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LEGISLATIVE SUMMARY

Bill C-47:

An Act to enact the Nunavut Planning and Project Assessment Act and the Northwest Territories Surface Rights Board Act and to make related and consequential amendments to other Acts

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Legislative Summary of Bill C-47

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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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CONTENTS

LEGISLATIVE SUMMARY OF BILL C-47: AN ACT TO ENACT THE NUNAVUT PLANNING AND PROJECT ASSESSMENT ACT AND THE NORTHWEST TERRITORIES SURFACE RIGHTS BOARD ACT AND TO MAKE RELATED AND CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

1 BACKGROUND

Bill C-47, An Act to enact the Nunavut Planning and Project Assessment Act and the Northwest Territories Surface Rights Board Act and to make related and consequential amendments to other Acts (short title: Northern Jobs and Growth Act) was introduced in the House of Commons on 6 November 2012 and referred to the House of Commons Standing Committee on Aboriginal Affairs and Northern Development on 26 November 2012.

Bill C-47 is the successor to 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), which was introduced in the House of Commons in May 2010 but died on the *Order Paper* at the first reading stage with the dissolution of Parliament on 26 March 2011. Unlike its predecessor, Bill C-47 is an omnibus bill[1] that does the following:

- creates a new Nunavut Planning and Project Assessment Act (which remains substantively unchanged from its previous iteration in Bill C-25);
- creates a new Northwest Territories Surface Rights Board Act; and
- amends the *Yukon Surface Rights Board Act*.[2]

1.1 THE NUNAVUT PLANNING AND PROJECT ASSESSMENT ACT

The Nunavut Planning and Project Assessment Act fulfills Canada's obligations under articles 10 to 12 of the 1993 Nunavut Land Claims Agreement[3] by setting out the processes for land use planning and for the environmental assessment of proposed development projects.[4]

According to Aboriginal Affairs and Northern Development Canada (AANDC), the bill will:

- confirm and clarify the roles of the Nunavut Planning Commission and the Nunavut Impact Review Board;
- establish timelines regarding the decision-making process surrounding land use plans and environmental assessments;
- define the processes surrounding the creation and implementation of land use plans as well as development projects;

- establish enforcement mechanisms;
- harmonize assessment processes for transboundary and extraterritorial projects;
- streamline the assessment processes; and
- enable the development of monitoring plans to track the social, economic and environmental impacts of projects.[5]

1.2 The Northwest Territories Surface Rights Board Act

The *Gwich'in Comprehensive Land Claim Agreement*[6] and the *Sahtu Dene and Metis Comprehensive Land Claim Agreement*[7] both required the introduction of surface rights[8] legislation. The Northwest Territories Surface Rights Board Act addresses this outstanding obligation. The introduction of surface rights legislation was also contemplated in the Tlicho Land Claims and Self-Government Agreement[9] and the *Inuvialuit Final Agreement*.[10]

The Northwest Territories Surface Rights Board Act establishes a surface rights board to resolve disputes regarding access to lands and compensation for access when a negotiated agreement cannot be reached. The Act applies in both settlement and non-settlement lands. The Act outlines the processes regarding applications to the Board, hearings and terms and conditions of access orders. The Act also provides the Board with the power to:

- grant binding access orders, which set out the terms and conditions of access;
- determine compensation in respect of access;
- terminate access orders; and
- determine and award costs.[11]

The legislation replaces the interim dispute resolution measures regarding access which are currently in place under the Gwich'in and Sahtu Dene comprehensive land claims agreements.[12]

1.3 Related Amendments – The *Yukon Surface Rights Board Act*

According to AANDC, the amendments to the *Yukon Surface Rights Board Act* are intended to provide clarity and consistency in regulatory regimes in the North. Specifically, the three proposed amendments:

- will exclude board members from personal liability for decisions made in good faith in a manner that is consistent with other resource management legislation;
- require annual audits to be conducted by the Board and submitted to the minister; and enable an independent auditor to report to the Board and the minister; and
- allow members whose term has expired to continue to serve as members in order to render a final decision on hearings in which they have participated.[13]

1.4 The Origins of Bill C-47

In addition to implementing federal obligations arising from the relevant land claims agreements, Bill C-47 also responds to the Action Plan to Improve Northern Regulatory Regimes.[14] Announced in May 2010 by the Minister of Aboriginal Affairs and Northern Development, the Action Plan was intended to address growing concerns among northerners and industry proponents relating to the complexity of northern regulatory regimes. Streamlining regulatory processes was identified as a key area of reform under the Action Plan,[15] to be effected through the introduction of legislation such as the Nunavut Planning and Project Assessment Act, surface rights legislation in the Northwest Territories, and amendments to the *Mackenzie Valley Resource Management Act* (MVRMA).[16]

Bill C-47 also responds, in part, to the 2008 report prepared for the Minister of Indian Affairs and Northern Development entitled *Road to Improvement: "The Review of Regulatory Systems Across the North"* (also known as the McCrank Report).[17] The McCrank Report examined northern regulatory regimes to determine whether the regulatory systems could be improved in order to allow resource development to occur in an orderly and responsible manner. The primary focus of the report was on the regulatory system in place in the Mackenzie Valley under the Gwich'in, Sahtu Dene and Metis, and Tlicho land claims agreements, as legislated in the MVRMA. A number of organizations were consulted over the course of the review, including Aboriginal organizations, land claims signatories, regulatory bodies, government departments (both territorial and federal), municipal governments, industry (both individual companies and associations), environmental organizations, politicians and interested individuals.

The McCrank Report proposed two options that would require amending the MVRMA in order to provide consistent and efficient land use planning and permitting. Option 1 outlined a fundamental restructuring that would necessitate the agreement of all parties to amend the comprehensive land claims agreements and the MVRMA. Option 2 outlined a less extensive restructuring which could require some amendments to the MVRMA. In addition to these two options, the report also included a number of recommendations, one of which was that the federal government should consider creating surface rights legislation that would address "the current difficulty of surface access to lands."[18]

1.5 Consultation

1.5.1 The Nunavut Planning and Project Assessment Act

Work on the Nunavut Planning and Project Assessment Act began in 2002. To fulfill its obligation of 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. The Working Group was supported by the participation of the Nunavut Planning Commission (NPC) and the Nunavut Impact Review Board (NIRB).

The Working Group met until 2007 to discuss policy issues, identify gaps, resolve questions relating to the legal interpretation of the Nunavut Land Claims Agreement and propose how these solutions should be reflected in the bill. Starting in 2007, the Working Group contributed to the drafting of the bill.[19]

1.5.2 The Northwest Territories Surface Rights Board Act

Work on the Northwest Territories Surface Rights Board Act began in 2010. Consultations were held with several Aboriginal organizations, Aboriginal governments, and Aboriginal groups with and without settled comprehensive land claims as well as those with transboundary land claims. In addition, input was sought from the Government of the Northwest Territories and various industry organizations, such as the Canadian Association of Petroleum Producers, the Canadian Energy Pipeline Association, and the Mining Association of Canada. As a result, three drafts of the Northwest Territories Surface Rights Board Act were produced, with consultation sessions held after each draft. The final version reflects the feedback received during the consultation sessions.[20]

2 DESCRIPTION AND ANALYSIS

Bill C-47 is organized in the following manner:

- clause 1, which contains the short title of the bill, the Northern Jobs and Growth Act;
- Part 1, which creates the Nunavut Planning and Project Assessment Act (clauses 2 to 10); and
- Part 2, which creates the Northwest Territories Surface Rights Board Act and amends several existing Acts (clauses 11 to 20).

2.1 Part 1 of Bill C-47: Nunavut Planning and Project Assessment Act

Part 1 of Bill C-47 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.[21]

2.1.1 Introductory Provisions of the Nunavut Planning and Project Assessment Act (Sections 1–9 of the Act)

Part 1 of Bill C-47 enacts a new statute with the short title the Nunavut Planning and Project Assessment Act (section 1).

Section 2 of the proposed Act sets out a number of definitions. One of these is “designated area,” which means the area consisting of the Nunavut Settlement Area and the Outer Land Fast Ice Zone. These last two elements are defined in the Nunavut Land Claims Agreement. Together, they form the “designated area” to which the proposed Act applies (section 5(1)) and to which the *Canadian Environmental Assessment Act, 2012*[22] does not apply (section 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 Inuit of Nunavut. “Makivik” means Makivik Corporation, which represents 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 (such as fishing rights) on the shared border between land covered by the land claims agreements for Nunavut and Nunavik.

The proposed Act 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 proposed Act (section 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 (section 3(1)). However, this legislation and its regulations prevail if they are inconsistent or in conflict with any other law or regulations (federal or territorial), other than the *Nunavut Land Claims Agreement Act*[23] (section 3(2)).

The federal Minister of Indian Affairs and Northern Development may delegate any of his or her 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 (section 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 (section 8).

2.1.2 Part 1 of the Nunavut Planning and Project Assessment Act: Nunavut Planning Commission and Nunavut Impact Review Board (Sections 10–39 of the Act)

This part of the proposed Nunavut Planning and Project Assessment Act formally provides for the continuance of both the NPC (section 10) and the NIRB (section 18). It describes their powers, duties and functions, and how members will be appointed.

2.1.2.1 Nunavut Planning Commission

As it exists today, the NPC has the responsibility for developing land use plans,[24] 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 implementing land use plans, and the NPC monitors compliance. The NPC is established under articles 10 and 11 of the Nunavut Land Claims Agreement.[25] 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 land in Nunavut will be managed under the plans.[26]

2.1.2.1.1 Appointment of Members

The federal Minister of Indian Affairs and Northern Development is responsible for appointing members and the chairperson to the NPC (section 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 (section 11(2)).

In order to provide appropriate representation for 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 (section 11(3)). Similarly, for certain decisions relating to areas of equal use and occupancy (for example, the land occupied by both Inuit of northern Quebec and Inuit of Nunavut),[27] Makivik may nominate substitutes for up to half of the Tunngavik-nominated members (section 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 (sections 11(5) and 11(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 (section 12).

2.1.2.1.2 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 (section 14).

The proposed Act 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 (section 15). Some of those principles set out the purposes and priorities of land use planning.

2.1.2.1.3 Bylaws, Rules and Meetings

The proposed Act gives the NPC broad powers to make bylaws and rules respecting the conduct and management of its business (section 17(1)). It specifically

anticipates that NPC meetings may be held by teleconference (section 16). Bylaws and rules must give due regard to Inuit traditions regarding oral communication and decision making (section 17(2)). Such bylaws and rules are not statutory instruments (section 17(3)).

2.1.2.2 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.[28] 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.[29]

2.1.2.2.1 Appointment of Members

The NIRB consists of nine members, including the chairperson (section 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 (section 19(2)). Additional members may be appointed according to the same proportions for a specific purpose (section 19(3)).

As is the case for the NPC, in respect of an area of equal use and occupancy by such groups as Inuit of northern Quebec and Inuit of Nunavut, Makivik-nominated members may be substituted for half of the Tunngavik-nominated members (section 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 (section 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 (section 20(2)).

2.1.2.2.2 Powers, Duties and Functions

The proposed Act 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 [section 23(2)]), and without establishing requirements relating to socio-economic benefits (section 24); and
- to protect the ecosystemic integrity of the designated area (section 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 (section 27).

2.1.2.2.3 Bylaws, Rules and Meetings

The Nunavut Planning and Project Assessment Act gives the NIRB fairly broad powers to make bylaws and rules respecting the conduct and management of its business (section 26(1)). However, bylaws or rules relating to the collection of information and opinions must give due regard to Inuit traditions regarding oral communication and decision-making (section 26(2)). Bylaws and rules relating to the conduct of public hearings must emphasize flexibility and informality, and must allow designated Inuit organizations full standing to make submissions on behalf of the Inuit groups they represent (section 26(3)). Bylaws and rules are not statutory instruments (section 26(4)).

The proposed Act anticipates that meetings will be held within the Nunavut Settlement Area, and that teleconferencing will be permitted (sections 25(1) and 25(2)). NIRB quorum is set at five members (section 25(5)). The chairperson must convene a board meeting within 21 days of receiving a written request for a meeting from at least five members (section 25(3)). NIRB decisions are made by a majority of member votes, with the chairperson casting a vote only to break a tie (section 25(4)).

2.1.2.3 General Provisions: Nunavut Planning Commission and Nunavut Impact Review Board

Part 1 of the Nunavut Planning and Project Assessment Act includes a number of provisions applicable to both the NPC and the NIRB.

2.1.2.3.1 Members and Staff

Members are appointed to the NPC or the NIRB for a three-year, renewable term (section 29). Vacancies must be filled as soon as practicable through the nomination of a new member by the same person or group that nominated the departing member (section 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 (section 31). A member may be removed for cause by the minister who appointed the member (section 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 (section 33).

No member or other person employed or 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 (section 34).

2.1.2.3.2 Status and General Powers

The NPC and the 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 (section 35).

2.1.2.3.3 Languages

The NPC and the 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 (section 37).

2.1.2.3.4 Bylaws and Rules

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

2.1.2.3.5 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 (section 39).

2.1.3 Part 2 of the Nunavut Planning and Project Assessment Act: Land Use Planning (Sections 40–72 of the Act)

Part 2 of the Nunavut Planning and Project Assessment Act 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.[30]

2.1.3.1 Interpretation

“Land” includes land, water, land covered by water – whether in the onshore or the offshore – and resources, including wildlife (section 40).

2.1.3.2 Policies, Priorities and Objectives

Part 2 of the Nunavut Planning and Project Assessment Act relates to the work of the NPC, which is responsible (along with the federal and territorial governments) for planning policies, priorities and objectives for the use and management of land in the designated area (section 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 (sections 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 (section 44), including those relating to wildlife and outpost camps (section 48(5)). It may also hold a public hearing on the matter (section 45).

2.1.3.3 Land Use Plans

2.1.3.3.1 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 being changed (section 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 (section 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 (section 48(1)). It may set out prohibited and permitted uses for the land, and it may authorize the NPC to grant minor variances (sections 48(2) and 48(3)).

2.1.3.3.2 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 (sections 49, 50 and 51(1)). The NPC must take all necessary steps to promote public participation in the hearing (section 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 the designated Inuit organization full standing to make submissions at the hearing (section 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 resubmit it for joint acceptance or rejection (sections 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 (sections 56 and 57). Once a land use plan is finally accepted, the federal and territorial ministers must recommend its approval to the Governor in Council as well as to the Executive Council of Nunavut (section 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 (section 55).

2.1.3.3.3 Amendment

Sections 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 (section 59). The NPC must consider the submissions made during a public review (section 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 (section 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 (section 62).

When considering submissions made during a public review, the NPC must consult with the Nunavut Water Board (section 63) and must give great weight to the views of the municipalities in the area (section 64). The NPC, the federal minister, the territorial minister and the designated Inuit organization must take into account all relevant factors as per sections 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) (section 65).

2.1.3.3.4 Periodic Review

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

2.1.3.3.5 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 (section 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 (section 69).

2.1.3.4 Parks and Conservation Areas

Part 2 of the Nunavut Planning and Project Assessment Act 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 (section 70).

2.1.3.5 Municipalities

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

2.1.4 Part 3 of the Nunavut Planning and Project Assessment Act: Assessment of Projects to Be Carried Out in the Designated Area (Sections 73–183 of the Act)

Part 3 of the Nunavut Planning and Project Assessment Act 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.[31]

2.1.4.1 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 (section 73). This definition of traditional knowledge is also found in the *Yukon Environmental and Socio-economic Assessment Act*.[32]

2.1.4.2 Compliance

A project can be carried out only if it has been proposed to the NPC, assessed under Part 3 of the Nunavut Planning and Project Assessment Act, and approved to proceed as set out in the proposed Act (section 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 (section 75).

2.1.4.3 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 (section 76). The NPC must determine if the project is in conformity with the applicable land use plan or plans (section 77).

Once the NPC determines that the project conforms to the land use plan, it must determine whether the project 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 proposed Act and are not otherwise prescribed). The NPC can consult the NIRB to determine if a project is exempt from screening (section 78). If a project requires screening, the NPC sends the proposal to the NIRB (section 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 (section 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. In granting the minor variance, the NPC must take into account any reasons given that it should not be granted (section 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 (section 82). The NPC must exercise its review functions under sections 77 to 80 within a 45-day time limit upon receiving a project proposal (section 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 (section 85).

2.1.4.4 Screening by the Nunavut Impact Review Board

The NIRB must determine the scope of a project proposal referred to it by the NPC (section 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 (section 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 (section 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 (section 90). A project with the potential to result in unacceptable adverse impacts must be modified or abandoned (section 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 (section 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, as he or she deems necessary, extend the time to make the determination and notify the proponent and the NIRB) (section 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 (section 94).

Section 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 (section 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 (section 97). 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 sections 88 to 97 (screening by the NIRB) (section 98).

2.1.4.5 Review

2.1.4.5.1 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 (section 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 (section 101).

The NIRB must review the project in a manner appropriate to the project, including through correspondence or by holding a public hearing (section 102). Section 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 (section 104).

If the NIRB determines that a project should proceed, the responsible minister must, within 150 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 (section 105). If the NIRB determines that a project should not proceed, the responsible minister must, within 150 days, either agree with the determination or disagree if of the opinion that the project is in the national or regional interest (section 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 (section 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 (section 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 (section 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 (section 110). The NIRB then must issue a project certificate stating the terms and conditions (section 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 (section 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 sections 101 to 112 (section 113). A responsible minister may prioritize one review over another (section 114).

2.1.4.5.2 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 section 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 (section 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 (section 116). The Minister of the Environment and the responsible minister fix the terms of reference for the panel (section 117).

The Minister of the Environment must, in consultation with the responsible minister, determine the scope of the project (section 118). The federal environmental assessment panel then reviews the project (section 119) and issues guidelines for the preparation of a statement by the proponent on the ecosystemic and socio-economic impacts of the project (section 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 (section 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 (section 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 (section 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 (section 124).

If the panel determines that a project should proceed, the responsible minister must, within 240 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 (section 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 (section 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 (section 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 (section 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 (section 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 (section 130). The responsible minister must notify the NIRB, as soon as practicable, of the terms and conditions that are to apply to a project (section 131). The NIRB must then issue a project certificate stating the terms and conditions set out in that notice (section 132). The federal environmental assessment panel's review of a project under sections 120 to 132 must take into account the ecosystemic and socio-economic impacts of the project both inside and outside the designated area (section 133).

2.1.4.6 Project Terms and Conditions

2.1.4.6.1 Compatibility

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

2.1.4.6.2 Monitoring Programs

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

2.1.4.6.3 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 (section 136). In addition, 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 (section 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 (section 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 (section 139). Any Inuit Impact and Benefit Agreement[33] 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 (section 140).

2.1.4.7 General Provisions

2.1.4.7.1 Modifications to a 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 Nunavut Planning and Project Assessment Act (section 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 section 141 (section 142).

2.1.4.7.2 Requests During Assessment

A proponent may request in writing that the assessment of a project be suspended. This request can be made to anybody exercising powers or performing duties or functions with respect to the project under Part 3 of the Nunavut Planning and Project Assessment Act. The assessment will be terminated should the proponent fail to request the resumption of the assessment within three years from the request for suspension (section 143(4)).

A project assessment will also be terminated if a proponent fails to provide, within three years of the request, any additional information the NPC, the NIRB or any federal environmental assessment panel considers necessary to carry out its review or screening or determination of the scope of a project (section 144(4)).

A proponent can always submit a new proposal relating to the project (sections 143(7) and 144(4)).

2.1.4.7.3 Modifications to a 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 Nunavut Planning and Project Assessment Act (sections 145 and 146).

2.1.4.7.4 Projects Not Carried Out

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

2.1.4.7.5 Consultations

The responsible minister must consult with the relevant regulatory authorities with respect to the establishment of terms and conditions under Part 3 of the Nunavut Planning and Project Assessment Act (section 148).

2.1.4.7.6 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. However, if there are both federal and territorial responsible ministers, then the federal ministers must make joint decisions and are deemed the responsible minister (section 149).

2.1.4.7.7 Reasons for Decisions

Section 150 sets out the circumstances where written reasons for decisions must be provided. This can include decisions made under various sections of the proposed Act to address, for example, nonconformity 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.

2.1.4.8 Special Cases

2.1.4.8.1 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 (section 151).

2.1.4.8.2 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 proposed Act (section 152).

2.1.4.8.3 Community Resupply and Ship Movements

Sections 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 (section 153).

2.1.4.8.4 Exploration or Development Activities

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

2.1.4.8.5 Transboundary Projects

The provisions on project proposals (section 76) and the option for the NPC to refer a proposal to the NIRB to consider cumulative ecosystemic and socio-economic impacts (section 80) apply for the entire area if a project is to be carried out partly outside the designated area. However, other sections, such as those relating to the NPC's determination of whether a project is in conformity with a land use plan, if it requires screening, or if it can be granted a minor variance, only apply to the portion of the project inside the designated area (section 156).

Sections 86 to 98, regarding screening by the NIRB, apply to the whole of a project located partly outside the designated area (section 157). Section 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 section 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. Sections 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.

2.1.4.8.6 Parks and Conservation Areas

In sections 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 (section 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 (section 164), who must determine if the project is in conformity with any requirements set out by any law for which it has responsibility (section 165). If the responsible authority determines that the project is indeed in conformity per section 165, it must then determine whether a project is exempt from screening, and can request the NIRB's opinion about it (section 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 (section 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, the authority 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 (section 168). The responsible authority has 45 days to determine whether a project requires screening after finding that it conforms to applicable law (section 169).

Section 170 sets out how certain provisions in the proposed Act, such as those relating to review by the NIRB and reference to the NPC, apply to projects in parks and historic places. Section 171 sets out what provisions apply, as modified by this section, to a project to be carried out partly outside a park or a historic place. Per section 172, sections 73 to 162 of the proposed Act 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 section 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 (section 174). The NPC must determine if the initiative is in conformity with any applicable land use plan (section 175). If it is in conformity, the NPC must send the proposal relating to the initiative to the NIRB for screening (section 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 (section 177). In addition, 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 (section 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 (section 179), though time required for the department or agency to provide certain information does not count as part of the time period (section 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 (section 181). Section 182 modifies how certain provisions in the proposed Act apply to an initiative to establish or abolish a park or conservation area in whole or in part within a designated area. In order to ensure efficiency and avoid duplication of work, the person or body exercising functions under sections 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 (section 183).

2.1.5 Part 4 of the Nunavut Planning and Project Assessment Act: Review of Projects to Be Implemented Outside the Designated Area (Sections 184–188 of the Act)

Part 4 of the Nunavut Planning and Project Assessment Act ensures the right of the Government of Nunavut and the Government of Canada to review and assess projects outside the territory that may have an adverse impact on Nunavut.[34]

In this part, “project” includes an initiative to establish or abolish a park or conservation area (section 184). At the request of the Government of Canada or the Government of Nunavut, or the designated Inuit organization, with the consent of both governments, the NIRB may conduct a review of a project to be carried out entirely outside the designated area that may have significant adverse ecosystemic or socio-economic impacts in the designated area (section 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 (section 186). The Government of Canada and the Government of Nunavut must each respond to the report as it considers appropriate in the circumstances (section 187). Sections 185 to 187 do not limit the jurisdiction of any other authority having power related to the review of the impacts of the project (section 188).

2.1.6 Part 5 of the Nunavut Planning and Project Assessment Act: General Provisions (Sections 189–230 of the Act)

Part 5 of the Nunavut Planning and Project Assessment Act 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.[35]

2.1.6.1 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 (section 189).

2.1.6.2 Standing During Assessment

In the exercise of their powers and the performance of their duties under Parts 2 to 4 of the Nunavut Planning and Project Assessment Act, 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 for 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 (section 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 Inuit of northern Quebec, they must accord full standing to Makivik Corporation to make submissions regarding Inuit of northern Quebec and must take those submissions into account (section 191).

2.1.6.3 Coordination of Activities

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

2.1.6.4 Information and Documents

2.1.6.4.1 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 (section 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 (section 198).

2.1.6.4.2 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 the legislation (section 199).

2.1.6.4.3 Communication of Information and Documents

Section 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 (section 201). The NIRB must keep a similar registry (section 202). The NPC and the NIRB may agree to maintain a joint public registry (section 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 (by placing it in the public registry, for example) 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*;[36]
- 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 (section 204).

Persons referred to in section 204 must take all necessary precautions to prevent the disclosure of any information that they are not permitted to disclose (section 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 (section 206).

2.1.6.5 Rights Preserved

The approval of a land use plan, or its amendment after a project proposal has been submitted in accordance with section 76 or has been approved, is not to be taken into account in the assessment of the project under Part 3 of the Nunavut Planning and Project Assessment Act, but it is to be taken into account for the issuing of licences by a regulatory authority (section 207). Despite the general requirement that projects be assessed and approved (section 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 (section 208).

2.1.6.6 Administration and Enforcement

2.1.6.6.1 Designation

The federal minister may designate any employee or class of employees to exercise powers relating to the verification of compliance with the proposed Act or with orders made under section 214 (section 209).

2.1.6.6.2 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 proposed Act (section 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 section 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 (section 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 (section 213).

2.1.6.6.3 Orders

If a person designated to verify compliance or prevent non-compliance with this legislation believes on reasonable grounds that compliance 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 (section 214).

2.1.6.6.4 Coordination

To avoid duplication, a person designated to verify compliance or prevent non-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 (section 215).

2.1.6.6.5 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 proposed Act, 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 (section 216).

2.1.6.6.6 Prohibitions, Offences and Punishment

It is prohibited to knowingly obstruct a designated person from performing his or her duties under this legislation (section 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 (section 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 (section 219).

2.1.6.7 Judicial Matters

2.1.6.7.1 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[37] or prohibition (section 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 (section 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 the Nunavut Planning and Project Assessment Act (section 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 section 220 and the *Federal Courts Act* (section 223).

2.1.6.7.2 Immunity

Section 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 section 209 cannot be held liable for actions taken in good faith in the performance of their duties. Section 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.

2.1.6.7.3 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 proposed Act does not terminate their authority or invalidate actions undertaken by them in performing their duties and functions (section 226).

2.1.6.8 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 (section 227).

2.1.6.9 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 section 2(1); and
- to determine classes of physical works and activities that are not exempt from screening (section 228).

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

Section 230 sets out how a modification can be made to Schedule 3 of the Nunavut Planning and Project Assessment Act when an agreement is proposed under item 7 of Schedule 12-1 to the Nunavut Land Claims Agreement,[38] which lists classes of works and activities exempt from screening.

2.1.7 Part 6 of the Nunavut Planning and Project Assessment Act: Transitional Provisions, Consequential Amendments and Coming into Force (Sections 231–235 of the Act and Clauses 3–10 of Bill C-47)

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

2.1.7.1 Transitional Provisions

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

2.1.7.2 Consequential Amendments

Clauses 3 through 9 contain consequential amendments to other Acts, such as 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*.[39]

2.1.7.3 Coming into Force

This part of the bill will come into force on a day to be fixed by order of the Governor in Council (clause 10).

2.2 Part 2 of Bill C-47: The Northwest Territories Surface Rights Board Act

Part 2 of Bill C-47 establishes the Northwest Territories Surface Rights Board Act (clause 11). The Act consists of 101 sections, preceded by a preamble.

2.2.1 Preamble

The substantive sections in Part 2 are preceded by a three-paragraph preamble. Statutory preambles are often employed as a way of establishing a context and rationale for legislation and to explain the intention of the legislator. Preambles are considered interpretive rather than substantive.

In this case, the preamble sets out the factual context for this part of the bill, noting that it fulfills Canada's obligations under certain land claims agreements to establish a surface rights board as an institution of public government intended to resolve

disputes over the terms and conditions of access – and compensation to be paid for that access – to Gwich'in, Sahtu and Tlicho lands and to the waters overlying those lands, as well as to Inuvialuit lands.

2.2.2 General Provisions (Sections 1–8 of the Northwest Territories Surface Rights Board Act)

Section 2(1) sets out a number of definitions used in the proposed Act, including: "Agreement," "designated lands," "access order," "entity," "occupant," "minerals," "oil," "non-designated lands," and "regulatory authority." Notably, "Agreement" is defined as the Gwich'in Agreement, the Inuvialuit Agreement, the Sahtu Agreement or the Tlicho Agreement.

Section 3 provides that in the event of an inconsistency or conflict between the proposed legislation and an Agreement, the latter – which is a constitutionally protected document – prevails to the extent of the inconsistency or conflict. Section 4 provides that the proposed legislation applies to the Northwest Territories.

Section 6 provides that the federal Minister of Indian Affairs and Northern Development may delegate any of his or her powers or functions under the proposed Act to the territorial minister designated by the Commissioner of the Northwest Territories.

Section 7 provides that the minister must review the Act when new agreements are entered into with any Aboriginal group, in order to determine whether the Act should be amended.

Section 8(1) stipulates that an individual or entity is required to seek consent from the applicable designated organization or the Tlicho Government in order to enter, cross or remain on Gwich'in, Sahtu, Tlicho or Inuvialuit lands, unless otherwise provided in an Agreement or under the proposed Act. Further, any order by the Northwest Territories Surface Rights Board does not exempt individuals or entities from any obligations, restrictions or prohibitions set out in an Agreement or federal or territorial laws (section 8(3)).

2.2.3 Establishment and Organization of the Board (Sections 9–32 of the Northwest Territories Surface Rights Board Act)

Section 9 formally provides for the establishment of the Northwest Territories Surface Rights Board and stipulates that it shall consist of five to nine members, including the chairperson, all of whom are to be appointed by the minister. Under the proposed Act, the minister must also appoint five alternate members who may be called upon to perform the functions of a board member in the event of absence, incapacitation or vacancy (section 12). Members and alternate members are appointed for a term of five years (section 15) and must be residents of the Northwest Territories as identified in Sahtu, Tlicho and Gwich'in land claims agreements (section 13).

Section 10 stipulates that the purpose of the Board is to resolve disputes relating to access to Gwich'in, Sahtu, Tlicho or Inuvialuit lands as well as non-designated land.

The Board may issue orders setting out the terms and conditions of access, and appropriate compensation to be paid in respect of that access. The Board's head office is to be located in Yellowknife, unless otherwise provided for by the Governor in Council (section 23).

Section 26 provides that the Board is an institution of public government but is not an agent of the Crown, and section 27 provides that the Board can acquire or hold real property, enter into contracts and may bring legal proceedings, or have legal proceedings taken against it.

Section 25 establishes the bylaw-making authority of the Board, in particular with respect to its internal administrative procedures as well as the powers and duties of the chairperson. Under the Northwest Territories Surface Rights Board Act, the Board is required to conduct its business in both official languages (section 30).

2.2.3.1 Financial Provisions

The Board is required to submit an annual budget to the federal minister for review and approval. In addition, the Board is required to prepare annual consolidated financial statements that are to be audited by the Board's auditor (section 31). Further, the Board is required to submit to the minister an annual report on its operations and activities within three months of the end of the fiscal year (section 32).

2.2.4 Applications and Hearings (Sections 33–47 of the Northwest Territories Surface Rights Board Act)

2.2.4.1 Jurisdiction of the Board

The Board may only consider an application where the applicant has made an attempt to negotiate in good faith and the negotiation has not resulted in a resolution within a reasonable period (section 33). However, the Board cannot make an order in respect of a matter that has been previously resolved, either by mediation or negotiation, unless otherwise agreed to by the parties or the Board determines that there has been a material change in circumstances or facts (section 34). The Board is restricted from considering matters not raised by the parties (section 35).

2.2.4.2 Hearings

To the greatest extent possible, and as permitted by the principles of fairness, Board hearings must be conducted in an expeditious and informal manner. The Board is not bound by legal or technical rules of evidence, but must take into account all material it considers relevant, including Aboriginal traditional knowledge (section 36). In the conduct of its hearings, the Board has all the powers, rights and privileges of a superior court (section 37) and can, at any time, refer any questions of law or jurisdiction to the Supreme Court of the Northwest Territories (section 38).

The parties to a hearing for various types of access orders are stipulated in section 39, while the locations for hearings are identified in section 41.

2.2.4.3 Panels

Section 42 stipulates that all hearings will be held by a three-member panel or by a one-member panel if both parties consent. Section 47 establishes that panels have all the powers and functions of the Board.

In respect of hearings that relate specifically to Gwich'in, Sahtu, Tlicho or Inuvialuit lands, section 44 stipulates that at least one member of the panel must meet an additional specific residency requirement – notably, that the individual be a resident of the settlement area, as provided for in the respective individual land claims agreements.

2.2.5 Orders in Relation to Designated Land and Tlicho Lands (Sections 48–67 of the Northwest Territories Surface Rights Board Act)

2.2.5.1 Access Orders

2.2.5.1.1 Required Documents for Access Orders

An application for an access order must be accompanied by copies of any agreements concluded between the parties regarding the terms and conditions of access or compensation to be paid in respect of access.

2.2.5.1.2 Obligation of the Board to Make Access Orders

Section 49 establishes that the Board must, upon application, make an order setting out the terms and conditions of access relating to Gwich'in lands or Sahtu lands, as well as compensation to be paid in respect of that access, if an individual or entity has been unable to obtain the consent of the appropriate Gwich'in or Sahtu organization to exercise a right to explore, develop or produce minerals on or under those lands.

Similarly, section 50 provides that the Board must, upon application, make an order setting out the terms and conditions of access for individuals or entities seeking to cross Gwich'in, Sahtu or Tlicho lands in order to reach adjacent lands or waters for a commercial purpose if such access is reasonably required and the party has been unable to obtain consent from the appropriate organization.

Section 50(3) stipulates that the terms and conditions of access orders across Gwich'in, Sahtu or Tlicho lands must ensure that access is by a suitable route and minimizes harmful effects. Section 50(2) identifies circumstances when consent is not required, including, for example, where access is casual and insignificant and prior notice has been given to the appropriate organization.

Section 51 relates to Inuvialuit lands and provides that the Board must, upon application, make an order setting out the terms and conditions of access for individuals or entities seeking to cross Inuvialuit lands in order to reach non-Inuvialuit lands if that access is significant but temporary and the party has been unable to conclude a right of way agreement with the Inuvialuit Regional Corporation. As with

access orders for Gwich'in, Sahtu or Tlicho lands, access must be by a route that is least harmful to the Inuvialuit and suitable to the individual or entity seeking to cross Inuvialuit lands.

In addition, access orders must provide for mitigation of damage, loss of use and restoration of affected Inuvialuit lands (section 51(3)). The individual or entity exercising the right of access is responsible for any damage caused to Inuvialuit lands in the exercise of the right and may be removed from those lands for failure to respect the terms and conditions of the order (section 51(4)).

Section 52 refers to travel by water and stipulates that the Board is required, on application, to make access orders for individuals or entities seeking to access navigable waterways, waterfront lands and portages in the course of conducting a commercial activity. With some exceptions, the right of access can only be exercised with the consent of the appropriate organization.

Sections 53 and 54 provide that the Board must, upon application, make an order setting out the terms and conditions of access for individuals or entities seeking to exercise an existing right on Gwich'in, Sahtu or Tlicho lands.

2.2.5.1.3 Terms and Conditions, and Compensation

The Board may determine the terms and conditions of an access order, including where, when, how and by whom access may be exercised, and the terms and conditions relating to the verification of compliance (section 56). The Board is required to include in its order the terms and conditions of access as well as any compensation in respect of access agreed to by the parties to a hearing (sections 55 and 58).

Section 59 stipulates that when making a determination regarding compensation, the Board must consider all relevant factors, including:

- market value of the land;
- loss of use;
- effects on wildlife harvesting;
- cultural attachment to the land;
- damage, nuisance or inconvenience; and
- the adverse effects on other lands.

The Board is also authorized to determine the manner of compensation payment (section 60).

Interim access orders may be issued by the Board pending determination of compensation (section 62).

2.2.6 Orders in Relation to Non-designated Land (Sections 68–81 of the Northwest Territories Surface Rights Board Act)

2.2.6.1 Access Orders

2.2.6.1.1 Obligation of the Board to Make Access Orders and Set Terms and Conditions

Where there has been a failure to obtain the consent of the occupant, section 69 requires the Board to make an order setting out the terms and conditions of access, as well as the compensation to be paid in respect of that access, to non-designated land by individuals or entities in possession of mineral rights.

The Board is required to include in its access order any terms and conditions of access agreed to by the parties (section 70). In addition to what is required by the proposed Act or agreed to by the parties, the Board may include the following terms and conditions in an access order: where, when, how and by whom access may be exercised and the terms and conditions relating to the verification of compliance (section 71). However, the Board is prohibited from requiring the posting of security as a condition of access (section 71(2)). The terms and conditions imposed by a regulatory authority prevail over those in an access order (section 72).

2.2.6.1.2 Compensation

Where there is agreement between the parties in respect of compensation and the manner of payment, the Board is required to include the terms of the agreement in its access order (section 73). Where there is no such agreement, the Board may determine the amount of compensation to be paid (section 74(1)). In addition, section 74 stipulates that when setting the amount of compensation, the Board is required to consider all relevant factors, including, as in section 59:

- market value of the land;
- loss of use;
- effects on wildlife harvesting;
- cultural attachment to the land;
- damage, nuisance or inconvenience; and
- the adverse effects on other lands.

Section 75 establishes that the Board may determine the manner of payment where no such agreement has been concluded by the parties.

2.2.6.1.3 Payment Before Exercise of a Right of Access, Interim Access Orders and Other Orders

Section 76 provides that a right of access may be exercised only after payment has been made to the occupant in accordance with the provisions of the proposed Act.

Section 77 establishes that the Board may issue an interim access order to allow the holder of a right to access land pending a final determination of compensation.

Section 79 requires the Board to make an order for additional compensation as a result of damage to non-designated land unforeseen at the time of the original order and caused as a result of access to that land. As with other similar provisions in the proposed Act, section 80 requires the Board to consider all relevant factors when determining the amount of compensation for unforeseen damage.

2.2.7 General (Sections 82–99 of the Northwest Territories Surface Rights Board Act)

2.2.7.1 Orders and Decisions of the Board

Section 82 establishes that the Board may make an order awarding costs to the parties. Decisions made by the Board in this respect are final and binding and not subject to appeal or review by any court (section 84). The Board must provide, in writing, reasons for its decision to the parties (section 83).

2.2.7.2 Review of Access Orders

Upon application by any party, section 89 requires the Board to review and amend access orders if there is a material change in the facts or circumstances.

Section 90 requires that access orders be reviewed in their entirety by the Board every five years, unless the parties waive the requirement. Upon completion of the review, the Board is required to make any amendments it considers appropriate to an order if there is a material change in the facts or circumstances. This section implements relevant provisions of the Gwich'in, Sahtu and Tlicho agreements requiring periodic reviews of access orders.

2.2.7.3 Termination of Access Orders

Section 91 establishes that upon application by a party to a hearing, the Board is required to hold hearings with respect to the termination of an order where consent is no longer required or access is no longer being used for its original, authorized purpose. This section implements relevant provisions of the Gwich'in, Sahtu and Tlicho agreements requiring the termination of an access order where the lands are no longer being used for the authorized purpose.

Section 92 provides that if the parties reach an agreement on the terms and conditions of access, as well as compensation in respect of the access, after an order has been issued, the Board must, on application, terminate the order.

2.2.7.4 Jurisdiction of the Supreme Court of the Northwest Territories

Section 93 stipulates that the Supreme Court of the Northwest Territories has exclusive original jurisdiction to hear and to determine applications for judicial review

in respect of an order of the Board. This section implements relevant provisions of the Gwich'in, Sahtu and Tlicho agreements setting out the jurisdiction of the Supreme Court of the Northwest Territories.

2.2.7.5 Rules of the Board

Section 94 requires the Board to make rules with regard to the conduct of negotiations, practices and procedures relating to applications, reviews and hearings and the disclosure of information and knowledge. In addition to these mandatory rules, section 95 allows the Board to make rules respecting the awarding of costs to the parties.

Section 97 provides that the Board must give notice of proposed rules and invite representations in writing from interested parties. After a rule is made, the Board must publish the rule on its website, in a newspaper, and in the *Canada Gazette* (which must also indicate the newspaper the Board selected to publish the rule), and must provide copies of the rules to federal and territorial ministers, designated organizations, the Tlicho governments and to any individual or entity requesting a copy.

2.2.7.6 Public Registry

Section 98 requires the Board to maintain a public registry on its website and at its office for public inspection. The registry is to include the following: a list of members and alternate members, Board bylaws, an annual report, rules of the Board, applications for orders or reviews, and the Board's decisions and reasons.

2.2.7.7 Regulations

Section 99 authorizes the Governor in Council to make regulations for the proper functioning of the Board.

2.2.8 Transitional Provisions (Sections 100–101 of the Northwest Territories Surface Rights Board Act)

Importantly, sections 100 and 101 provide that any disputes which have already been referred to arbitration under the Gwich'in, Sahtu, Tlicho or Inuvialuit land claims agreements will continue through the arbitration process set out in the relevant agreement.

2.3 Part 2 of Bill C-47: Related Amendments to the *Yukon Surface Rights Board Act* (Clauses 12–16 of Bill C-47)

Part 2 of Bill C-47 also amends the *Yukon Surface Rights Board Act* (clauses 12 to 16).

2.3.1 Acting After Membership on the Board Terminates

Clause 12 allows members of the Yukon Surface Rights Board whose membership terminates because they are no longer residents under section 10 of the Act to continue working on any matters before them until they have rendered a decision. Clause 13 has the same function as clause 12, but applies to members whose term expires.

2.3.2 Acting in Good Faith

Clause 14 exempts Board members from liability for acts or omissions made during the performance of their duties, provided that they acted in good faith.

2.3.3 Bylaws Relating to Acting After Termination of Appointment

Clause 15 allows the Board to create bylaws on board members' ability to continue performing certain functions after their membership on the Board terminates.

2.3.4 Audit

Clause 16 requires that the Board's auditor perform an annual audit and submit a report to the Board and the minister.

2.4 Consequential Amendments (Clauses 17–19 of Bill C-47)

The bill makes related and consequential amendments to the *Access to Information Act*, the *Canada Oil and Gas Operations Act,* [40] and the *Privacy Act*. These amendments serve, for the most part, to add a reference to the Northwest Territories Surface Rights Board to relevant legislation.

2.5 Coming into Force (Clause 20 of Bill C-47)

Most of the bill will come into force when it receives Royal Assent. The following provisions will come into force 24 months after the bill receives Royal Assent, or at an earlier date fixed by the Governor in Council.

- Several sections of the Northwest Territories Surface Rights Board Act (Part 2 of the bill), including:
  - section 8, which prohibits access to lands without consent;
  - section 33, which grants the Board jurisdiction to hear applications only where the applicant has made an attempt to negotiate in good faith;
  - section 93, which grants exclusive original jurisdiction to the Supreme Court of the Northwest Territories to hear applications for review of the Board's decisions; and
- clause 18, which amends the *Canada Oil and Gas Operations Act*.

3 COMMENTARY

Bill C-47 received light media attention following its introduction in the House of Commons on 6 November 2012. Commentary has generally been positive, with interested parties indicating that the proposed legislation represents an important step towards improving the existing regulatory regimes in the North.

In its news release, the Government of Nunavut expressed its support for the proposed legislation, noting that the bill would "enhance the regulatory process in Nunavut." It described the bill as an "important milestone in establishing an effective and streamlined regime for Inuit and government to manage resource development."[41]

The Government of the Northwest Territories indicated that it would support federal legislation to establish a surface rights board in the territory.[42] In its 2009 response to the McCrank Report, the territorial government stated that "surface rights legislation would complete a missing piece of the integrated system envisioned by the settled claims" and would "provide greater clarity for land users and in particular, for industrial proponents."[43]

The Mining Association of Canada also welcomed the introduction of Bill C-47. In the association's news release, President and CEO Pierre Gratton indicated that the bill would "enhance the territory's economic competitiveness for mineral investment" by providing "clarity and certainty around the regulatory framework."[44]

In a news release, the NWT and Nunavut Chamber of Mines echoed the view expressed by the Mining Association of Canada, noting in particular that by strengthening the regulatory framework in the North, Bill C-47 "will provide certainty to the investment climate," thereby enhancing investor confidence.[45] The news release also suggested that Bill C-47 would help to address legislative gaps in the regulatory framework prior to the devolution to the territories of federal powers over lands and resources.

At the time of writing, Aboriginal signatories to the relevant land claims agreements (i.e., Tlicho, Sahtu, Gwich'in and Inuvialuit) had not yet released statements commenting on the proposed legislation. However, general support for Bill C-47's predecessor was expressed by Nunavut Tunngavik Incorporated, the body representing land claims holders in Nunavut, who indicated that it was an important piece of legislation fulfilling outstanding federal obligations under the Nunavut Land Claims Agreement.[46]

NOTES

1. For more information regarding omnibus bills, see Michel Bédard, *Omnibus Bills: Frequently Asked Questions*, Publication no. 2012-79-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 1 October 2012.
2. *Yukon Surface Rights Board Act*, S.C. 1994, c. 43.

3. *Agreement Between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in Right of Canada* [Nunavut Land Claims Agreement], 1993.
4. Aboriginal Affairs and Northern Development Canada [AANDC], "Backgrounder – Nunavut Planning and Project Assessment Act."
5. Ibid.
6. Indian and Northern Affairs Canada [INAC], *Gwich'in Comprehensive Land Claim Agreement*, Ottawa, 1992, art. 26.
7. INAC, *Sahtu Dene and Metis Comprehensive Land Claim Agreement*, 1993, art. 27.
8. The term "surface rights" refers to the rights to land granted under Acts of Parliament, such as the *Canada Petroleum Resources Act*, mining regulations under the *Territorial Lands Act*, or existing rights under land claim agreements.
9. AANDC, *Land Claims and Self-Government Agreement Among the Tlicho and the Government of the Northwest Territories and the Government of Canada*, 2003, art. 6.6.
10. *Inuvialuit Final Agreement*, 1987, art. 7.21.
11. AANDC, "Backgrounder – Northwest Territories Surface Rights Board Act."
12. INAC (1993), art. 27.3; and INAC (1992), art. 26.3.1.
13. AANDC, "Backgrounder – Amendments to the *Yukon Surface Rights Board Act*."
14. AANDC, "Harper Government Invests in Northern Jobs and Economic Growth," News release, 6 November 2012.
15. AANDC, "Backgrounder – Action Plan To Improve Northern Regulatory Regimes."
16. *Mackenzie Valley Resource Management Act*, S.C. 1998, c. 25.
17. Neil McCrank, *Road to Improvement: "The Review of Regulatory Systems Across the North,"* Indian and Northern Affairs Canada, May 2008.
18. Ibid., p. 29.
19. AANDC, "Backgrounder – Nunavut Planning and Project Assessment Act."
20. AANDC, *Frequently Asked Questions – Northwest Territories Surface Rights Board Act*.
21. Part 1 of this Legislative Summary relies heavily on the following publication: Penny Becklumb, James Gauthier and Dara Lithwick, *Legislative Summary of Bill C-25: Nunavut Planning and Project Assessment Act*, Publication no. 40-3-C25-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 13 September 2010.
22. *Canadian Environmental Assessment Act, 2012*, S.C. 2012, c. 19, s. 52.
23. *Nunavut Land Claims Agreement Act*, S.C. 1993, c. 29.
24. "Land use planning" is the process of deciding how lands, waters, marine areas and resources will be protected, developed or conserved. (AANDC, *Frequently Asked Questions – Nunavut Planning and Project Assessment Act*.)
25. AANDC, *Nunavut Planning Commission*.
26. Nunavut Planning Commission, *About the Commission*.
27. See Nunavut Land Claims Agreement (1993), art. 40.2.2.
28. AANDC, *Nunavut Impact Review Board*.
29. Nunavut Impact Review Board, *About Us*.
30. AANDC, *Frequently Asked Questions – Nunavut Planning and Project Assessment Act*.

31. Ibid.

32. *Yukon Environmental and Socio-economic Assessment Act*, S.C. 2003, c. 7.

33. 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 people receive benefits from the development of natural resources on their land, as designated under the relevant land claims agreement. (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.)

34. AANDC, *Frequently Asked Questions – Nunavut Planning and Project Assessment Act*.

35. Ibid.

36. *Access to Information Act*, R.S.C., 1985, c. A-1.

37. These terms are defined as follows (Duhaime.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.

38. Nunavut Land Claims Agreement, Schedule 12.

39. *Privacy Act*, R.S.C., 1985, c. P-21.

40. *Canada Oil and Gas Operations Act*, R.S.C., 1985, c. O-7.

41. Government of Nunavut, "Government of Nunavut welcomes new federal legislation to implement the Nunavut Land Claims Agreement," News release, 6 November 2012.

42. At the time of writing, the Government of the Northwest Territories had not yet released a statement specific to Bill C-47.

43. Government of the Northwest Territories, *Approach to Regulatory Improvement*, March 2009, p. 7.

44. Mining Association of Canada, "New legislation bodes well for more mining development in Nunavut," News release, 6 November 2012.

45. NWT and Nunavut Chamber of Mines, "Mining Industry Welcomes Northern Jobs and Growth Act," News release, 6 November 2012.

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