under this legislation for any purpose other than the performance of their duties and functions under it (clause 199).

2.6.4.3 Communication of Information and Documents

Clause 200 sets out what information and documents the NPC, the NIRB, regulatory authorities, federal environmental assessment panels, the responsible Minister, the federal and/or territorial Minister, and joint panels must provide to each other, to proponents and to other parties involved in projects.

The NPC must maintain a public registry accessible on the Internet that must include a variety of materials, including reports, draft land use plans, notices, and recommendations (clause 201). The NIRB must keep a similar registry (clause 202). The NPC and NIRB may agree to maintain a joint public registry (clause 203). Still, a member or employee of the NPC or the NIRB or a responsible authority, federal environmental assessment panel or joint panel or the responsible Minister may only disclose information, for example by placing it in the public registry, if the following conditions are met: it has otherwise been made publicly available, or it would have been made available in response to a request under the *Access to Information Act*, it is not prohibited under any other Act of Parliament or territorial law, and such a disclosure would not contravene an agreement that the information is confidential (clause 204). Persons referred to in clause 204 must take all necessary precautions to prevent the disclosure of any information that they are not permitted to disclose (clause 205). The NPC and the NIRB must take the objectives of the Nunavut Land Claims Agreement into account when exercising any discretion relating to the disclosure of information under any Act of Parliament (clause 206).

2.6.5 Rights Preserved

The approval of a land use plan, or its amendment after a project proposal has been submitted in accordance with clause 76 or has been approved, is not to be taken into account in the assessment of the project under Part 3 of the bill, but is to be taken into account for the issuing of licences by a regulatory authority (clause 207). Despite the general requirement that projects be assessed and approved (clause 74), the following projects are not subject to an assessment under Part 3: projects that had been approved under that part, were commenced, but then stopped or shut down for a period of less than five years; or the rebuilding of a work that had been closed for less than five years if it relates to a project that was approved under Part 3 and lawfully carried out (clause 208).

2.6.6 Administration and Enforcement

2.6.6.1 Designation

For the purposes of clauses 210 to 215 (verifying compliance with the bill), the federal Minister may designate any employee or class of employees to exercise powers in relation to any matter referred to in the designation (clause 209).

2.6.6.2 Powers

A designated person may enter a place in which he or she has reasonable grounds to believe that a project is being carried out or a document or thing relating to a project is located, and upon entry to the place, may exercise powers such as being able to examine anything, or remove things for copying, or prohibit or limit access to all or part of the place. The federal Minister must provide every designated person with a certificate of designation, which that person must be able to show to the occupant or person in charge of the place if requested. The owner or person in charge of the place must give all reasonably required assistance to enable the designated person to verify compliance with the provisions in the bill (clause 210). If the place is a dwelling-house, the designated person may enter it only with the occupant's consent or under the authority of a warrant issued as described in clause 211. In order to gain entry to a place other than a dwelling-house, a designated person may enter and pass through private property, and no person may object and no warrant is required, unless the property is a dwelling-house (clause 212). In executing a warrant to enter a dwelling-house, a designated person must not use force unless the use of force has been specifically authorized in the warrant and the designated person is accompanied by a peace officer (clause 213).

2.6.6.3 Orders

If a person designated to verify compliance with this legislation believes on reasonable grounds that it has been contravened, he or she may, among other things, order a person or entity to stop doing whatever is in contravention of the legislation or take any measure considered necessary to get the person to comply with it or mitigate the effects of the contravention (clause 214).

2.6.6.4 Coordination

To avoid duplication, a person designated to verify compliance with this legislation must coordinate his or her activities with those of another person designated to verify compliance under another Act of Parliament or territorial law (clause 215).

2.6.6.5 Injunction

If a court of competent jurisdiction on application of the responsible Minister determines that a person has done or is about to do anything towards the commission of an offence under the bill, the court can issue an injunction ordering the person to refrain from doing such an act or to do an act to prevent the commission of an offence (clause 216).

2.6.6.6 Prohibitions, Offences and Punishment

It is prohibited to knowingly obstruct a designated person from performing his or her duties under this legislation (clause 217), or to make a false or misleading statement or provide false or misleading information in any matter connected to the legislation to any person exercising powers and duties under it (clause 218). Depending on the type of contravention, a person can be punished on summary conviction and held liable to a fine of up to $100,000, or to imprisonment for a term of up to a year. If certain offences continue for more than one day, they can constitute a separate offence for each day that they are committed or continued. The use of due diligence to prevent the commission of an offence can be used as a defence in some cases, but not, for example, in the situation of knowingly making false statements or providing false information (clause 219).

2.6.7 Judicial Matters

2.6.7.1 Court Jurisdiction

The Nunavut Court of Justice has concurrent jurisdiction with the Federal Court for an application for judicial review for any relief against the NPC or the NIRB by way of injunction, declaration, or an order of certiorari, mandamus, quo warranto[25] or prohibition (clause 220). The NPC or the NIRB may refer a question of law or jurisdiction regarding its powers and duties under this legislation to the Nunavut Court of Justice (clause 221). The designated Inuit organization has standing to apply to a court of competent jurisdiction to determine, for example, whether a requirement of a land use plan has been properly implemented, or whether a project is being carried out in accordance with its terms and conditions. It can also apply for judicial review of any interim or final decision or order made under Part 3 of this bill (clause 222). A decision made by the NPC regarding the conformity of a project to a land use plan, other than a project granted an exemption by the Minister is not subject to appeal or review by any court, save the right to judicial review under clause 220 and the *Federal Courts Act* (clause 223).

2.6.7.2 Immunity

Clause 224 provides that members or employees of the NPC, the NIRB, federal or joint environmental assessment panels, or a person designated by the federal Minister to administer and enforce the legislation under clause 209 cannot be held liable for actions taken in good faith in the performance of their duties. Clause 225 provides similar immunity to those bodies as well as to the Crown for the good faith disclosure of a document or information under this legislation.

2.6.7.3 Time Limits

The failure of the NPC, the NIRB, a responsible authority, any federal or joint environmental assessment panel or the responsible Minister to act within a period specified in the bill does not terminate their authority or invalidate actions undertaken by them in performing their duties and functions (clause 226).

2.6.8 General Monitoring

The Government of Canada and the Government of Nunavut, with the NPC, must develop a plan to monitor, and coordinate the monitoring of, the long-term state and health of the ecosystemic and socio-economic environment of the designated area. The NPC must gather information from industry, departments, agencies and others and prepare reports on the ecosystemic and socio-economic environment of the designated area (clause 227).

2.6.9 Regulations and Orders

The Governor in Council may make regulations (following consultation as required) to carry out the purpose of this legislation, in particular to prescribe what constitutes a conflict of interest for members of the NPC, the NIRB and federal environmental assessment panels; to establish a funding program to facilitate the participation of specified classes of people or groups in reviews of projects such as by the NIRB; to determine classes of works or activities to be excluded from the definition of "project" in clause 2(1); and to determine classes of physical works and activities that are not exempt from screening (clause 228).

The federal Minister may by order amend Schedule 2 to add, delete or amend the name of a designated regulatory agency (clause 229).

Clause 230 sets out how a modification can be made to Schedule 3 of the bill when an agreement is proposed under item 7 of Schedule 12-1 to the Nunavut Land Claims Agreement,[26] which lists classes of works and activities exempt from screening.

2.7 Part 6 – Transitional Provisions, Consequential Amendments and Coming into Force

Part 6 describes the way that the bill will come into force and its impact on existing legislation.

2.7.1 Transitional Provisions

Clauses 231 through 235 contain transitional provisions clarifying, for example, that members and employees of the NPC and NIRB who occupy a position immediately before the coming into force of the bill continue in that position as if they had been appointed or employed under this legislation.

2.7.2 Consequential Amendments

Clauses 236 through 242 contain consequential amendments to other Acts, for example to the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*, to Schedule I of the *Access to Information Act*, and to the schedule to the *Privacy Act*.

2.7.3 COMING INTO FORCE

This bill will come into force on a day to be fixed by order of the Governor in Council (clause 243).

3 COMMENTARY

The Government of Canada states that, in support of its regulatory streamlining efforts through the Northern Regulatory Improvement Initiative (NRII) and the completion of land use plans in Nunavut, Bill C-25 was introduced to "provide clarity, predictability, consistency and legal certainty to the planning and assessment processes in Nunavut that will foster economic investment for the benefit of Inuit, Northerners and industry." [27]

Bill C-25 received light media attention following its introduction in the House of Commons in May 2010.

General support for the proposed legislation was expressed by Nunavut Tunngavik Incorporated, the body representing land claim holders in Nunavut:

> This is an important piece of legislation because it brings NTI and the Inuit we represent one step closer to full implementation of the NLCA [Nunavut Land Claims Agreement]. The tabling of the bill today is the result of several years of hard work by NTI, NIRB, NPC, the Government of Nunavut and the Government of Canada." [28]

Overall, the introduction of Bill C-25 was received by interested parties as a positive first step towards improving the existing regulatory system in Nunavut, although some expressed concerns.

For example, John F. Kearney, President of the NWT and Nunavut Chamber of Mines, noted the following after Bill C-25 was introduced:

> The minerals industry has long called for the enactment of this Legislation. The Chamber of Mines and other industry associations appreciated having been given the opportunity to comment on the draft Bill and have given the industry's support to the initiative that the Minister of Indian Affairs and Northern Development has taken to set out a regime for land use planning and project assessment that recognizes the importance of responsible economic development. We were pleased to see that the Bill establishes timelines for various decision-making points in the land use planning and environmental assessment processes and seeks to streamline the impact assessment process, especially for smaller projects. We will now review the provisions of the Bill in detail to assess how it will work in practice and we have established a working group to follow the progress of the Bill through Parliament. It is important that the legislation be enacted as soon as possible to encourage continued mineral exploration in Nunavut and facilitate the responsible development of Nunavut's considerable mineral endowment. [29]

In testimony before the House of Commons Standing Committee on Aboriginal Affairs and Northern Development (AANO) on 13 May 2010, Stephanie Autut, of the NIRB, said, "The draft legislation will create the one-window approach that is currently lacking," but she added that "[a]dditional resources will be required for the

boards to participate in this implementation planning and in equipping the organizations to meet new requirements and timelines." [30]

In response to this issue, on 27 May 2010, Michael Wernick, Deputy Minister of INAC, provided reassurance to AANO members that, although "implementation will add to the workload of certain agencies in Nunavut, including the Nunavut Impact Review Board, ... they will get the resources they need." [31] It was not made clear, however, what funding would be dedicated for this purpose.

Other witnesses before AANO, responding to the introduction of Bill C-25, also expressed concerns that the proposed legislation does not go far enough to address regulatory streamlining. For example, Stephen Quin, of Capstone Mining, said:

> The bigger issue is the parallelism of the federal process with the local process. In the current setting the minister has a legal liability and responsibility ... I think that is a significant area that could be simplified and eliminated, as it has been in Yukon. The federal ministers do not sign off on territorial permits in Yukon.[32]

As well, testimony to AANO provided by Lawrence Connell, of Agnico-Eagle Mines Limited, in reference to the duplication in the regulatory process that would continue to exist following passage of Bill C-25, said on 8 June 2010:

> If I take a project through the environmental assessment process and on through permitting in Nunavut, I will have gone through three distinct levels of public hearings. At the end of this five-year-long process, even the elders in the community are asking, "Why are you coming back with the same project, with another public hearing round? Why can't these be rolled up and why can't we move forward?" ... Right now it's a retreat back to what's entrenched in the land claim agreement, and we're stuck with a process that just isn't working for anybody.[33]

Witnesses from the mining industry before AANO generally expressed the opinion that the development of a land use plan for Nunavut under Bill C-25 should incorporate their views to enable efficiency in the planning process. As Brooke Clements, of Peregrine Diamonds Limited, stated:

> The legislation should promote efficient and timely advancement of projects at all phases of the exploration and mining cycle. Industry should be recognized as a valuable partner in drafting and finalizing land use plans that will be developed under the legislation.[34]

NOTES

1. Indian and Northern Affairs Canada, "Government of Canada Introduces Long Awaited Legislation to Strengthen Nunavut's Land Use Planning and Environmental Assessment," News release, Ottawa, 12 May 2010.
2. *Calder* v. *British Columbia (A.G.)*, [1973] S.C.R. 313.
3. Mary C. Hurley, *Settling Comprehensive Land Claims*, Publication no. PRB 09-16E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 21 September 2009.

4. *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11, Part II: Rights of the Aboriginal Peoples of Canada, subsection 35(1).
5. Ibid., subsection 35(3).
6. Department of Indian Affairs and Northern Development, *Federal Policy for the Settlement of Native Claims*, Ottawa, 1993.
7. Ibid.
8. *Agreement Between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in Right of Canada*, 1993 [Nunavut Land Claims Agreement].
9. Terry Fenge and Paul Quassa, "Negotiating and Implementing the Nunavut Land Claims Agreement," *Options Politiques*, July–August 2009, pp. 80–86.
10. *Nunavut Land Claims Agreement Act*, S.C. 1993, c. 29, preamble.
11. *Nunavut Waters and Nunavut Surface Rights Tribunal Act*, S.C. 2002, c. 10.
12. Indian and Northern Affairs Canada [INAC], "Backgrounder – Nunavut Planning and Project Assessment Act."
13. INAC, "Frequently Asked Questions – Nunavut Planning and Project Assessment Act."
14. INAC, "Nunavut Planning Commission."
15. Nunavut Planning Commission, "About the Commission."
16. See Nunavut Land Claims Agreement, art. 40.2.2.
17. INAC, "Nunavut Impact Review Board."
18. Nunavut Impact Review Board, "About Us."
19. INAC, "Frequently Asked Questions – Nunavut Planning and Project Assessment Act."
20. Ibid.
21. *Yukon Environmental and Socio-economic Assessment Act*, S.C. 2003, c. 7.
22. In general, these agreements serve as mechanisms for establishing formal relationships between industrial developers and local communities. Their primary purposes are to address the adverse effects of commercial activities on local communities and their environments, and to ensure that Aboriginal peoples receive benefits from the development of natural resources on their land, as designated under the relevant land claim agreement. (Source: Irene Sosa and Karyn Keenan, *Impact Benefit Agreements Between Aboriginal Communities and Mining Companies: Their Use in Canada*, Canadian Environmental Law Association, Environmental Mining Association of British Columbia and CooperAcciòn, October 2001.)
23. INAC, "Frequently Asked Questions – Nunavut Planning and Project Assessment Act."
24. Ibid.
25. These terms are defined as follows (source: Duhame.org).

    > Certiorari**:** A formal request to a court challenging a legal decision of an administrative tribunal, judicial office or organization (e.g., government) alleging that the decision has been irregular or incomplete or if there has been an error of law.
    >
    > Mandamus**:** A writ which commands an individual, organization (e.g., government), administrative tribunal or court to perform a certain action, usually to correct a prior illegal action or a failure to act in the first place.
    >
    > Quo warranto: Legal procedure taken to stop a person or organization from doing something for which it may not have the legal authority, by demanding to know by what right they exercise the controversial authority.

26. Nunavut Land Claims Agreement, Schedule 12, p. 121.

27. INAC, "Backgrounder – Nunavut Planning and Project Assessment Act."

28. Nunavut Tunngavik Incorporated, "Nunavut Tunngavik Inc. Pleased with New Legislation," News release, Iqaluit, 12 May 2010.

29. NWT & Nunavut Chamber of Mines, "Chamber of Mines to review new Nunavut planning and environmental assessment legislation," News release, Iqaluit, 13 May 2010.

30. House of Commons Standing Committee on Aboriginal Affairs and Northern Development (AANO), *Evidence*, 3rd Session, 40th Parliament, 13 May 2010, 1535 (Stephanie Autut, Executive Director, Nunavut Impact Review Board).

31. AANO, *Evidence*, 3rd Session, 40th Parliament, 27 May 2010, 1545 (Michael Wernick, Deputy Minister, Department of Indian Affairs and Northern Development).

32. AANO, *Evidence*, 3rd Session, 40th Parliament, 1 June 2010, 1700 (Stephen Quin, President, Capstone Mining Corp.).

33. AANO, *Evidence*, 3rd Session, 40th Parliament, 8 June 2010, 1605–1610 (Lawrence Connell, Corporate Director of Sustainable Development, Corporate Office, Agnico-Eagle Mines Limited).

34. AANO, *Evidence*, 2nd Session, 40th Parliament, 24 November 2009, 1300 (Brooke Clements, President, Peregrine Diamonds Ltd.).