

Yukon Surface Rights Board Act

1994, c. 43

[Assented to December 15, 1994]

An Act to establish a board having jurisdiction concerning disputes respecting surface rights in respect of land in the Yukon Territory and to amend other Acts in relation thereto

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

SHORT TITLE

Short title 1. This Act may be cited as the *Yukon Surface Rights Board Act*.

INTERPRETATION

GENERAL

Definitions

2. In this Act,

"Board"
« *Office* »

"Board" means the Yukon Surface Rights Board established by section 8;

"category A settlement
land"
« *terre désignée de
catégorie A* »

"category A settlement land" means, in relation to a final agreement, land that has been
(a) identified or declared pursuant to the final agreement, or designated pursuant to section 63, as category A settlement land, or
(b) identified in a self-government agreement as land to which the final agreement is to apply as if it were category A settlement land,
and that has not ceased to be settlement land in accordance with the final agreement;

"category B settlement
land"
« *terre désignée de
catégorie B* »

"category B settlement land" means, in relation to a final agreement, land that has been
(a) identified or declared pursuant to the final agreement, or designated pursuant to section 63, as category B settlement land, or
(b) identified in a self-government agreement as land to which the final agreement is to apply as if it were category B settlement land,
and that has not ceased to be settlement land in accordance with the final agreement;

"cost of construction"
« *coûts de construction* »

"cost of construction", in respect of a hydro-electric or water storage facility, means the aggregate of the following costs:
(a) the costs of constructing civil structures,
(b) the costs of reservoir and site clearing,
(c) the costs of constructing access routes,
(d) electrical and mechanical costs,
(e) design costs, including the cost of socio-economic and environmental studies required for any application to construct or operate the facility,
(f) engineering and construction management costs, and
(g) in the case of a hydro-electric facility, the costs of constructing transmission lines to a grid;

<p>“Council for Yukon Indians” « <i>Conseil des Indiens du Yukon</i> »</p>	<p>“Council for Yukon Indians” includes any successor to the Council for Yukon Indians and, in the absence of any successor, the first nations referred to in the definition “Yukon first nation”, whether or not their land claims agreement has been added to Part I of Schedule I;</p>
<p>“Crown land” « <i>terre domaniale</i> »</p>	<p>“Crown land” means land vested in Her Majesty in right of Canada, whether the administration and control thereof is appropriated to the Commissioner of the Yukon Territory or not, but does not include settlement land;</p>
<p>“existing mineral right” « <i>droit minier existant</i> »</p>	<p>“existing mineral right” means a mineral right, other than a right to locate a claim or an unrecorded right to explore for minerals, other than oil and gas, existing at the date the affected land became settlement land, and includes</p> <ul style="list-style-type: none"> (a) a renewal or replacement of such a mineral right after that date, (b) a licence, permit or other right in respect of oil or gas granted after that date as of right to a person holding such a mineral right, and (c) a licence, permit or other right in respect of mines or minerals granted after that date pursuant to the <i>Yukon Quartz Mining Act</i> or the <i>Yukon Placer Mining Act</i> to a person holding such a mineral right;
<p>“fee simple settlement land” « <i>terre désignée en fief simple</i> »</p>	<p>“fee simple settlement land” means, in relation to a final agreement, land that has been</p> <ul style="list-style-type: none"> (a) identified or declared pursuant to the final agreement, or designated pursuant to section 63, as fee simple settlement land, or (b) identified in a self-government agreement as land to which the final agreement is to apply as if it were fee simple settlement land, <p>and that has not ceased to be settlement land in accordance with the final agreement;</p>
<p>“final agreement” « <i>accord définitif</i> »</p>	<p>“final agreement” means an agreement referred to in Part I of Schedule I, and includes any amendments made to it from time to time in accordance with its provisions;</p>
<p>“fish” « <i>poisson</i> » ou « <i>ressources halieutiques</i> »</p>	<p>“fish” includes</p> <ul style="list-style-type: none"> (a) parts of fish, (b) shellfish, crustaceans, marine animals, marine plants and parts of them, and (c) the eggs, spawn, larvae, spat and juvenile stages of fish, shellfish, crustaceans and marine animals;
<p>“gas” « <i>gaz</i> »</p>	<p>“gas” means natural gas and includes all substances, other than oil, that are produced in association with natural gas;</p>
<p>“Government” « <i>gouvernement</i> »</p>	<p>“Government” means the Government of Canada or the Government of the Yukon Territory, or both, depending on which has responsibility for the matter in question;</p>
<p>“harvesting” « <i>exploitation</i> »</p>	<p>“harvesting” means gathering, hunting, trapping or fishing in accordance with a final agreement or the Transboundary Agreement;</p>
<p>“mineral right” « <i>droit minier</i> »</p>	<p>“mineral right” means a licence, permit or other right to explore for, locate, develop, produce or transport minerals, other than specified substances, and to enter on land for those purposes;</p>
<p>“minerals” « <i>minéraux</i> »</p>	<p>“minerals” means precious and base metals and other non-living, naturally occurring substances, whether solid, liquid or gaseous, and includes coal, oil, gas and specified substances;</p>
<p>“mines” « <i>mines</i> »</p>	<p>“mines” means mines, opened and unopened;</p>
<p>“Minister” « <i>ministre fédéral</i> »</p>	<p>“Minister” means the Minister of Indian Affairs and Northern Development;</p>
<p>“navigable water” « <i>navigable</i> »</p>	<p>“navigable water” means a stream, river, lake, sea or other body of water, used or capable of being used by the public for navigation by boats, kayaks, canoes, rafts or other small craft, or log booms on a continuous or seasonal basis, and includes any parts of those bodies of water interrupted by occasional natural obstructions or bypassed by portages;</p>
<p>“new mineral right” « <i>droit minier nouveau</i> »</p>	<p>“new mineral right” means any mineral right, other than an existing mineral right;</p>
<p>“non-settlement land” « <i>terre non désignée</i> »</p>	<p>“non-settlement land” means all land and water in the Yukon Territory, other than settlement land, and includes mines and minerals, other than specified substances, in category B settlement land and in fee simple settlement land;</p>

<p>“oil” « <i>pétrole</i> »</p>	<p>“oil” means crude oil, regardless of gravity, produced at a well head in liquid form, and any other hydrocarbons, other than coal and gas, and includes hydrocarbons that may be extracted or recovered from deposits of oil sand, bituminous sand, oil shale or from any other type of deposits on the surface or subsurface;</p>
<p>“person” « <i>personne</i> »</p>	<p>“person” means a natural person or an artificial entity capable of having rights or obligations and includes a Government or the government of a province or of a foreign state or any subdivision thereof;</p>
<p>“self-government agreement” « <i>accord sur l’autonomie gouvernementale</i> »</p>	<p>“self-government agreement” means an agreement referred to in Part II of Schedule I;</p>
<p>“settlement land” « <i>terre désignée</i> »</p>	<p>“settlement land” means category A settlement land, category B settlement land or fee simple settlement land;</p>
<p>“specified substances” « <i>matières spécifiées</i> »</p>	<p>“specified substances” means carving stone, flint, limestone, marble, gypsum, shale, slate, clay, sand, gravel, construction stone, sodium chloride, volcanic ash, earth, soil, diatomaceous earth, ochre, marl and peat;</p>
<p>“Territorial Minister” « <i>ministre territorial</i> »</p>	<p>“Territorial Minister” means, in respect of any provision of this Act, such minister of the Yukon Territory as is designated by the Commissioner of the Yukon Territory for the purposes of that provision;</p>
<p>“traditional territory” « <i>territoire traditionnel</i> »</p>	<p>“traditional territory” means, with respect to a Yukon first nation, the geographic area within the Yukon Territory identified as that Yukon first nation’s traditional territory on the map for that purpose set out in Appendix B to the final agreement of that Yukon first nation;</p>
<p>“Transboundary Agreement” « <i>accord transfrontalier</i> »</p>	<p>“Transboundary Agreement” means the Yukon Transboundary Agreement, set out in Appendix C to the Comprehensive Land Claim Agreement between Her Majesty the Queen in right of Canada and the Gwich’in, as represented by the Gwich’in Tribal Council, that was approved, given effect and declared valid by the <i>Gwich’in Land Claim Settlement Act</i>, and includes any amendments made to it from time to time in accordance with its provisions;</p>
<p>“undeveloped settlement land” « <i>terre désignée non aménagée</i> »</p>	<p>“undeveloped settlement land” means all settlement land that has not been designated as developed settlement land in or pursuant to a final agreement or pursuant to section 63 or a self-government agreement;</p>
<p>“waterfront right-of-way” « <i>emprise riveraine</i> »</p>	<p>“waterfront right-of-way” means, except as otherwise provided in Appendix A to a final agreement, the thirty metre wide area measured landward from the limit or edge of the bed of any navigable water on or abutting settlement land;</p>
<p>“wildlife” « <i>faune</i> » ou « <i>ressources fauniques</i> »</p>	<p>“wildlife” means a vertebrate animal of any species or subspecies that is wild in the Yukon, but does not include</p> <ul style="list-style-type: none"> (a) fish, or (b) a vertebrate animal of any species or subspecies that is not indigenous to the Yukon Territory or that is intentionally introduced by a Government or other body, other than a Yukon first nation, as part of a wildlife management program;
<p>“Yukon first nation” « <i>première nation</i> »</p>	<p>“Yukon first nation” means any of the first nations known as the Champagne and Aishihik First Nations, the First Nation of Nacho Nyak Dun, the Teslin Tlingit Council, the Vuntut Gwitchin First Nation or any of the following first nations whose land claims agreement has been added to Part I of Schedule I pursuant to section 79, namely,</p> <ul style="list-style-type: none"> (a) Carcross/Tagish First Nation, (b) Tr’ondëk Hwëch’in, (c) Kluane First Nation, (d) Kwanlin Dun First Nation, (e) Liard First Nation, (f) Little Salmon/Carmacks First Nation, (g) Ross River Dena Council, (h) Selkirk First Nation, (i) Ta’an Kwach’an Council, and

(j) White River First Nation;

“Yukon Indian person”
« *Indien du Yukon* »

“Yukon Indian person” means a person enrolled as such under a final agreement.
1994, c. 43, s. 2; 1999, c. 31, s. 227.

TETLIT GWICH’IN YUKON LAND

Application to Tetlit
Gwich’in Yukon land

3. (1) Subject to this section, this Act applies within the primary use area described in Annex A of the Transboundary Agreement as if

(a) the references to settlement land, category B settlement land, fee simple settlement land and undeveloped settlement land were references to Tetlit Gwich’in Yukon land described in Annex B of the Transboundary Agreement;

(b) the references to traditional territory were references to the primary use area;

(c) the references to a Yukon first nation, other than the reference in the definition “Council for Yukon Indians” in section 2 and in paragraph (4)(b), were references to the Gwich’in Tribal Council; and

(d) the references to a Yukon Indian person were references to a Tetlit Gwich’in as defined in the Transboundary Agreement.

Provisions not applicable

(2) Subsection 31(1), sections 58 and 63 and paragraphs 1(g) and 2(1)(f) of Schedule II do not apply in respect of Tetlit Gwich’in Yukon land.

Hearing of applications

(3) An application in respect of Tetlit Gwich’in Yukon land shall be heard in Fort McPherson, Northwest Territories, unless the parties agree otherwise.

Compensation for
expropriation

(4) In making an order under section 55 in respect of the expropriation of Tetlit Gwich’in Yukon land for the construction, maintenance and operation of a hydro-electric or water storage facility, the Board shall not

(a) take into consideration the cultural or other special value to the Gwich’in Tribal Council of the land or any land to be provided as compensation for the expropriation; or

(b) fix compensation for improvements to the Tetlit Gwich’in Yukon land in an amount that, together with all other compensation for improvements provided to Tetlit Gwich’in and Yukon first nations in respect of the facility whether pursuant to such an order or otherwise, would exceed three per cent of the cost of construction of the facility.

Transfer of land

(5) Where land within the primary use area described in Annex A of the Transboundary Agreement is to be transferred, pursuant to an order of the Board or as a result of negotiation, to the Gwich’in Tribal Council as compensation for the expropriation of Tetlit Gwich’in Yukon land, the land shall, on transfer, become Tetlit Gwich’in Yukon land.

INCONSISTENCIES

Inconsistency between
final agreement and Act

4. (1) Where there is any inconsistency or conflict between a final agreement and this Act, the agreement prevails to the extent of the inconsistency or conflict.

Inconsistency between
Transboundary
Agreement and Act

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

Inconsistency between
order and Act or
document

5. (1) Where there is any inconsistency or conflict between an order of the Board respecting access and a requirement imposed by or under any Act, or a licence, permit or other document made or issued under such an Act, that regulates the activity for which the access is obtained, the Act or document prevails to the extent of the inconsistency or conflict.

Decision under *Yukon
Environmental and
Socio-economic
Assessment Act*

(2) The following prevail over an order of the Board respecting access, to the extent of any inconsistency or conflict between them:

(a) a decision document issued under section 75, 76 or 77 of the *Yukon Environmental and Socio-economic Assessment Act* by a federal agency that the federal agency is required to implement under subsection 82(2) of that Act;

(b) a decision document that is issued under those sections by the territorial minister, to the extent that a territorial agency or municipal government is required to implement it under subsection 83(2) of that Act; and

(c) a decision document that is issued under those sections by a first nation, to the extent that the first nation is required to implement it under subsections 84(2) and (3) of that Act.

APPLICATION

Application of Parts I and IV **6.** For greater certainty, Parts I and IV apply where the Board exercises a power or performs a duty or function conferred or imposed on it by or under any other Act of Parliament.

HER MAJESTY

Binding on Her Majesty **7.** This Act is binding on Her Majesty in right of Canada or a province.

PART I

YUKON SURFACE RIGHTS BOARD

ESTABLISHMENT AND ORGANIZATION OF BOARD

Establishment	8. (1) There is hereby established a board, to be called the Yukon Surface Rights Board, consisting of a Chairperson and not less than two or more than ten other members to be appointed by the Minister.
Odd number	(2) The Minister shall make such appointments as are necessary to ensure that an odd number of members holds office at any time.
Appointment of Chairperson	9. (1) The Chairperson shall be appointed on the recommendation of the Board.
Appointment of other members	(2) Half of the members, other than the Chairperson, shall be appointed on the nomination of the Council for Yukon Indians.
Residency qualification	10. (1) A majority of the members appointed on the nomination of the Council for Yukon Indians and a majority of the other members must be resident in the Yukon Territory.
Effect of ceasing to be resident	(2) If the Minister determines that a member ceases to be resident in the Yukon Territory and that the condition imposed by subsection (1) is not satisfied, the appointment of the member is terminated as of the date the member receives written notification from the Minister that the determination has been made.
No disqualification	(3) No person is disqualified from being appointed or continuing as a member of the Board or of a panel of the Board by reason only of being a Yukon Indian person or having an interest in land in the Yukon Territory.
Term of office	11. (1) Subject to subsection (2), a member shall be appointed to hold office for a term of three years.
Term of first members	(2) The first members appointed on the nomination of the Council for Yukon Indians shall be appointed for such term, not exceeding three years, as the Council may specify and the other first members shall be appointed for such term, not exceeding three years, as the Minister may determine.
Tenure	(3) A member holds office during good behaviour, but may be removed by the Minister for cause or for a ground set out in the by-laws of the Board made pursuant to paragraph 18(a).
Vacancy	12. If the office of a member becomes vacant during the term of the member, the Minister may, on the conditions under section 9 on which that member was appointed, appoint a person to that office for the remainder of the term.
Reappointment	13. A member is eligible to be reappointed to the Board in any capacity.
Duties of Chairperson	14. The Chairperson is the chief executive officer of the Board and has such powers, duties and functions as are prescribed by the by-laws of the Board.
Remuneration	15. (1) Each member shall be paid such fees or other remuneration as the Treasury Board may fix.
Expenses	(2) Each member shall be paid such travel and living expenses incurred by the member while absent from the member's ordinary place of residence in the course of performing duties under this Act as are consistent with Treasury Board directives for public servants.
Workers compensation	(3) A member is deemed to be an employee for the purposes of the <i>Government Employees Compensation Act</i> and to be employed in the federal public administration for the purposes of any regulation made pursuant to section 9 of the <i>Aeronautics Act</i> .

1994, c. 43, s. 15; 2003, c. 22, s. 224(E).

HEAD OFFICE AND MEETINGS

- Head office **16.** The head office of the Board shall be at Whitehorse or at such other place in the Yukon Territory as the Governor in Council may designate.
- Business meetings **17.** (1) The meetings of the Board shall be held at such times and at such places in the Yukon Territory as the Board considers necessary or desirable for the proper conduct of its business.
- Participation by telephone (2) Subject to the by-laws of the Board, any member may participate in a business meeting by means of telephone or other communications facilities that are likely to enable all persons participating in the meeting to hear each other, and a member so participating is deemed for all purposes of this Act to be present at that meeting.

BY-LAWS

- By-laws **18.** The Board may make by-laws
- (a) specifying grounds for removal of members in addition to the grounds for removal for cause generally recognized by law;
 - (b) respecting the assignment of members to panels of the Board; and
 - (c) generally, respecting the conduct and management of the internal administrative affairs of the Board.

GENERAL POWERS

- Staff **19.** The Board may employ such officers and employees and engage the services of such agents, advisors and consultants as are necessary for the proper conduct of its business and may fix the terms and conditions of their employment or engagement and pay their remuneration.
- Government facilities and information **20.** In exercising its powers or performing its duties or functions under this or any other Act of Parliament, the Board may, where appropriate, use the services and facilities of departments, boards and agencies of a Government and may obtain from any such department, board or agency, any information that is required to exercise those powers or perform those duties or functions.
- Property and contracts **21.** (1) The Board may, for the purposes of conducting its business,
- (a) acquire personal property in the name of the Board and dispose of the property; and
 - (b) enter into contracts in the name of the Board.
- Legal proceedings (2) Actions, suits or other legal proceedings in respect of any right or obligation acquired or incurred by the Board may be brought or taken by or against the Board in any court that would have jurisdiction if the Board were a corporation.

STATUS

- Not an agent **22.** The Board is not an agent of Her Majesty in right of Canada.

FINANCIAL PROVISIONS

- Annual budget **23.** (1) The Board shall annually submit a budget for the next following fiscal year to the Minister for consideration.
- Funding for training and language (2) The Board shall consider including in its annual budget funding to allow the Board to provide the members of the Board with cross-cultural orientation and education and other training for the purpose of improving the ability of the members to carry out their responsibilities as members as well as funding for facilities to allow members to carry out their responsibilities in their traditional languages.
- Accounts (3) The Board shall maintain books of account and records in relation thereto in accordance with accounting principles recommended by the Canadian Institute of Chartered Accountants or its successor.
- Consolidated financial statements (4) The Board shall, within such time after the end of each fiscal year as the Minister specifies, prepare consolidated financial statements in respect of that fiscal year in accordance with the accounting principles referred to in subsection (3) and shall include in them such information or statements as are required in support of the consolidated financial statements.

Audit (5) The accounts, financial statements and financial transactions of the Board shall be audited annually by the Auditor General of Canada and a report of the audit shall be made to the Board and forthwith sent to the Minister.

REPORTS

Special reports **24.** On request of the Minister, the Board shall report to the Minister on
(a) the operations of the Board;
(b) the number of applications made to the Board;
(c) the orders made by the Board; or
(d) such other matters as the Minister may specify.

Annual report **25.** (1) The Board shall, within three months after the end of each fiscal year, submit to the Minister a report on the activities of the Board in that year.

Publication (2) The Board shall publish the annual report.

JURISDICTION OF THE BOARD

Negotiations **26.** (1) No person may apply to the Board for an order unless the person has attempted to resolve the matter in dispute by negotiation in accordance with the rules made under paragraph 39(1)(a) or, until such rules have been made, in a manner satisfactory to the Board.

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

Matters not raised (3) The Board may not make an order in respect of a matter that is not raised by any of the parties.

APPLICATIONS AND HEARINGS

Informal and expeditious **27.** An application before the Board shall be dealt with as informally and expeditiously as the circumstances and considerations of fairness permit.

General powers of Board **28.** The Board has, with respect to the attendance and examination of witnesses, the production and inspection of documents and all other matters necessary or proper in relation to applications before the Board, all the powers, rights and privileges of a superior court.

Parties to a hearing **29.** The following are parties to a hearing before the Board:
(a) the applicant and any other person who may apply for an order in respect of which the hearing is held;
(b) where settlement land is in issue, the Yukon first nation and any affected interest holder;
(c) in the case of an application for an order under section 47, the Minister and Territorial Minister;
(d) in the case of an application for an order under section 55 where Ministers are notified under paragraph 57(2)(a), the Ministers;
(e) in the case of an application for an order under section 60, the Government for whose benefit the reservation was made; and
(f) in the case of an application under section 65 in relation to a mineral right granted under the *Yukon Placer Mining Act* or the *Yukon Quartz Mining Act*, the mining recorder.

Hearing in absence of party **30.** The Board may not hear an application in the absence of any party unless that party consents to the holding of the hearing in their absence or notice of the hearing was given to that party in accordance with the rules of the Board or, in the absence of rules respecting the giving of such notice, in a manner satisfactory to the Board.

Location of hearing — settlement land **31.** (1) An application in respect of settlement land shall be heard in the traditional territory of the Yukon first nation whose settlement land is involved, unless the parties agree otherwise.

Location of hearing — non-settlement land (2) An application in respect of non-settlement land shall be heard in the community in Canada closest to the land, whether within or outside the Yukon Territory, unless the parties agree otherwise.

Panels **32.** (1) An application to the Board shall be heard and decided by a panel consisting of three

	members of the Board.
Nomination by Council	(2) At least one member of any panel hearing an application in respect of settlement land must be a member nominated by the Council for Yukon Indians.
Single member	(3) Notwithstanding subsections (1) and (2), an application may, with the consent of the parties, be heard and decided by a panel consisting of one member of the Board, whether or not nominated by the Council for Yukon Indians.
Assignment of members	33. (1) Members shall be assigned to panels in accordance with the by-laws of the Board or, in the absence of by-laws respecting the assignment of members to panels, by the Chairperson.
Conflict of interest	(2) A member shall not be assigned to, or continue on, a panel if doing so would place the member in a material conflict of interest.
Powers, duties and functions of panel	34. (1) A panel has all of the powers, and shall perform all of the duties and functions, of the Board in relation to an application before the panel.
Status of order of panel	(2) An order made by a panel is an order of the Board.
Continuation of hearing	35. (1) Where a member of a panel dies, resigns or for any other reason is absent during all or part of a hearing, the remaining member or members may, with the consent of the parties, continue the hearing.
Disposition of application	(2) A member of a panel who is not present during the entire hearing of an application may not participate in the disposition of the application.
Information made available	36. Before disposing of an application, the Board shall make any information that it intends to use in the disposition available to the parties and provide them a reasonable opportunity to respond to the information.
References to Supreme Court	37. The Board may, at any stage of its proceedings, refer any question or issue of law or of jurisdiction, other than a question or issue that has been referred to arbitration pursuant to a final agreement or the Transboundary Agreement, to the Supreme Court of the Yukon Territory.

RECORDS

Records	<p>38. The Board shall</p> <p>(a) keep a public record of all applications made to the Board and orders and other decisions made by the Board in respect of applications;</p> <p>(b) issue, on request and payment of such fee as the Board may fix, certified copies of any order or other decision, rule or by-law made by the Board; and</p> <p>(c) have the custody and care of all documents filed with the Board.</p>
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RULES

Negotiation and entry fee	<p>39. (1) The Board shall make rules</p> <p>(a) establishing procedures to be followed in the conduct of negotiations for the purposes of section 26, either generally or with respect to any particular application or class of applications; and</p> <p>(b) establishing the amount of the entry fee that may be provided for by the Board in an access order made under subsection 42(1).</p>
Parameter of entry fee	(2) In making a rule pursuant to paragraph (1)(b), the Board shall not establish more than one amount in respect of the entry fee, to be applicable in all cases.
Procedures, mediation and costs	<p>40. The Board may make rules</p> <p>(a) respecting the practice and procedure in relation to applications to and hearings before the Board, including the service of documents and the imposition of reasonable time limits;</p> <p>(b) establishing procedures that may be followed in the mediation of matters in dispute; and</p> <p>(c) respecting the allowance of costs, including rules</p> <p>(i) establishing a schedule of fees and other expenses incurred by a party in relation to applications to or hearings before the Board that may be allowed as part of that party's costs under section 68, and</p> <p>(ii) respecting the circumstances under which the Board may allow costs with respect to</p>

matters dealt with in the schedule of fees and other expenses on a basis other than that established by the schedule.

1994, c. 43, s. 40; 1998, c. 5, s. 15(F).

Publication of proposed rules	41. (1) At least thirty days before making a rule, the Board shall give notice of the proposed rule in the <i>Canada Gazette</i> and in a periodical that, in the opinion of the Board, has a large circulation in the Yukon and shall, in the notice, invite interested persons to make representations in writing to it with respect to the rule within thirty days after publication.
Exception	(2) Notice of a proposed rule need not be published more than once pursuant to subsection (1), whether or not the rule is amended after the publication as a result of representations made to the Board, but the rules shall be published in the <i>Canada Gazette</i> immediately after they are made.
Non-application of <i>Statutory Instruments Act</i>	(3) Sections 3, 5 and 11 of the <i>Statutory Instruments Act</i> do not apply in respect of the rules of the Board.

PART II

SETTLEMENT LANDS

RIGHTS OF ACCESS SUBJECT TO CONSENT OR ORDER

Access order	42. (1) Subject to subsection (2), on application by a person who has a right of access described in section 1 of Schedule II, the Board shall make an access order establishing terms and conditions for the exercise of the right.
Restriction	(2) The Board shall not make an access order in respect of a right of access described in any of paragraphs 1(a) to (d), (f), (g), (i) and (k) of Schedule II unless the applicant satisfies the Board that the applicant reasonably requires access and that access across Crown land is not practicable and reasonable.
Terms and conditions	43. (1) The Board may include in an access order made under subsection 42(1) in respect of a right of access <ul style="list-style-type: none">(a) terms and conditions respecting any of the following matters, namely,<ul style="list-style-type: none">(i) the times when the right may be exercised,(ii) the giving of notice,(iii) limitations on the location in which the right may be exercised and on routes of access,(iv) limitations on the number of persons exercising the right,(v) limitations on the activities that may be carried on and on the equipment that may be used,(vi) subject to any regulations made under paragraph 78(c), the giving of security in the form of a letter of credit, guarantee or indemnity bond or insurance or any other form satisfactory to the Board and the purposes for which the security is given,(vii) the payment of the entry fee, in the amount established by the rules of the Board, to the Yukon first nation and, in the case of an interim access order, to any affected interest holder designated by the Board,(viii) the payment of compensation for the exercise of the right and any damages resulting from that exercise to the Yukon first nation and, in the case of an interim access order, to any affected interest holder designated by the Board,(ix) abandonment and restoration work, and(x) the right of a Yukon first nation to verify, by inspection or otherwise, whether the other terms and conditions have been complied with; and(b) any other terms and conditions that the Board considers appropriate for reducing any conflict between the exercise of that right and the use and peaceful enjoyment of the settlement land by the Yukon first nation and, in the case of an interim access order, any affected interest holder designated by the Board.
Designation of route	(2) When making an access order that designates a route of access, the Board shall designate a route that is least harmful to the interests of the Yukon first nation while being reasonably suitable to the needs of the applicant.
Parameter of entry fee	(3) The Board may, in respect of an access order, provide for the payment of only one entry fee to each Yukon first nation whose settlement land is the subject of the order, whether or not the order is

	amended.
Payment of entry fee where interim access order	(4) If the Board provides for the payment of an entry fee under an interim access order, (a) the entry fee shall be allocated by the Board among the Yukon first nation and any affected interest holders designated by the Board; and (b) no additional entry fee is payable on the issuance of an order finalizing the interim access order.
Restriction for Government and public utility access	(5) The Board may not provide for the payment of the entry fee or compensation, other than compensation for significant damage, in respect of the exercise of a right of access described in paragraph 1(c) or (d) of Schedule II.
Definition of "significant damage"	(6) For the purposes of subsection (5), "significant damage" does not include necessary alteration of settlement land or watercourses required to maintain transportation corridors referred to in paragraph 1(c) of Schedule II.
Compensation factors	(7) In determining the amount of compensation, the Board may consider such factors as it considers appropriate and, without limiting the generality of the foregoing, shall consider (a) the market value of the settlement land; (b) any loss of, or interference with, the use of the land and any loss of opportunity in connection therewith; (c) any impact on the fish and wildlife, and their habitat, on the land; (d) in all cases, any impact on fish and wildlife harvesting on the land and, in the case of Tetlit Gwich'in Yukon land described in Annex B of the Transboundary Agreement, on the gathering of plants on the land; (e) any nuisance, including that caused by noise, or inconvenience or any damage to the land that may be caused by the applicant in exercising the right of access; (f) any cultural or other special value of the land to the Yukon first nation; (g) any expenses associated with the implementation of the order, including monitoring and inspection expenses; (h) any impact on other settlement land of the Yukon first nation; and (i) any compensation paid or payable to the same person by or pursuant to another authority for the exercise of the right of access or for any damages resulting from that exercise.
Compensation factors	(8) The Board shall not (a) decrease the amount of compensation on account of any reversionary interest remaining in the Yukon first nation or of any entry fee payable; or (b) increase the amount of compensation on account of any aboriginal claim, right, title or interest or of the value of mines and minerals on or under category B settlement land or fee simple settlement land.
Payment	(9) The Board may require compensation to be paid by one lump sum payment or by periodic payments of equal or different amounts and may require the payment of interest, at a rate to be determined in accordance with the regulations, on compensation payments made after the day on which they are required to be made.
Restriction for military manoeuvres	44. Notwithstanding subsection 43(1), terms and conditions that the Board may include in an access order made under subsection 42(1) in respect of the exercise of a right of access described in paragraph 1(e) of Schedule II shall be restricted to contact persons, areas, timing, environmental protection, protection of wildlife and habitat, land use rent and compensation for damage caused to the settlement land and any improvements and personal property on the land.
Interim access order	45. (1) Pending the final determination of an application for an access order, the Board may make an interim access order.
Final access hearing	(2) The Board shall, within thirty days after making an interim access order, commence a hearing to finally determine the matter.
Payment before exercise of right	46. Subject to subsection 43(5) and section 44, no person may exercise the right of access under an interim access order made under subsection 45(1) until the entry fee and any compensation provided for by the interim access order is paid, as allocated by the Board, to the Yukon first nation and any affected interest holder designated by the Board.

ADDITIONAL TERMS FOR RIGHT OF ACCESS NOT SUBJECT TO CONSENT

Order for additional terms and conditions	<p>47. On application made by a Yukon first nation that does not reach an agreement with the Minister in respect of terms and conditions for the exercise by any person, on the settlement land of the Yukon first nation, of a right of access described in section 2 of Schedule II that are additional to any applicable terms and conditions described in subsections 2(2) to (6) of that Schedule, the Board shall</p> <p>(a) make an order establishing terms and conditions that specify seasons, times, locations, methods of access or manner of access; or</p> <p>(b) dismiss the application.</p>
Restrictions	<p>48. (1) Unless the Yukon first nation and the Minister agree otherwise, terms and conditions may not be established pursuant to an order made under section 47 for a purpose other than</p> <p>(a) protecting the environment;</p> <p>(b) protecting fish or wildlife or their habitat;</p> <p>(c) reducing conflicts between the exercise of that right and the traditional or cultural uses of settlement land by the Yukon first nation or a Yukon Indian person; or</p> <p>(d) protecting the use and peaceful enjoyment of land used for communities or residences.</p>
Restrictions	<p>(2) No additional term or condition established pursuant to an order made under section 47 may</p> <p>(a) restrict law enforcement or any inspection authorized by law;</p> <p>(b) impose a fee or charge for the exercise of that right; or</p> <p>(c) unreasonably restrict the exercise of that right.</p>
Publication of order	<p>49. The Board shall publish each order made under section 47 in the <i>Canada Gazette</i> and in such other manner as, in its opinion, will best bring it to the attention of those persons affected by it.</p>

DISPUTES RESPECTING RIGHTS OF ACCESS NOT SUBJECT TO CONSENT

Disputes over particular access rights	<p>50. On application by any person or Yukon first nation, the Board shall make an order resolving any dispute concerning the interpretation, application or violation of a right of access described in paragraph 2(1)(b) or (c) of Schedule II or of a term or condition established by the Yukon first nation with the agreement of the Minister, or by an order made under section 47, in respect of such a right.</p>
Disputes over waterfront right-of-way	<p>51. (1) On application by a Government or a Yukon first nation that has established or proposes to establish a permanent camp or structure on a waterfront right-of-way on its settlement land, the Board shall make an order resolving any dispute as to whether</p> <p>(a) the camp or structure substantially alters, or would substantially alter, the right to use that waterfront right-of-way as described in paragraph 2(1)(a) of Schedule II; or</p> <p>(b) there is a reasonable alternate area for the exercise of the right to use a waterfront right-of-way as described in paragraph 2(1)(a) of Schedule II.</p>
Order requiring removal or prohibition of camp or structure	<p>(2) The Board may include in the order a provision requiring the Yukon first nation to remove the camp or structure or prohibiting it from establishing the camp or structure.</p>

SPECIFIED SUBSTANCES DISPUTES

Definition of "specified substances right"	<p>52. (1) In this section, "specified substances right" means the right of a Yukon first nation to take and use a specified substance on its settlement land, without payment of a royalty.</p>
Conflicts between specified substances right and mineral right	<p>(2) In the case of a conflict between the exercise by a Yukon first nation of its specified substances right and the exercise of a mineral right by its holder, the Board shall, on application by the Yukon first nation or that holder, make an order specifying terms and conditions for exercising either right or both rights so as to reduce interference between them as far as practicable, but, to the extent that interference with the exercise of the specified substances right cannot be avoided, the Board shall give priority to the exercise of the mineral right.</p>
Compensation	<p>(3) The Board shall include in an order under subsection (2) that gives priority to the exercise of a new mineral right a provision requiring the person who has that right to pay compensation to the Yukon first nation for any interference with, or loss of opportunity for, the exercise of the specified substances right, and, in determining the compensation for loss of opportunity, the Board shall take into account the production costs incurred by the person who has the new mineral right.</p>

QUARRY DISPUTES

Definitions	53. (1) In this section,
"identified quarry" « <i>carrière déterminée</i> »	"identified quarry" means a quarry on settlement land that was identified by a Government (a) prior to the selection of the settlement land for the final agreement of the Yukon first nation concerned or for the Transboundary Agreement, or (b) within the period specified in the final agreement or Transboundary Agreement for identification of quarries or, if no period is so specified, within two years after the date that Agreement takes effect;
"new quarry" « <i>nouvelle carrière</i> »	"new quarry" means a quarry on settlement land that is not an identified quarry;
"quarry" « <i>carrière</i> »	"quarry" means (a) a pit, excavation or other place that is made by any means for the purpose of removing rock, gravel, sand, marl, clay, earth, silt, pumice, volcanic ash or any other material, or any material derived therefrom or occurring as a constituent part thereof, used in the construction and maintenance of public roads and other public works, or (b) a site identified for the purpose referred to in paragraph (a), and includes works, machinery, plants and buildings below or above ground belonging to or used in connection with such a place or site.
Disputes over identified quarries	(2) On application by a Government or Yukon first nation, the Board shall make an order resolving any dispute as to the use or restoration by the Government of an identified quarry.
Disputes over new quarries	(3) On application by a Government or Yukon first nation made at least thirty days after the Government's request for the use of a new quarry, the Board shall make an order (a) resolving any dispute as to whether the Government needs a new quarry or whether a suitable alternate quarry is available on non-settlement land in the surrounding area; or (b) establishing terms and conditions for the use by the Government of the new quarry.
Prohibition	(4) Where the Board makes an order determining that the Government does not need a new quarry or that a suitable alternative quarry is available on non-settlement land, the Board shall include in the order a provision prohibiting the Government from establishing or using the new quarry.

EXPROPRIATION

Definitions	54. In this section and sections 55 to 58,
"authority" « <i>autorité expropriante</i> »	"authority" means any Government or any other entity authorized by or pursuant to any Act to expropriate land;
"land" « <i>terre</i> »	"land" includes any interest in land recognized by law.
Order in respect of an expropriation	55. On application by an authority or a Yukon first nation, the Board shall make an order fixing the compensation to be provided for the expropriation of settlement land by the authority, other than an expropriation under the <i>National Energy Board Act</i> .
Compensation	56. (1) In determining the amount of compensation, the Board may consider such factors as it deems appropriate and, without limiting the generality of the foregoing, shall consider (a) the market value of the settlement land; (b) any loss of, or interference with, the use of the land and any loss of opportunity in connection therewith; (c) any impact on the fish and wildlife, and their habitat, on the land; (d) in all cases, any impact on fish and wildlife harvesting on the land and, in the case of Tetlit Gwich'in Yukon land described in Annex B of the Transboundary Agreement, on the gathering of plants on the land; (e) any nuisance, including that caused by noise, or inconvenience or any damage to the land that may be caused as a result of the expropriation;

	<p>(f) any cultural or other special value of the land to the Yukon first nation;</p> <p>(g) any expenses associated with the implementation of the order; and</p> <p>(h) any impact on other settlement land of the Yukon first nation.</p>
Compensation	<p>(2) The Board shall not</p> <p>(a) decrease the amount of compensation on account of any reversionary interest remaining in the Yukon first nation or of any entry fee payable; or</p> <p>(b) increase the amount of compensation on account of any aboriginal claim, right, title or interest or of the value of mines and minerals on or under category B settlement land or fee simple settlement land.</p>
Form of compensation	<p>(3) The compensation may be in any form or combination of forms, including money and, if requested by the Yukon first nation, land of the authority within the traditional territory of the Yukon first nation if the land is identified by the Yukon first nation and is available.</p>
Payment	<p>(4) The Board may require compensation in the form of money to be paid by one lump sum payment or by periodic payments of equal or different amounts and may require the payment of interest, at a rate to be determined in accordance with the regulations, on compensation payments made after the day on which they are required to be made.</p>
Land compensation	<p>57. (1) If a Yukon first nation requests land as all or part of the compensation, the Board shall</p> <p>(a) determine whether the authority holds the land identified by the Yukon first nation and, if so, whether the land is within the traditional territory of the Yukon first nation and is available;</p> <p>(b) determine the value of the land that is available; and</p> <p>(c) order the authority to transfer to the Yukon first nation the amount of the available land that is necessary to provide the compensation in land.</p>
Crown land	<p>(2) If the authority is not the Government and the Board determines that sufficient land is not available for the purposes of subsection (1), the Board shall</p> <p>(a) notify the Minister and Territorial Minister to that effect;</p> <p>(b) determine whether either Government holds land contiguous to the settlement land concerned and, if so, whether the land is within the traditional territory of the Yukon first nation and is available;</p> <p>(c) determine the value of the land that is available; and</p> <p>(d) order the Government to transfer to the Yukon first nation the amount of the available land that, together with any land transferred pursuant to an order under paragraph (1)(c), is necessary to provide the compensation in land.</p>
Balance of compensation	<p>(3) If the land transferred pursuant to orders under paragraphs (1)(c) and (2)(d) is not sufficient to provide the compensation in land, the Board shall order the authority to provide the balance of the compensation in any other form or combination of forms.</p>
Factors	<p>(4) In determining the value of land that is to be transferred to the Yukon first nation, the Board may consider such factors as it deems appropriate and, without limiting the generality of the foregoing, shall consider</p> <p>(a) the market value of the land;</p> <p>(b) the value of fish and wildlife harvesting and of the gathering of plants on the land to the Yukon first nation;</p> <p>(c) any potential effect of the transfer of the land on settlement land of the Yukon first nation; and</p> <p>(d) any cultural or other special value of the land to the Yukon first nation.</p>
When land not available	<p>(5) For the purposes of this section, land is not available if it is</p> <p>(a) land that is subject to a lease or an agreement for sale, unless the Government and the holder of the interest consent to the land being available;</p> <p>(b) land that is determined by the Board to be occupied or used, or required for future use, by the authority, any department or agency of a Government or any municipal government, unless the authority, department, agency or government consents to the land being available;</p> <p>(c) land that is within thirty metres of the boundary line between the Yukon Territory and Alaska, British Columbia or the Northwest Territories;</p>

(d) land the provision of which to a Yukon first nation would, in the determination of the Board, unreasonably limit the expansion of any community or the access by any person to navigable waters or highways;

(e) a highway or highway right-of-way; or

(f) any other land that is determined by the Board not to be available.

Definitions

58. (1) In this section,

“identified site”
« *emplacement déterminé* »

“identified site” means a site for a hydro-electric or water storage facility on settlement land that is identified on the map of that settlement land annexed to the final agreement of a Yukon first nation;

“unidentified site”
« *emplacement indéterminé* »

“unidentified site” means a site for a hydro-electric or water storage facility on settlement land that is not an identified site.

Compensation for identified site

(2) In making an order under section 55 in respect of the expropriation of settlement land for the construction, maintenance and operation of a hydro-electric or water storage facility at an identified site, the Board shall not

(a) fix compensation for anything other than improvements to the settlement land; or

(b) fix compensation in an amount that, together with all other compensation provided to Yukon first nations in respect of the facility whether pursuant to such an order or otherwise, would exceed three per cent of the cost of construction of the facility.

Compensation for unidentified sites

(3) In making an order under section 55 in respect of the expropriation of settlement land for the construction, maintenance and operation of a hydro-electric or water storage facility at an unidentified site, the Board shall not

(a) take into consideration the cultural or other special value to the Yukon first nation of the land or any land to be provided as compensation for the expropriation; or

(b) fix compensation for improvements to the settlement land in an amount that, together with all other compensation for improvements provided to Yukon first nations in respect of the facility whether pursuant to such an order or otherwise, would exceed three per cent of the cost of construction of the facility.

RESERVATIONS

Definitions

59. In this section and sections 60 to 62,

“land”
« *terre* »

“land” includes any interest in land recognized by law;

“reservation”
« *réserve* »

“reservation” means

(a) a reservation made in the land records of the Northern Affairs Program of the Department of Indian Affairs and Northern Development, or

(b) in the case of land under the administration and control of the Commissioner of the Yukon Territory, a reservation or notation made in the land records of the Lands Branch of the Department of Community and Transportation Services of the Government of the Yukon Territory.

Order in respect of a reservation

60. On application by a Yukon first nation, the Board shall make an order fixing the compensation to be provided by the Government for whose benefit the reservation was made for any diminution in the value of settlement land resulting from the continuation of the reservation after the date of a declaration under section 5.7.4 of a final agreement that the land remains settlement land subject to the reservation.

Compensation

61. (1) In determining the amount of compensation, the Board may consider such factors as it deems appropriate and, without limiting the generality of the foregoing, shall consider

(a) the market value of the settlement land;

(b) any loss of, or interference with, the use of the land and any loss of opportunity in connection therewith;

(c) any impact on the fish and wildlife, and their habitat, on the land;

(d) any impact on fish and wildlife harvesting on the land;

(e) any nuisance, including that caused by noise, or inconvenience or damage to the land that may be caused by the activities for which the land is reserved;

	<p>(f) any cultural or other special value of the land to the Yukon first nation;</p> <p>(g) any expenses associated with the implementation of the order; and</p> <p>(h) any impact on other settlement land of the Yukon first nation.</p>
Compensation	<p>(2) The Board shall not</p> <p>(a) decrease the amount of compensation on account of any reversionary interest remaining in the Yukon first nation or of any entry fee payable; or</p> <p>(b) increase the amount of compensation on account of any aboriginal claim, right, title or interest or of the value of mines and minerals on or under category B settlement land or fee simple settlement land.</p>
Form of compensation	<p>(3) The compensation may be in any form or combination of forms, including money and, if requested by the Yukon first nation, Crown land that is administered by the Government for whose benefit the reservation was made and that is within the traditional territory of the Yukon first nation if the land is identified by the Yukon first nation and is available.</p>
Payment	<p>(4) The Board may require compensation in the form of money to be paid by one lump sum payment or by periodic payments of equal or different amounts and may require the payment of interest, at a rate to be determined in accordance with the regulations, on compensation payments made after the day on which they are required to be made.</p>
Land compensation	<p>62. (1) If a Yukon first nation requests Crown land as all or part of the compensation, the Board shall</p> <p>(a) determine whether the land is within the traditional territory of the Yukon first nation and is available;</p> <p>(b) determine the value of the land that is available; and</p> <p>(c) order the Government to transfer to the Yukon first nation the amount of the available land that is necessary to provide the compensation in land.</p>
Balance of compensation	<p>(2) If the land transferred pursuant to an order under paragraph (1)(c) is not sufficient to provide the compensation in land, the Board shall order the Government to provide the balance of the compensation in any other form or combination of forms.</p>
Factors	<p>(3) In determining the value of Crown land that is to be transferred to the Yukon first nation, the Board may consider such factors as it deems appropriate and, without limiting the generality of the foregoing, shall consider</p> <p>(a) the market value of the land;</p> <p>(b) the value of fish and wildlife harvesting and of the gathering of plants on the land to the Yukon first nation;</p> <p>(c) any potential effect of the transfer of the land on settlement land of the Yukon first nation; and</p> <p>(d) any cultural or other special value of the land to the Yukon first nation.</p>
When land not available	<p>(4) For the purposes of this section, Crown land is not available if it is</p> <p>(a) land that is subject to a lease or an agreement for sale, unless the Government and the holder of the interest consent to the land being available;</p> <p>(b) land that is determined by the Board to be occupied or used, or required for future use, by any department or agency of a Government or any municipal government, unless the department, agency or government consents to the land being available;</p> <p>(c) land that is within thirty metres of the boundary line between the Yukon Territory and Alaska, British Columbia or the Northwest Territories;</p> <p>(d) land the provision of which to a Yukon first nation would, in the determination of the Board, unreasonably limit the expansion of any community or the access by any person to navigable waters or highways;</p> <p>(e) a highway or highway right-of-way; or</p> <p>(f) any other land that is determined by the Board not to be available.</p>

DESIGNATION OF SETTLEMENT LAND

Designation of land **63.** (1) Where land within the traditional territory of a Yukon first nation is to be transferred,

pursuant to an order of the Board or as a result of negotiation, to the Yukon first nation as compensation for the expropriation of settlement land or for any diminution in the value of settlement land resulting from the continuation of a reservation after the date of a declaration under section 5.7.4 of a final agreement, on application by the Minister or Yukon first nation, the Board shall make an order designating the land as

(a) category A settlement land, if mines and minerals are included, or as category B settlement land or fee simple settlement land, if they are not included; and

(b) developed settlement land or undeveloped settlement land.

Priority of designation order

(2) Before making a determination or an order under paragraph 57(1)(b) or (c) or (2)(c) or (d) or 62(1)(b) or (c) in relation to land, the Board shall make an order under subsection (1) designating the land.

ADDITIONAL FUNCTIONS OF THE BOARD

Additional functions of Board

64. The Board shall, in addition to exercising the powers and performing the duties and functions conferred or imposed on the Board by this Act, exercise the powers and perform the duties and functions conferred or imposed on it by the regulations in relation to any particular parcel of settlement land.

PART III

MINERAL RIGHTS DISPUTES ON NON-SETTLEMENT LAND

Order respecting interpretation

65. In the case of a dispute respecting access to non-settlement land between the following persons, the Board shall, on application of either person, make an order interpreting a provision described in paragraph (b) in relation to the right of access for purposes of the dispute:

(a) a person, other than Government, who has an interest or right in the surface of the land; and

(b) a person, other than Government, who has, in relation to a mineral right, a right of access on the land under any provision of a law of the Legislature of Yukon identified in regulations made pursuant to paragraph 78(f).

1994, c. 43, s. 65; 1998, c. 5, s. 16; 2002, c. 7, s. 270.

Nature of order

66. For greater certainty, the Board may not, in making an order under section 65 respecting a right of access provided for by a provision referred to in paragraph 65(b), create any right or make that right subject to a term or condition or otherwise restrict that right in a manner not provided for in that provision.

PART IV

GENERAL

DECISIONS OF THE BOARD

Conditional orders

67. The Board may in any order direct that the order or any provision of the order come into force at a future time or on the happening of a specified contingency, event or condition or on the performance to the satisfaction of the Board, or a named person, of any terms that the Board may impose on any interested party, and the Board may direct that the order or any part of the order has force for a limited time or until the happening of a specified contingency, event or condition.

Costs

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

Reasons for decisions

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

Copies

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

Proof of orders

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

Order binding on successor

72. An order of the Board is binding on and the rights thereunder extend to any person who subsequently acquires the ownership of or other interest or right in the land to which the order

relates and, in the case of an access order, the right of access and the right for which the right of access was acquired.

Enforcement of orders **73.** An order of the Board may be made an order of the Supreme Court of the Yukon Territory by filing a certified copy of the order with the registrar of the Court and, when so made, the order is enforceable in the same manner as an order of that Court.

REVIEW OF ORDERS

Findings of fact **74.** Subject to sections 75 to 77, a determination of the Board on any question of fact within its jurisdiction is final and binding.

Review by Board **75.** (1) Subject to subsection (2), the Board may, on application made by any person who was a party to the hearing held in respect of the order or any successor to such a party referred to in section 72, review any of its orders, including an order made under this section, where it appears that there has been a material change in the facts or circumstances relating to the order and shall

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

Exception (2) The Board may not review under this section an order made under section 55, 60, 63 or 65. 1994, c. 43, s. 75; 1998, c. 5, s. 17(F).

Application for judicial review **76.** (1) Notwithstanding section 18 of the *Federal Courts Act*, the Federal Court has concurrent original jurisdiction in respect of relief referred to in paragraph 18(1)(b) of that Act, and the Attorney General of Canada, the Territorial Minister or anyone directly affected by the matter in respect of which relief is sought may make an application for judicial review to the Supreme Court of the Yukon Territory for any relief that the applicant could otherwise obtain in respect of the Board by way of an application for an order of or in the nature of *mandamus*, prohibition or *certiorari* or by way of an action for a declaration or an injunction.

Limitation period (2) An application for judicial review in respect of a decision or order of the Board must be made within thirty days after the day on which the decision or order was first communicated to the office of the Deputy Attorney General of Canada, the Territorial Minister or the party directly affected by the order, or within such further period as a judge of the Supreme Court may, either before or after the end of those thirty days, fix.

Powers of Court (3) On an application for judicial review, the Supreme Court may

- (a) order the Board to do any act or thing that it has unlawfully failed or refused to do or has unreasonably delayed in doing; or
- (b) prohibit, restrain, declare invalid or unlawful, quash, set aside or set aside and refer back for determination in accordance with such directions as it considers appropriate, any decision, order, act or proceeding of the Board.

Grounds for review (4) The Supreme Court may grant relief if it is satisfied that the Board

- (a) acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;
- (b) failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe;
- (c) erred in law in making a decision or order, whether or not the error appears on the face of the record;
- (d) based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it;
- (e) acted, or failed to act, by reason of fraud or perjured evidence; or
- (f) acted in any other way that was contrary to law.

Technical irregularity (5) The Supreme Court may refuse any application for judicial review founded solely on a defect in form or other technical irregularity if it finds that no substantial wrong or miscarriage of justice has occurred and, if the technical irregularity was in a decision or order, it may make an order validating the decision or order, effective from such time and on such terms as it considers appropriate.

Interim orders	(6) On an application for judicial review, the Supreme Court may make such interim orders as it considers appropriate pending final disposition of the application. 1994, c. 43, s. 76; 2002, c. 8, s. 181, c. 10, ss. 192(F), 202(F).
Constitutional questions	77. (1) Where the constitutional validity, application or operation of an Act of Parliament or an ordinance of the Yukon Territory, or of a regulation thereunder, is in question before the Supreme Court of the Yukon Territory or the Board in a proceeding under this Act, the Act, ordinance or regulation shall not be adjudged to be invalid, inapplicable or inoperable unless notice has been served on the Attorney General of Canada and the Territorial Minister.
Time of notice	(2) Except where otherwise ordered by the Supreme Court or Board, the notice shall be served at least ten days before the day on which the constitutional question is to be argued.
Notice of appeal or application for judicial review	(3) The Attorney General of Canada and the Territorial Minister are entitled to notice of any appeal or application for judicial review made in respect of the constitutional question.
Evidence	(4) The Attorney General of Canada and the Territorial Minister are entitled to adduce evidence and make submissions to the Supreme Court or Board in respect of the constitutional question and, where either Minister makes submissions, that Minister shall be deemed to be a party to the proceedings for the purposes of any appeal in respect of the question.

REGULATIONS AND ORDERS

Regulations	<p>78. The Governor in Council may make regulations</p> <p>(a) prescribing what constitutes a material conflict of interest for the purposes of subsection 33(2);</p> <p>(b) respecting the maintenance of public records by the Board;</p> <p>(c) respecting the amount of security that may be required to be given under a term or condition of an order of the Board made under this Act;</p> <p>(d) setting out parameters, in addition to those mentioned in this Act, respecting the entry fee that may be provided for by the Board in an access order made under subsection 42(1);</p> <p>(e) prescribing, for the purposes of subsections 43(9), 56(4) and 61(4), a rate of interest or rules for determining the rate of interest that may be payable on compensation payments;</p> <p>(f) identifying, for the purposes of section 65, any provision of a law of the Legislature of Yukon that confers a right of access for purposes of the exercise of a mineral right;</p> <p>(f.1) [Repealed, 2002, c. 7, s. 271]</p> <p>(g) authorizing the Board to exercise the additional powers or perform the additional duties or functions specified in a final agreement in relation to any particular parcel of settlement land; and</p> <p>(h) generally for carrying the purposes and provisions of this Act into effect.</p> <p>1994, c. 43, s. 78; 1998, c. 5, s. 18; 2002, c. 7, s. 271.</p>
Amendment of Schedule I	<p>79. The Governor in Council may, by order, amend Schedule I</p> <p>(a) by adding to Part I any land claims agreement that is approved, given effect to and declared valid by order made pursuant to the <i>Yukon First Nations Land Claims Settlement Act</i>; or</p> <p>(b) by adding to Part II any self-government agreement that is brought into effect by order made pursuant to the <i>Yukon First Nations Self-Government Act</i>.</p>

PART V

RELATED AMENDMENTS AND COMING INTO FORCE

RELATED AMENDMENTS

80. to 102. [Amendments]

Coming into Force

Coming into force	<p>*103. This Act comes into force on a day to be fixed by order of the Governor in Council.</p> <p>* [Note: Act in force February 14, 1995, see SI/95-19.]</p>
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SCHEDULE I

(Sections 2 and 79)

PART I

YUKON FIRST NATION FINAL AGREEMENTS

1. The land claims agreement entered into between Her Majesty in right of Canada as represented by the Minister, the Government of the Yukon Territory as represented by the Government Leader of the Yukon, and the Champagne and Aishihik First Nations as represented by the Chief of the Champagne and Aishihik First Nations, signed on May 29, 1993.

2. The land claims agreement entered into between Her Majesty in right of Canada as represented by the Minister, the Government of the Yukon Territory as represented by the Government Leader of the Yukon, and the First Nation of Nacho Nyak Dun as represented by the Chief of the First Nation of Nacho Nyak Dun, signed on May 29, 1993.

3. The land claims agreement entered into between Her Majesty in right of Canada as represented by the Minister, the Government of the Yukon Territory as represented by the Government Leader of the Yukon, and the Teslin Tlingit Council as represented by the Teslin Tlingit General Council, signed on May 29, 1993.

4. The land claims agreement entered into between Her Majesty in right of Canada as represented by the Minister, the Government of the Yukon Territory as represented by the Government Leader of the Yukon, and the Vuntut Gwitchin First Nation as represented by the Chief of the Vuntut Gwitchin First Nation, signed on May 29, 1993.

5. The land claims agreement entered into between Her Majesty in right of Canada as represented by the Minister, the Government of the Yukon Territory as represented by the Government Leader of the Yukon, and the Little Salmon/Carmacks First Nation as represented by the Chief of the Little Salmon/Carmacks First Nation, signed on July 21, 1997.

6. The land claims agreement entered into between Her Majesty in right of Canada as represented by the Minister, the Government of the Yukon Territory as represented by the Government Leader of the Yukon, and the Selkirk First Nation as represented by the Chief of the Selkirk First Nation, signed on July 21, 1997.

7. The land claims agreement entered into between Her Majesty in right of Canada as represented by the Minister, the Government of the Yukon Territory as represented by the Government Leader of the Yukon, and the Tr'ondëk Hwëch'in as represented by the Chief of the Tr'ondëk Hwëch'in, signed July 16, 1998.

8. The land claims agreement entered into between Her Majesty in right of Canada as represented by the Minister, the Government of the Yukon Territory as represented by the Government Leader of the Yukon, and the Ta'an Kwach'an Council as represented by the Chief of the Ta'an Kwach'an Council, signed on January 13, 2002 and approved, given effect to and declared valid as of April 1, 2002 by Order in Council P.C. 2002-403 of March 21, 2002.

9. The land claims agreement entered into between Her Majesty in right of Canada as represented by the Minister, the Government of Yukon as represented by the Government Leader of Yukon, and the Kluane First Nation as represented by the Chief of the Kluane First Nation, signed on October 18, 2003.

10. The land claims agreement entered into between Her Majesty in right of Canada as represented by the Minister, the Government of Yukon as represented by the Government Leader of Yukon, and the Kwanlin Dun First Nation as represented by the Chief of the Kwanlin Dun First Nation, signed on February 19, 2005.

11. The land claims agreement entered into between Her Majesty in right of Canada as represented by the Minister, the Government of Yukon as represented by the Government Leader of Yukon, and the Carcross/Tagish First Nation as represented by the Chief of the Carcross/Tagish First Nation, signed on October 22, 2005.

PART II

SELF-GOVERNMENT AGREEMENTS

1. The agreement entered into between Her Majesty in right of Canada as represented by the Minister, the Government of the Yukon Territory as represented by the Government Leader of the Yukon, and the Champagne and Aishihik First Nations as represented by the Chief of the Champagne and Aishihik First Nations, signed on May 29, 1993, respecting government by and for the First Nations.

2. The agreement entered into between Her Majesty in right of Canada as represented by the Minister, the Government of the Yukon Territory as represented by the Government Leader of the Yukon, and the First Nation of Nacho Nyak Dun as represented by the Chief of the First Nation of Nacho Nyak Dun, signed on May 29, 1993, respecting government by and for the First Nation.

3. The agreement entered into between Her Majesty in right of Canada as represented by the Minister, the Government of the Yukon Territory as represented by the Government Leader of the Yukon, and the Teslin Tlingit Council as represented by the Teslin Tlingit General Council, signed on May 29, 1993, respecting government by and for the First Nation.

4. The agreement entered into between Her Majesty in right of Canada as represented by the Minister, the Government of the Yukon Territory as represented by the Government Leader of the Yukon, and the Vuntut Gwitchin First Nation as represented by the Chief of the Vuntut Gwitchin First Nation, signed on May 29, 1993, respecting government by and for the First Nation.

5. The agreement entered into between Her Majesty in right of Canada as represented by the Minister, the Government of the Yukon Territory as represented by the Government Leader of the Yukon, and the Little Salmon/Carmacks First Nation as represented by the Chief of the Little Salmon/Carmacks First Nation, signed on July 21, 1997, respecting government by and for the First Nation.

6. The agreement entered into between Her Majesty in right of Canada as represented by the Minister, the Government of the Yukon Territory as represented by the Government Leader of the Yukon, and the Selkirk First Nation as represented by the Chief of the Selkirk First Nation, signed on July 21, 1997, respecting government by and for the First Nation.

7. The agreement entered into between Her Majesty in right of Canada as represented by the Minister, the Government of the Yukon Territory as represented by the Government Leader of the Yukon, and the Tr'ondëk Hwëch'in as represented by the Chief of the Tr'ondëk Hwëch'in, signed July 16, 1998, respecting government by and for the First Nation.

8. The agreement entered into between Her Majesty in right of Canada as represented by the Minister, the Government of the Yukon Territory as represented by the Government Leader of the Yukon, and the Ta'an Kwach'an Council as represented by the Chief of the Ta'an Kwach'an Council, respecting government by and for the First Nation, signed on January 13, 2002 and brought into effect as of April 1, 2002 by Order in Council P.C. 2002-403 of March 21, 2002.

9. The agreement entered into between Her Majesty in right of Canada as represented by the Minister, the Government of Yukon as represented by the Government Leader of Yukon, and the Kluane First Nation as represented by the Chief of the Kluane First Nation, signed on October 18, 2003, respecting government by and for the First Nation.

10. The agreement entered into between Her Majesty in right of Canada as represented by the Minister, the Government of Yukon as represented by the Government Leader of Yukon, and the Kwanlin Dun First Nation as represented by the Chief of the Kwanlin Dun First Nation, signed on February 19, 2005, respecting government by and for the First Nation.

11. The agreement entered into between Her Majesty in right of Canada as represented by the Minister, the Government of Yukon as represented by the Government Leader of Yukon, and the Carcross/Tagish First Nation as represented by the Chief of the

Carcross/Tagish First Nation, signed on October 22, 2005, respecting government by and for the First Nation.

1994, c. 43, Sch. I; SOR/98-178; SOR/99-14; SOR/2002-378; SOR/2004-10; SOR/2005-70, 402.

SCHEDULE II

(Sections 3, 42, 43, 44, 47, 50 and 51)

RIGHTS OF ACCESS

Rights of Access Subject to Consent or Order

1. The rights subject to the consent of the Yukon first nation concerned are the following:

(a) the right of any person to use a waterfront right-of-way on settlement land for commercial recreational purposes;

(b) the right of any person, other than a person having a right described in paragraph 2 (1)(b), to enter, cross and make necessary stops on undeveloped settlement land in order to reach adjacent land for commercial or non-commercial purposes;

(c) the right of a Government or its agents or contractors to enter, cross and stay on undeveloped settlement land for a period of more than one hundred and twenty consecutive days, and to use natural resources incidental to that access, in order to deliver, manage or maintain Government programs or projects, including, without limiting the generality of the foregoing, the right to make necessary alterations of land or watercourses by earthmoving equipment for routine or emergency maintenance of transportation corridors;

(d) the right of any person authorized by law to provide utilities for public purposes, including electricity, telecommunications and municipal services, to enter, cross and stay on undeveloped settlement land for a period of more than one hundred and twenty consecutive days in order to carry out site investigations, assessments, surveys and studies in relation to proposed services;

(e) the right of the Department of National Defence to conduct military manoeuvres on undeveloped settlement land;

(f) the right of any person

(i) having a right, under and in accordance with laws of general application, to use water incidental to the exercise of a right or interest of that person in settlement land, or

(ii) holding a licence under the *Yukon Waters Act* or the *Dominion Water Power Act* for water on or flowing through settlement land, which licence existed when the land became settlement land,

to use that settlement land in order to exercise that right or licence;

(g) the right of the holder of a commercial timber permit or a timber harvesting agreement to cross and make necessary stops on settlement land in order to reach adjacent land or to reach settlement land subject to that permit or agreement;

(h) the right of any person having an existing mineral right on settlement land, other than a person having a right described in paragraph 2(1)(g), to cross and make necessary stops on settlement land for the purpose of exercising that existing mineral right;

(i) the right of any person having an existing mineral right on non-settlement land, other than a person having a right described in paragraph 2(1)(g), to cross and make necessary stops on settlement land for the purpose of exercising that existing mineral right;

(j) the right of any person having a new mineral right on category B settlement land or fee simple settlement land, other than a person having a right described in paragraph 2 (1)(h) or (i), to use, cross and make necessary stops on settlement land for the purpose of exercising that new mineral right;

(k) the right of any person having a new mineral right on non-settlement land, other than a person having a right described in paragraph 2(1)(h), to cross and make necessary stops on settlement land for the purpose of exercising that new mineral right; and

(l) the right of a Government, in relation to a right-of-way on a parcel of settlement land that is identified in Appendix A to a final agreement as a right-of-way to which a Specified Access Right applies, to significantly alter that parcel of settlement land for the purpose of maintaining the right-of-way.

Rights of Access Not Subject to Consent

2. (1) The rights not subject to the consent of the Yukon first nation concerned are the following:

(a) the right of any person to use a waterfront right-of-way on settlement land for travel or non-commercial recreation, including camping and sport fishing, and to use standing dead or deadfall firewood incidental to that use;

(b) the right of any person to enter, cross and make necessary stops on undeveloped settlement land in order to reach adjacent non-settlement land for commercial or non-commercial purposes;

(c) the right of any person to enter, cross and stay on undeveloped settlement land for a reasonable period for non-commercial recreational purposes;

(d) except where a final agreement requires, in relation to a parcel of settlement land, the consent of the Yukon first nation concerned, the right of a Government or its agents or contractors to enter, cross and stay on undeveloped settlement land for a period of not more than one hundred and twenty consecutive days, and to use natural resources incidental to that access, in order to deliver, manage or maintain Government programs or projects, including, without limiting the generality of the foregoing, the right to make necessary alterations of land or watercourses by earthmoving equipment for routine or emergency maintenance of transportation corridors;

(e) the right of any person authorized by law to provide utilities for public purposes, including electricity, telecommunications and municipal services, to enter, cross and stay on undeveloped settlement land for a period of not more than one hundred and twenty consecutive days in order to carry out site investigations, assessments, surveys and studies in relation to proposed services, if there has been prior consultation with the Yukon first nation;

(f) the right of the holder of a trapline on settlement land, other than a Yukon Indian person, to construct and occupy on settlement land such cabins as are necessary for the reasonable use and enjoyment of the trapline and to cut necessary trails on the trapline;

(g) the right of any person having an existing mineral right on settlement land or non-settlement land to cross and make necessary stops on settlement land for the purpose of exercising that existing mineral right;

(h) the right of any person having a new mineral right on category B settlement land or fee simple settlement land or on non-settlement land to cross and make necessary stops on settlement land for the purpose of exercising that new mineral right; and

(i) the right of any person having a new mineral right on category B settlement land or fee simple settlement land to use the land in a manner that does not require the use of heavy equipment or methods more disruptive or damaging to the land than hand labour methods, for the purpose of exercising that new mineral right.

(2) A right described in paragraph (1)(a) or (c) is subject to the conditions that there will be no

(a) significant damage to settlement land or to improvements on settlement land;

(b) mischief committed on settlement land; or

(c) significant interference with the use and peaceful enjoyment of settlement land by the Yukon first nation.

(3) A right described in paragraph (1)(b) is subject to the conditions set out in subsection

(2) and to the condition that

(a) the access is of a casual and insignificant nature; or

(b) the route used is generally recognized and was being used on a regular basis, whether year round or intermittently,

(i) prior to public notification of the selection of the settlement land for the final agreement of the Yukon first nation concerned, or prior to June 8, 1992 in the case of Tetlit Gwich'in Yukon lands, or

(ii) where the land became settlement land after the date that agreement takes effect, on the date the land became settlement land,

and the exercise of the right does not result in a significant alteration of that route.

(4) A right described in paragraph (1)(d) or (e) is subject to the conditions that there will be no

(a) mischief committed on settlement land; or

(b) unnecessary interference with the use and peaceful enjoyment of settlement land by the Yukon first nation.

(5) A right described in paragraph (1)(g) or (h) is subject to the conditions set out in subsections (2) and (3) and to the condition that there will be no permanent structure erected on settlement land.

(6) A right described in paragraph (1)(i) is subject to the conditions that there will be no

(a) unnecessary damage to settlement land or significant damage to improvements on settlement land;

(b) mischief committed on settlement land; or

(c) unnecessary interference with the use and peaceful enjoyment of settlement land by the Yukon first nation.