Appendix 4A: Land Provisions of Modern Treaties

1. James Bay and Northern Quebec Agreement and the Northeastern Quebec Agreement[1]

While the James Bay and Northern Quebec Agreement (JBNQA) and subsequent Northeastern Quebec Agreement (NEQA) were essentially out-of-court settlements designed to resolve conflicts over construction of the James Bay hydroelectric development project (announced in 1971), they are regarded as Canada's first modern treaties. Signed in 1975 and 1978 respectively, these agreements have also come to be viewed as the benchmark for subsequent comprehensive claims agreements. Signatories to JBNQA were the Grand Council of the Crees of Quebec (representing eight Cree communities), the Northern Quebec Inuit Association, the government of Canada, the government of Quebec, the Quebec Hydro-Electric Commission (Hydro Quebec), the James Bay Energy Corporation, and the James Bay Development Corporation. NEQA was entered into between the same non-Aboriginal parties and the Naskapi Band of Quebec (Kobac Naskapi-Aeyouch), amending JBNQA.

The territory covered by JBNQA and NEQA is a vast area of northern Quebec amounting to roughly 410,000 square miles (1,061,900 square kilometres). The James Bay Crees and Inuit of Nunavik (northern Quebec) are allocated an area of 'primary interest' (basically their traditional land use areas or traditional territories) and an area of 'common interest' (overlapping land use area). With respect to the James Bay Crees, their area of primary interest amounts to some 13,510 square miles (35,000 square kilometres) south of the 55th parallel. Land administration is the responsibility of two public institutions: the James Bay Regional Council (JBRC) and the James Bay Development Corporation (JBDC). JBRC, made up of equal representation from the Crees, Naskapi and province of Quebec, has a legislative mandate from the province for purposes of municipal administration on Category II lands. The development corporation was created by Quebec to promote, plan and co-ordinate development in the territory. The Cree regional authority, composed of all corporations with jurisdiction over Category I lands, was also established. The authority represents Cree interests, and co-ordinates and administers all programs and services on Category I lands, if the communities so delegate.

The portion north of the 55th parallel, known as the Inuit area of primary interest, amounts to approximately 21,616 square miles (56,000 square kilometres). Administration of this region is undertaken by a public body, the Kativik regional government, and is thus referred to as the Kativik region. The Kativik regional government is responsible for land use planning, the environmental assessment procedures pursuant to the agreement, and the provision of public services.

Under JBNQA and NEQA, each Aboriginal party received specific rights to and interests in lands and resources within their primary interest area, which was divided into Category I (divided into IA and IB lands in the Cree region), II and III lands. Category I lands are for the exclusive use and benefit of the Aboriginal signatories. Each James Bay Cree community received approximately 2,158 square miles (approximately 5,589 square kilometres) of lands surrounding or adjacent to the community. Each Inuit community received title to an area of 3,130 square miles (approximately 8,106 square kilometres) allocated in a similar fashion. Although Quebec retained mineral rights, the Aboriginal beneficiaries were granted exclusive use of forest resources and harvesting.

Within the Cree region, title to Category IA lands is held by the Crown for Quebec. But in all other respects such lands are subject to the jurisdiction of the federal government, which is constitutionally responsible for their administration. Category IA lands are subject to the regime established under the *Cree-Naskapi (of Quebec) Act*. Category IB lands are fully transferred to the Aboriginal community landholding corporation and are not subject to federal authority. The *Cree Villages and the Naskapi Village Act* makes Category IB land into village municipalities and established the Aboriginal municipal corporations whose make-up is identical to the landholding community corporations referred to above. Within the Inuit or Kativik region, Category I lands are not subdivided into IA or IB. The *Act respecting Northern Villages and the Kativik Regional Government* provides for local and regional organizational structures. Northern municipalities are established in Category I lands. Each municipal council is also responsible for administration of Category II lands.

With respect to the James Bay Crees, Category II lands comprise 25,130 square miles (approximately 65,086 square kilometres) south of the 55th

parallel of latitude. Of this amount, Inuit have rights to 231 square miles (some 598.29 square kilometres). Category II lands for Inuit communities amount to 35,000 square miles (approximately 90,650 square kilometres) north of the 55th parallel and include a small allocation for the Whapmagoostui Crees. Within the Inuit allocation, 1,600 square miles (approximately 4,144 square kilometres) was later provided for the Naskapi band pursuant to NEQA. The Aboriginal parties have exclusive hunting, fishing and trapping rights, but Category II lands are also accessible by others for development purposes. In the event that development takes precedence over Aboriginal harvesting, the lands are to be replaced. Quebec retained title to and jurisdiction over these lands, although the Aboriginal communities share in land and resource management for hunting, fishing and trapping; tourism development; and forestry.

Category III lands, which make up the balance of land within the territory, are a unique type of provincial public lands. Both Aboriginal and non-Aboriginal people may hunt and fish on these lands, although the Aboriginal beneficiaries have exclusive rights to certain species (except migratory birds and marine animals). The Aboriginal parties also participate in land administration and development. The province, the James Bay Energy Corporation, Hydro Quebec, and the James Bay Development Corporation have specific rights to develop resources on Category III lands. However, depending on the jurisdictional nature of the project, either the federal or the provincial government must undertake an environmental impact assessment. (The exact meaning of this last provision has been, and continues to be, extremely contentious given Quebec's hydro development plans.)

With respect to Category I lands, title is owned collectively by the appropriate Aboriginal government authority. The Cree and Naskapi governments exercise full authority with respect to local government, and the administration and management of lands, pursuant to the *James Bay and Northern Quebec Native Claims Settlement Act* and the *Cree-Naskapi (of Quebec) Act*. Local and regional administrative structures governing James Bay are parallel to municipalities in southern Quebec in terms of powers and authority. The powers of local government with respect to Category

I lands include land and resource use and zoning; preparing land use

plans; setting rules governing the use of lands and resources; regulating the construction and use of buildings; environmental protection; and hunting, fishing and trapping. However, with respect to the latter, wildlife harvesting by-laws must be submitted to the co-ordinating committee established pursuant to JBNQA, and the responsible minister can disallow them. (See the JBNQA wildlife regime, set out in Appendix 4B, for details.) No Category I lands can be sold or otherwise ceded except to the province.

The Aboriginal parties to the agreements also obtained the right of first refusal for outfitting within Category III lands for a period of 30 years from the execution of the agreements. However, the Aboriginal parties were not able to exercise this right in at least three non-Aboriginal applications out of every 10. The hunting, fishing and trapping co-ordinating committee established following the agreement is charged with overseeing this provision. (For details of the committee, see Appendix 4B.) In addition to compensation paid by Canada and Quebec, the beneficiaries were also entitled to a 25 per cent royalty share in provincial duties flowing from other forms of development, for example, mining and forestry, although this was later converted to a cash payment.

In addition to the types of access noted above, access is granted to Aboriginal lands and waters for public purposes. Government agents are authorized to enter Category I lands for the purpose of delivering public programs or services, and constructing or operating a public work or utility.

2. Inuvialuit Final Agreement

The 1984 comprehensive claims agreement between the Committee for Original Peoples' Entitlement (representing Inuvialuit of the western Arctic) and Canada transferred title to about 91,000 square kilometres to Inuvialuit. Of that amount, referred to as the Inuvialuit settlement region (ISR), Inuvialuit hold full surface and subsurface rights to approximately 12,800 square kilometres (Category A) and the surface rights to sand and gravel over another 78,200 square kilometres (Category B). Category A lands were distributed in blocks of approximately 1,700 square kilometres more or less near each of the six communities within the ISR. Fee simple absolute title includes the beds of all lakes, rivers and other water bodies found in Inuvialuit lands, although the Crown retains ownership of all waters in the ISR. Finally, a single block of approximately 2,000 square kilometres

of fee simple absolute title in Cape Bathurst was conveyed. Title is collectively owned and managed through the Inuvialuit Land Corporation, a division of the Inuvialuit Regional Corporation.

The agreement also creates a special conservation regime governing the area between Alaska, the Yukon, and the Northwest Territories (known as the “Yukon North Slope”), including a new national park covering the western portion, as well as the creation of a territorial park (Herschel Island Park). Inuvialuit enjoy harvesting rights within both areas and participate in management activities. The balance of Inuvialuit harvesting and management rights with respect to lands and resources throughout ISR are set out in Appendix 4B.

Public right of access is subject to conditions that protect the area from damage, mischief and interference. The public has access to Inuvialuit lands without prior notice in case of emergency or to reach adjacent lands. The public may also enter Inuvialuit lands for recreation purposes if they receive the consent of Inuvialuit. Specifically, Inuvialuit agreed to allow the public to fish commercially or for sport on lands that do not surround the six communities, provided that individuals are registered with the appropriate authority (hunters and trappers committee or government agency). Government agents can enter Inuvialuit lands and use natural resources incidental to such access when delivering and managing programs and projects. Similarly, the government retained the right to manage fisheries on Category B lands. Further, the department of national defence has access for military exercises but must first negotiate an arrangement, including compensation.

Private access to Inuvialuit lands was granted so that non-Inuvialuit lands could be reached. As well, those holding resource rights on Inuvialuit lands are entitled to exercise such rights without alteration or interruption until such licences or permits terminate. In return, Canada remits to Inuvialuit any rents, fees or other payments from such third-party resource rights. With respect to future development, if such access requires a permanent right of way, developers are required to deal directly with the Inuvialuit administration commission and negotiate participation agreements, including rents for surface use, compensation and other benefits. With respect to sand and gravel on Inuvialuit lands, Inuvialuit agreed to reserve supplies to meet public community needs, direct private needs and, as a

third priority, government projects. Removal of such materials requires a licence from or concessions to the Inuvialuit land administration.

Inuvialuit lands can be expropriated only by a federal cabinet order, subject to their receiving suitable alternative lands and cash compensation for loss of use and actual harvesting loss. Any disagreement concerning expropriated lands can be referred to arbitration (set out in the agreement). Similarly, Inuvialuit agreed to enter into negotiations in the event that any level of government requires Inuvialuit lands to meet public needs.

3. Nunavut Final Agreement

The 1993 comprehensive claims agreement between Inuit of the Nunavut settlement area (as represented by the Tungavik Federation of Nunavut) and Canada is the first to create a new territory within Canada (Nunavut), which will be publicly governed with its own legislative assembly separate from the remainder of the Northwest Territories. Article 3 of the agreement sets out the boundaries of the new territory. Area A is a portion of the Arctic islands and the mainland of the eastern Arctic (including adjacent marine areas). Area B includes the Belcher Islands and associated islands, and adjacent marine areas in Hudson Bay. In addition, the area includes separate zones of waters and land-fast ice. Zone I comprises the waters north of the 61st parallel, subject to Canadian jurisdiction, seaward of the territorial sea boundary, and Zone II refers to those waters of James Bay, Hudson Bay and Hudson Strait that are not part of another land claim settlement or government jurisdiction. The outer land-fast ice zone is also defined in the agreement.

Article 19 of the agreement lays out Inuit rights to land within the new public territory (which is also divided into regional land use areas). ‘Inuit-owned lands’ are intended to provide Inuit with rights that promote economic self-sufficiency consistent with Inuit social and cultural needs and aspirations. Lands will therefore be selected near communities, include significant sites, and incorporate land use activities and patterns. Inuit-owned lands will take one of two forms: fee simple including surface and subsurface rights, and fee simple excluding surface and subsurface rights. Generally, Inuit title includes water except where water forms a boundary or is transboundary. There will be no Inuit lands in marine areas. Title will be owned collectively and vested in a designated Inuit organization (DIO), which is either

Tungavik or a designated regional Inuit organization. Inuit title can be transferred only to another DIO, or in the case of land within a municipality, to Canada, the territorial government or a municipal corporation. The agreement also makes provisions for the future granting of certain Inuit lands to government for the purposes of public easements and the north warning system.

Quantum is as follows:

• North Baffin land use region: 86,060 square kilometres, consisting of at least 6,010 square kilometres in fee simple including surface and subsurface rights (first form), and approximately 80,050 square kilometres in fee simple excluding rights to surface and subsurface resources (second form);

• South Baffin Island land use region: 64,745 square kilometres, consisting of at least 4,480 square kilometres in the first form, and approximately 60,265 square kilometres in the second form of title;

• Keewatin Island land use region: 95,540 square kilometres, consisting of at least 12,845 square kilometres in the first form, and approximately 82,695 square kilometres in the second form;

• Kitikmeot East land use region: 36,970 square kilometres, consisting of at least 1,500 square kilometres in the first form, and approximately 35,470 square kilometres in the second form;

• Kitikmeot West land use region: at least 66,390 square kilometres, consisting of at least 9,645 square kilometres in the first form, and approximately 56,745 square kilometres in the second form;

• Sanikiluaq land use region: at least 2,486 square kilometres in the second form.

The agreement also establishes the following parks: Auyuittuq National Park (from a park reserve), Ellesmere Island National Park, a national park on north Baffin, and a national park on Wager Bay (the last is subject to the exchange of Inuit-owned lands). Establishment of territorial parks also will be considered. Inuit will be involved in the planning and management of

parks through the negotiation of Inuit impact and benefits agreements (IIBA). (See discussion of Auyuittuq National Park Reserve, Baffin Island, in Appendix 4B, for discussion of IIBA.)

Inuit will have free and unrestricted access to harvest within the entire settlement area, including Category I and II lands, Crown lands, parks and conservation areas. As well, subject to Canada's rights and jurisdiction, Inuit will have the right to continue to use and harvest for domestic consumption in open waters in the outer land-fast ice zone. (See Appendix 4B for details of harvesting rights and management processes.) This right is subject to safety, conservation principles, bilateral agreements and land use activity. The last two conditions are rather expansive, as they refer to lands that are dedicated to military activity, owned in fee simple, granted in fee simple following ratification (if less than one square mile or 2.6 square kilometres) subject to an agreement for sale, or subject to a surface lease. However, renewal of surface leases is subject to Inuit rights. Pre-existing commercial rights to minerals on Inuit-owned lands continue following ratification of the agreement.

Designated Inuit organizations will have the right of first refusal throughout Nunavut to the following ventures: new lodges (sports or naturalist); wildlife propagation, cultivation or husbandry enterprises; and marketing wildlife (including parts and products). However, in all cases, if a DIO exercises this right and fails to establish an enterprise without just cause, the right may be declared by government as having lapsed.

Article 21 of the agreement outlines access rights to Inuit-owned lands within the Nunavut settlement area. Generally, non-Inuit may enter, cross or remain on Inuit-owned lands only with the consent of the appropriate DIO. All entry and access is subject to conditions to protect against damage, mischief and significant interference. The public may enter lands for emergency purposes, travel and recreation (including harvesting subject to the laws of general application). Public harvesting rights, however, can be removed where the DIO requires exclusive possession. Government agents can enter Inuit-owned lands to carry out public services, wildlife management and research (subject to the appropriate management board's approval), and the department of national defence can enter Inuit lands only after conclusion of an agreement with the DIO. In addition to the conditions stated earlier, third parties can enter Inuit lands for mineral

exploration and/or development only with the consent of the DIO. Such consent may involve compensation.

Authorized agencies can expropriate Inuit-owned lands. However, there must first be an attempt to negotiate an agreement for the use or transfer of the land, and, failing that, public hearings must be held. Approval must be obtained from either the federal cabinet or territorial government, and compensation must be paid (as determined by the surface rights board created pursuant to the agreement).

4. Umbrella Final Agreement between Council for Yukon Indians, the Government of Canada and the Government of the Yukon

The 1993 umbrella agreement between the Council for Yukon Indians (now the Council for Yukon First Nations) and the federal and territorial governments sets out the substantive benefits and processes that are to form the basis for individually negotiated First Nation claims

agreements.[2] Four individual First Nation agreements were signed in 1994 with the Vuntut Gwich'in First Nation; the First Nation of Na-cho Ny'a'k Dun; the Teslin Tlingit Council; and the Champagne and Aishihik First Nations. Chapters 4, 5, 6 and 9 of the umbrella agreement contain the settlement lands provisions entailing quantum, how lands will be owned and managed by the communities, and the conditions for access to settlement lands.

Three different categories of lands are detailed — Category A, Category B and fee simple. Waters and water beds within the boundaries of a parcel form part of the settlement land. For Category A lands, Yukon First Nations will have rights equivalent to fee simple title to the surface of the land and full fee simple title to the subsurface. For Category B lands, First Nations will have rights equivalent to fee simple surface title only. Fee simple settlement lands will be the same as fee simple title as it is held by individuals. Note that the wording "equivalent to fee simple" for Category A and B

lands was used intentionally in an attempt to avoid extinguishing any Aboriginal rights the First Nations may have. (In the preamble to the agreement, the parties acknowledge explicitly that First Nations wish to retain Aboriginal rights and titles with respect to settlement lands.)

However, title to Category A and B lands is subject to pre-existing rights (less than fee simple); interests for the use of land or resources, and any renewals or replacements; and any right of way or easement contained in individual First Nation agreements. In return, any rents received by government are payable to the First Nation. Further, the First Nations are free to divest, reacquire, or deregister Category A and B lands. In doing so, the ceding, release and surrender of any Aboriginal claims or title or interest in the land is not affected.

The total amount of land for the requirements of all Yukon First Nations shall not exceed 16,000 square miles (41, 439.81 square kilometres). That amount shall not contain more than 10,000 square miles (25,899.88 square kilometres) of Category A settlement land. Each First Nation agreement will set out whether existing reserves are to retain that status or to be selected as settlement land, thereby ceasing to be a reserve. As well, Yukon First Nations can convert land previously set aside into settlement land.[3] If the total amount of reserves and land set aside retained as settlement land by all the Yukon First Nations is less than 60 square miles (approximately 163 square kilometres), they will be able to select an additional amount of settlement land up to 60 square miles in total (see Table 4A.1).

TABLE 4a.1
Allocation of Settlement Land Amount

	Category A		Fee Simple and Category B		Total		Allocation under 4.3.4	
	1	2	1	2	1	2	1	2
Carcross/Tagish First Nation	400	1,036	200	518	600	1,554	2.9	8
Champagne and Aishihik First Nations	475	1,230	450	1,165,	925	2,396	12.17	32
Dawson First Nation	600	1,554	400	1,036	1,000	2,590	3.29	9
Kluane First Nation	250	648	100	259	350	907	2.63	7
Kwalin Dun First Nation	250	648	150	389	400	1,036	2.62	7
Liard First Nation	930	2,409,	900	2,331	1,830	4,740	2.63	7
Little Salmon/Carmacks First Nations	600,	1,555,	400	1,036,	1,000,	2,590	3.27	8
Nacho Nyak Dun First Nation	930	2,409	900	2,331	1,830	4,740	3.58	9
Dené Council of Ross River	920	2,383	900	2,331	1,820	4,714	2.75	7
Selkirk First Nation	930	2,409	900,	2,331	1,830	4,740	2.62	7
Ta'an Kwach'an Council	150	389	150	389	300	777	3.21	8
Tlingits de Teslin Council	475	1,230	450	1,165	925	2,396	12.88	33
Gwich'ins Vuntut First Nation	2,990	7,744	—	—	2,990	7,744	2.74	7
White River First Nation	100	259	100	259	200	518	2.72	7
Total	**10,000**	**25,900**	**6,000**	**15,540**	**16,000**	**41,440**	**60**	**155**

Note:
1= square miles.
2= approximate square kilometers (converted from square miles and rounded).

Source: Department of Indian Affairs and Northern Development, Umbrella Final Agreement between the Government of Canada, the Council for Yukon Indians and the Government of the Yukon (1993), Chapter 9, Schedule a, P. 85.

Chapter 10 of the agreement provides for the establishment of an additional category of lands ‘special management areas’, which are for conservation purposes. Agreements outlining the rights and benefits of affected First Nations within such areas (that is, harvesting, participation in economic opportunities) are to be established.

First Nations will have the power to enact by-laws for use and occupancy, including setting rents or fees for third-party land use, land management, and establishing and keeping land records. Similarly, Yukon First Nations will have the authority to manage, administer, allocate and regulate the harvesting rights of Yukon Indians on settlement lands. (Refer to Yukon Umbrella Final Agreement, Appendix 4B, for details.)

In selecting lands, several restrictions apply. Privately owned land, or land that is subject to an agreement for sale or a lease, is not available, unless the owner consents. Likewise, leased land, land occupied or transferred to a federal, territorial or municipal government, is not available. Finally, land with public highways or rights of way or that forms a jurisdictional border is not available for selection.

Public right of access is subject to conditions to prevent damage, mischief and interference. Anyone has the right to enter settlement land in case of emergency. Anyone has the right to enter settlement land without the consent of the First Nation to reach adjacent non-settlement land for commercial or recreational purposes. Those holding licences can enter settlement land to exercise rights granted by such permits. Government agents can enter settlement land and use natural resources incidental to such access in order to deliver and manage programs and projects. Government will also retain fisheries management on Category B lands. Further, the department of national defence has the right of access to undeveloped settlement land for military manoeuvres with the consent of the First Nation or, failing that, an order from the surface rights board established pursuant to the agreement.

On Category A lands, the public will need permission to hunt, except on defined waterfront rights of way. Similarly, those seeking to conduct mineral exploration will need the permission of the First Nation to look for minerals and will be required to negotiate in order to develop any mines. On Category B lands, public access for non-commercial hunting will be

permitted. Access to the subsurface for mining exploration and development will generally require the developer to negotiate an agreement outlining terms and conditions (with the First Nation or the surface rights board).

Although the parties recognize that settlement land is fundamental to the Yukon First Nations and therefore agree that expropriation should be avoided, authorized agencies can in fact expropriate settlement land. However, first there must be an attempt to negotiate an agreement for the use or transfer of the land, and failing that, public hearings must be held. Approval must be obtained from either the federal cabinet or territorial government, and compensation must be paid (as determined by the surface rights board).

5. The Sahtu Dene and Métis Comprehensive Land Claim Agreement and the Gwich'in Comprehensive Land Claim Agreement

In August 1993 Canada signed a comprehensive claims agreement with the Sahtu (Slavey, Hare and Mountain Dene) and the Métis of the Sahtu region of the Northwest Territories. A separate comprehensive claims agreement was signed with the Gwich'in Tribal Council on behalf of the Gwich'in (also known as the Loucheaux) of the Northwest Territories and the Yukon in April 1992. Although the Sahtu Dene and the Gwich'in are signatories of Treaty 11, and Métis people of the region received cash grants in return for surrendering their claims, the federal government agreed to enter into comprehensive claims negotiations with these nations because of unresolved differences with respect to the interpretation of their Aboriginal and treaty rights. The land provisions (Chapter 19 of the Sahtu Dene and Métis agreement and Chapter 18 of the Gwich'in agreement) are presented together here, as they are essentially identical.

The Gwich'in are to receive 16,264 square kilometres of lands in fee simple, except for subsurface and surface mines and mineral deposits and the right to develop those deposits. The Gwich'in are to obtain fee simple title, including subsurface and surface rights, to an additional 4,299 square kilometres; another 1,755 square kilometres of lands in fee simple, including mines and minerals; and a final 93 square kilometre block with title only to the subsurface mines and minerals, subject to existing rights and interests (the last parcel is known as "the Aklavik Lands"). The Sahtu

Dene and Métis people are to receive title collectively to 39,624 square kilometres of lands in fee simple, without subsurface and surface rights to mines and mineral deposits. An additional 1,813 square kilometres in fee simple land, including subsurface and surface rights to minerals and mines, is to be transferred.

Both Gwich'in and Sahtu title will include ownership of those portions of the beds of inland waters contained within land boundaries, but will exclude boundary waters. The total quantum includes a category referred to as 'municipal lands', which are to provide the communities with local government boundaries for residential, commercial, industrial and traditional purposes. These lands may be conveyed to any person and if done, cease to be settlement lands. Such lands may also be made available for public purposes, such as road corridors, in return for compensation. With the exception of municipal lands, which are subject to real property taxation, no other settlement lands are subject to federal, territorial or municipal taxation.

The selection processes contained in the agreements outline the various criteria guiding the actual selection of lands. Noteworthy among them are the following: unless otherwise agreed, land subject to a fee simple interest, an agreement for sale, or a lease may not be selected; land that is administered or reserved by government (federal, territorial or municipal) may not be selected; and a sufficient amount of reasonably accessible Crown land is to be left for public purposes, including recreation and wildlife harvesting. As well, settlement lands may be expropriated by government for compensation (that is, sufficient alternative lands to restore total quantum).

Lands are to be owned collectively, and title cannot be conveyed to anyone except the Crown or a designated Aboriginal organization. In turn, the designated organization(s) will manage and control land use, and may charge rents or fees for use and occupancy. However, the Aboriginal organizations are expected to provide (and be compensated for) supplies of construction materials (sand, gravel, clay and others) and permit access to them if no alternative source is available.

The harvesting rights of the claims beneficiaries are similar to those outlined in other comprehensive claims agreements in which the Aboriginal

parties possess exclusive and preferential harvesting rights on settlement lands as well as in protected areas and parks. Various bodies are established to oversee the management and regulation of wildlife, fisheries, land use and environmental screening of proposed development projects. Each body includes representation from the Aboriginal party, but the relevant minister retains ultimate decision-making authority.

Generally, only beneficiaries of the agreements are allowed access to settlement land. There are numerous exceptions. Access by any non-Aboriginal person is subject to conditions to prevent damage, mischief, alteration and interference. Further, permanent or seasonal camps are not allowed. Any person may enter land, and waters lying over such lands, in case of emergency. Members of the public have the right to use inland waters for travel or for recreation, but may harvest wildlife only for recreation (fish and migratory birds) in certain waters specified in schedules to the agreements. Government agencies or departments have the right to enter, cross and stay on settlement land to deliver programs and services or establish navigational aids. Further, if government, including the department of national defence, requires continuous use or occupancy of settlement land, it must negotiate an agreement with the Aboriginal parties.

As alluded to in the land provisions, parties with existing rights to use or operate on settlement land for commercial purposes shall continue to enjoy such rights, including associated benefits. Further, such rights are eligible for renewal, replacement and/or transfer. Commercial travel on waters and waterfront lands is allowed in the course of conducting commercial activity, although the most direct route must be taken with minimal use, and the Aboriginal party must be given prior notification. As well, access across lands and waters is allowed in order to reach adjacent lands for commercial purposes. Commercial fishing operations have the right of access to waterfront lands and waters.

Individuals and governments possessing mineral rights on settlement land are granted access for exploring, developing, producing or transporting minerals, provided that they have the agreement of the appropriate Aboriginal party or the surface rights boards created after each agreement. Further, those with mineral prospecting rights do not require a land use permit to exercise such rights, and are granted access to settlement land provided that notice is given to the appropriate Aboriginal party. Any party

wishing to undertake oil and gas or mineral exploration on settlement land must first consult with the relevant Aboriginal party via the appropriate government agency. Consultations are to include such matters as the impact on the environment and wildlife, Aboriginal employment, and business opportunities and training. In turn, proposed developments may be subject to review by claims-based bodies that make recommendations, including conditions for mitigation, to the appropriate minister.

The Gwich'in agreement also contains the Yukon Transboundary Agreement between the Crown and the Gwich'in Tribal Council (Appendix C to the agreement). This agreement has to do with the rights of the Tetlit Gwich'in in the Fort McPherson group trapping area as well as in an adjacent area, which both fall under the auspices of the Yukon Umbrella Final Agreement. Specifically, the Tetlit Gwich'in and the Vuntut Gwich'in First Nation, the Dawson First Nation and the First Nation of Na-cho Ny'a'k Dun entered into an agreement in 1990 dealing with the interests of the Tetlit Gwich'in in an area included in the umbrella agreement. Essentially, the companion agreement sets out the provisions relating to those lands in the Yukon to which the Tetlit Gwich'in will receive title. It deals with the representation of both Aboriginal parties on the relevant interjurisdictional land and resource management bodies, and Tetlit Gwich'in harvesting rights in areas of overlapping traditional use. The rights and benefits set out in the companion agreement are the same as those outlined earlier.

6. Quebec's Offer to the Atikamekw and Montagnais Nations

In 1980 Quebec agreed to participate with Canada in negotiations with the Atikamekw Nation and the Montagnais Nation (represented by the Conseil Attikamek-Montagnais, or CAM) toward the settlement of their comprehensive claim, which covers much of northeastern Quebec and the southern half of Labrador. The government of Newfoundland did not participate in the negotiations since it considers the nations represented by CAM to be non-resident. In 1988, an agreement in principle was reached which, among other things, established interim measures for most of the claimed territory within Quebec. In December 1994 Quebec tabled an offer in an attempt to accelerate discussions so as to conclude the agreement by the end of 1995. The proposal, which does not constitute a final offer on the province's part, is an amalgamation of the acceptable positions of the three parties and is only for their consideration.[4]

Title II of the offer sets out the territorial provisions proposed by the Quebec government. Three basic types of land are contemplated: 'domains',[5] 'shared management areas' and 'traditional activity areas', and public lands. Domains would be lands that make up existing reserves, plus new land transferred to the communities from the province. The individual Atikamekw and Montagnais communities[6] would own this land, the mineral rights and all other real property rights, but not the beds and shorelines of waterways, including hydro reservoirs. Once transferred, these lands would cease to be reserves, but Aboriginal right to these lands would be protected under the *Constitution Act, 1982*. The total proposed amount, which is to satisfy the requirements of all 12 member communities, is 4,000 square kilometres. Domains are intended for the sole benefit of individual Atikamekw and Montagnais communities and would form the territory over which individual community governments (autonomous governments) govern. Jurisdiction would include matters relating to land-use planning, granting interests and rights in land and natural resources, and managing forestry, wildlife and mineral resources.

Traditional activity areas amounting to 40,000 square kilometres, which are also to be designated as shared management areas, are to be established for the Atikamekw and the Montagnais. Quebec would retain ownership of these areas and rights to use and occupancy. However, the Montagnais and Atikamekw would enjoy exclusive rights to subsistence trapping, hunting, fishing and food gathering (harvesting). To harmonize mutual rights, the province proposed that each party draw up a code governing their respective activities, which would be consolidated and administered by a co-management committee. Such a committee would include equal representation from regional public authorities. Although these areas would be subject to provincial statutes, Quebec proposed a number of economic development initiatives. These include Aboriginal rights of first refusal for the establishment of outfitting operations, and a share of provincial land and resource revenues.

Protected sites may be established under the sole or joint management of the relevant autonomous government. Ten thousand square kilometres of public land would be designated as conservation sites on which there would be no resource development except recreation, tourism and wildlife activities, and which would be subject to joint management (between

Quebec and the Montagnais only). The offer includes Canada's proposal to convert the Mingan Archipelago National Park Reserve into a national park with socio-economic development and joint management initiatives specifically with the Montagnais.

Finally, Quebec proposes that families engaging in harvesting activities on specific trapping sites outside the traditional activity area would retain exclusive rights in subsistence harvesting. As part of economic development, the province also proposes to open access to 186,000 cubic metres of timber in forest already covered by timber supply and forest management agreements, with support to establish Aboriginal forestry operations.

Aboriginal and non-Aboriginal harvesting and related activities on all other lands would be subject to laws of general application. As for other Aboriginal nations in the territory (James Bay Crees), the offer stipulates that, following the 1988 framework agreement, Canada will settle overlapping territorial concerns.

Although the offer states that provisions regarding access to lands by the public and third parties will be made in the final agreements, Quebec proposes that certain pre-existing rights (such as mineral rights) in the Aboriginal lands selected should remain in force until expiry. In return, as part of the proposed transitional process, the province offers not to transfer or attribute permanent rights on the lands except those for the resources that Quebec continues to own. In addition, Quebec would provide support to involve the Montagnais and Atikamekw in the development, maintenance, operation and management of hydro development operations producing less than 25 megawatts of energy. Finally, municipalities affected by the proposal would receive compensation.

Schedule C of the offer outlines terms and conditions governing the expropriation of Atikamekw and Montagnais domains. A provincially authorized authority may expropriate these lands for public purposes in accordance with provincial statutes. However, the authority must negotiate with the affected community to provide compensation (new lands or money). In the absence of such agreement, public hearings must be undertaken and lands would be expropriated only with the approval of cabinet.

Notes:

1 This summary is based on the terms of the two agreements and on René Dussault and Louis Borgeat, *Administrative Law: A Treatise*, 2nd ed., Volume 1, trans. Murray Rankin (Toronto: Carswell, 1985).

2 The communities that are party to the agreement are Carcross/Tagish First Nation, Champagne and Aishihik First Nations, Dawson First Nation, Kluane First Nation, Kwanlin Dunn First Nation, Liard First Nation, Little Salmon/Carmacks First Nation, First Nation of Na-cho Ny'a'k Dun, Ross River Dena Council, Selkirk First Nation, Ta'an Kwach'an Council, Teslin Tlingit Council, Vuntut Gwich'in First Nation, and White River First Nation.

3 In addition to existing reserves, other land had been set aside over the years throughout the Yukon for Indian use for housing, buildings and other purposes.

4 "Comprehensive Land Claims of the Atikamekw and Montagnais Nations: Offer of the Québec Government" (December 1994); and "Summary of the Comprehensive Offer of the Québec Government to the Atikamekw and Montagnais Nations" (December 1994). See also Renée Dupuis, "Historique de la Négociation sur les revendications territoriales du conseil des Atikamekw et des Montagnais (1978-1992)", *Recherches Amérindiennes au Québec* XXIII/1 (1993), pp. 35-48.

5 The term 'fee simple lands' employed by the June 1993 negotiators' summary report was replaced by the expression 'domains'.

6 There are three Atikamekw communities (Manawan, Obedjiwan and Weymontachie), all in the Haute-Mauricie forest area, and nine Montagnais communities. Seven of the latter are spread over 900 kilometres of the Côte-Nord region along the north shore of the St. Lawrence River (Les Escoumins, Betsiamites, Sept-ëles or Uashat-Maliotenam, Mingan, Natashquan, La Romaine, and Saint-Augustin or Pakuashipi); of the remaining two, one (Pointe-Bleue or Mashteviatsh) is in the Lac Saint-Jean

region and the other (Matimekosh) is near Schefferville.