Legislative Summary **LS-486E**

BILL C-14: THE TLICHO LAND CLAIMS AND SELF-GOVERNMENT ACT

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LEGISLATIVE HISTORY OF BILL C-14

HOUSE OF COMMONS		SENATE	
Bill Stage	**Date**	**Bill Stage**	**Date**
First Reading:	19 October 2004	First Reading:	7 December 2004
Second Reading:	2 November 2004	Second Reading:	13 December 2004
Committee Report:	2 December 2004	Committee Report:	10 February 2005
Report Stage:	6 December 2004	Report Stage:	
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Royal Assent: 15 February 2005

Statutes of Canada 2005, c. 1

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

Legislative history by Peter Niemczak

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BILL C-14: THE TLICHO LAND CLAIMS AND SELF-GOVERNMENT ACT*

Bill C-14, the Tlicho Land Claims and Self-Government Act, was introduced and given first reading in the House of Commons on 19 October 2004.(1) The bill ratifies and gives force of law to the August 2003 tripartite land claim and self-government agreement among the Tlicho people of the central Northwest Territories and the federal and territorial governments. It also amends the 1998 *Mackenzie Valley Resource Management Act* for the purpose of integrating the Tlicho into the land and water and environmental review institutions of public government established in that statute, and makes consequential amendments to a number of additional federal statutes.

Bill C-14 received second reading in the House of Commons from 27 October through 2 November, when it was referred to the Standing Committee on Aboriginal Affairs and Northern Development. Following hearings from 16 to 30 November, the Committee returned the bill unamended to the House, where it was adopted at third reading on 7 December. On 10 February 2005, Bill C-14 was adopted by the Senate without amendment following a similarly uneventful passage. The bill received Royal Assent on 15 February, becoming Chapter 1 of the Statutes of Canada for 2005.

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

(1) During the 3rd Session of the 37th Parliament, a substantially similar bill was introduced as Bill C-31. It died on the *Order Paper* when Parliament was dissolved in May 2004, having been referred to but not considered by the then House of Commons Standing Committee on Aboriginal Affairs, Northern Development and Natural Resources.

BACKGROUND

A. The General Comprehensive Land Claim Negotiation Context

Comprehensive land claims are those based on assertions of continuing Aboriginal rights and title that have not been dealt with by treaty or other means. Canada first articulated a comprehensive land claims policy in 1973, largely in response to the Supreme Court of Canada decision in *Calder* v. *Attorney General of B.C.*[(2)] The decision confirmed that Aboriginal peoples' historic occupation of the land gave rise to legal rights that had survived European settlement.

The recognition and affirmation, in section 35 of the *Constitution Act, 1982*, of the existing Aboriginal and treaty rights of Canada's Aboriginal peoples, including those in modern land claim agreements, altered the legal and constitutional landscape in which those agreements were to be negotiated.

A long-standing issue associated with comprehensive claims has been the federal policy requirement that Aboriginal groups surrender their Aboriginal title to lands and resources in exchange for defined rights set out in a land claim settlement. Aboriginal groups have opposed this policy. In practice, it was not until 1998 that the first alternative approach in the form of a "modified rights" scheme was practised, in the *Nisga'a Final Agreement* among Canada, British Columbia and the Nisga'a Tribal Council.

In 1986, the government's revised federal land claim policy recognized the growing importance of Aboriginal self-government issues in land claim negotiations.[(3)] The same year, the federal government had released its Policy on Community-Based Self-Government Negotiations. Several other developments in the 1980s contributed to the growing focus on self-government, including the 1983 Penner Report on *Aboriginal Self-Government in Canada*,[(4)] and constitutional First Ministers' Conferences in which Aboriginal self-government was a primary topic.[(5)]

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(2) [1973] S.C.R. 313.

(3) Minister of Indian Affairs and Northern Development, *Comprehensive Land Claims Policy*, Minister of Supply and Services, Ottawa, 1987, p. 17.

(4) House of Commons Special Committee on Indian Self-Government, Issue No. 40, 12 and 20 October 1983.

(5) These proceedings are reviewed by Bryan Schwartz in *First Principles, Second Thoughts: Aboriginal Peoples, Constitutional Reform and Canadian Statecraft*, The Institute for Research on Public Policy, Montréal, 1986.

In 1992, participants in the ultimately unsuccessful Charlottetown round of constitutional negotiations unanimously endorsed constitutional entrenchment of an inherent right of self-government.(6) Subsequently, a 1993 federal policy statement on land claim settlements(7) confirmed that comprehensive land claim agreements might include commitments to negotiate self-government and that self-government negotiations might occur at the same time as land claim negotiations. Although the statement provided that constitutional recognition would not attach to self-government agreements in the absence of a constitutional amendment, it also suggested a possible shift in policy, referring to the then Conservative government's 1991 "commitment to reconsider its policy on the constitutional protection of self-government agreements negotiated with comprehensive claims should the constitutional process" not succeed.(8)

In 1995, a policy shift did occur with the Liberal government's recognition of the inherent right of self-government as an existing Aboriginal right under section 35 of the *Constitution Act, 1982*.(9) The Liberal policy statement set out an approach for the negotiation of self-government agreements, under which self-government rights might be protected under section 35 in new treaties, as part of comprehensive land agreements or as additions to existing treaties.

Since 1973, a total of 17 comprehensive land claims have been settled, 14 of them in the three northern territories. Only the 2 settlements to have been concluded post-1995 explicitly extend section 35 constitutional protection to self-government rights as well as to land rights in the same agreements. These are the 1998 *Nisga'a Final Agreement*, ratified by Parliament in 2000,(10) and the 2003 Tlicho *Land Claims and Self-Government Agreement* that is the subject of Bill C-14 (Tlicho Agreement or the Agreement).

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(6) *Consensus Report on the Constitution of August 28, 1992*, Minister of Supply and Services, Ottawa, 1992.

(7) Minister of Indian Affairs and Northern Development, *Federal Policy for the Settlement of Native Claims*, Ottawa, 1993.

(8) *Ibid.*, p. 7.

(9) *Aboriginal Self-Government: The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government*, Minister of Public Works and Government Services, Ottawa, 1995.

(10) *Nisga'a Final Agreement Act* (S.C. 2000, c. 7).

B. Dene/Métis Land Claim Negotiations in the Northwest Territories to Date

In 1921, Tlicho Chief Monfwi was among the Aboriginal signatories of Treaty 11, the last of the numbered treaties, covering most of the Mackenzie District and including portions of the Northwest Territories and Yukon. In the ensuing period, land entitlement provisions of Treaty 11 and of the 1899 Treaty 8, covering the region of the Northwest Territories south of Great Slave Lake, remained virtually unsatisfied. Furthermore, Aboriginal groups considered the treaties ones of peace and friendship rather than land cessions.

Accordingly, in 1978 the federal government agreed to negotiate Dene and Métis land claims within the Territory on a joint basis,[11] in the interest of consistency in dealing with northern Aboriginal groups. They in turn desired a negotiated settlement in light of increased development activities throughout the region, in the hope that, with land claims settled, they might benefit from and participate in those activities while preserving rights to harvest wildlife and other resources.

In 1988, the federal government and the Dene and Métis of the Mackenzie Valley signed the Dene-Métis joint comprehensive land claim Agreement-in-Principle. The proposed Final Agreement was subsequently rejected, owing in large measure to the opposition of many Dene on two points: the extinguishment or surrender of Aboriginal land rights in the document's "certainty" provisions under federal land claim policy, and the absence of provisions setting out self-government rights. The Dene/Métis leadership resolved to renegotiate part of the proposed Agreement or litigate recognition of their Aboriginal and treaty rights. The Gwich'in of the Mackenzie Delta region and the Dene and Métis of the Sahtu region disagreed with this position and withdrew from the joint claim to submit separate regional claims.

In 1990, the federal Minister of Indian Affairs announced that the government would negotiate regional settlements with any of the Aboriginal groups from the five regions of the Mackenzie Valley that had been involved in the joint claim, based on the provisions of the failed Final Agreement. Under these conditions, for example, any regional agreement would have to include a Mackenzie Valley environmental assessment scheme as well as pan-regional land and water management measures.

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(11) The Dene were represented by the Indian Brotherhood of the Northwest Territories, later the Dene Nation, while the Métis were represented by the Métis Association of the Northwest Territories.

In 1992, the Gwich'in became the first regional group to reach a negotiated settlement.(12) The Sahtu Dene and Métis concluded their agreement in 1994.(13) The Tlicho Agreement is the third regional land claim settlement to be reached under the same general conditions. In the altered negotiation context marked by the government's 1995 "inherent right" policy, it is the first such settlement to extend section 35 protection to self-government rights.

Negotiations at various stages continue with the Deh Cho and Akaitcho (Treaty 8) Dene of the Deh Cho and South Slave regions respectively, as well as with the Northwest Territory Métis Nation, formerly the South Slave Métis Tribal Council. In addition, self-government negotiations with the Gwich'in and Inuvialuit of the western Arctic,(14) based on their respective land claim agreements, are the first in which two different Aboriginal groups have joined to negotiate a single self-government agreement. Individual Sahtu communities are also pursuing self-government settlements.

C. Implementing Resource and Land Management Regimes

In the Gwich'in and Sahtu Dene and Métis agreements, virtually identical land and water regulation chapters call for an integrated land and water management and environmental assessment system for the Mackenzie Valley.(15) They describe in general terms the composition, role and jurisdiction of a number of institutions of public government to be established by legislation, including land use planning boards, land and water boards and environmental impact review boards. These institutions were officially put in place and their mandates and processes defined in greater detail by the 1998 *Mackenzie Valley Resource Management Act* (MVRMA).(16)

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(12) *Gwich'in Comprehensive Land Claim Agreement*, Minister of Indian Affairs and Northern Development, Ottawa, 1992, ratified by the *Gwich'in Land Claim Settlement Act*, S.C. 1992, c. 53.

(13) *Sahtu Dene and Métis Comprehensive Land Claim Agreement*, Minister of Indian Affairs and Northern Development, Ottawa, 1993, ratified by the *Sahtu Dene and Métis Land Claim Settlement Act*, S.C. 1994, c. 27.

(14) The settlement region of the western Arctic Inuit under the 1984 *Inuvialuit Final Agreement* includes a northwestern portion of the Northwest Territories and its offshore, as well as an adjacent area in Yukon.

(15) Chapters 24 and 25 respectively.

(16) S.C. 1998, c. 25. A legislative summary of the MVRMA, LS-302E, prepared by the author and Jill Wherrett of the Library of Parliament in October 1998, is available on-line at http://lpintrabp.parl.gc.ca/lopimages2/prbpubs/ls1000/361c6-e.asp.

D. The Tlicho

The Tlicho people, known until 2002 by the English translation Dogrib, are members of the Northwest Territories Dene Nation, along with the Gwich'in, the Sahtu, the Deh Cho and the Akaitcho people.

The Tlicho reside primarily in four communities in the North Slave region of the Northwest Territories, and are for the most part members of the four *Indian Act* bands located respectively in those communities. According to on-line population estimates of the N.W.T. Bureau of Statistics and First Nations community information published by the Department of Indian Affairs and Northern Development (DIAND),

- In Rae-Edzo or Behchokò, the largest of the four communities and the closest to Yellowknife, the total population as of July 2003 was 1,867. The total number of *Indian Act* registrants in the Dogrib Rae Band as of September 2004 was 2,526;
- Whatì had a population of 493, while the Whatì First Nation community had 553 registered members;
- Rae Lakes or Gamètì's population was 298, and the Gamètì First Nation community had 313 registered members;
- Wekwètì's total population was 148, and the Dechi Laot'i First Nations had 156 *Indian Act* members.

The figures indicate a total registered Tlicho population of around 3,500, with not all Tlicho people living within the communities in which Tlicho represent the large majority.(17)

The Tlicho are known as strong defenders of their distinct culture, language and traditions, as well as for entrepreneurship and economic development activities in the North Slave region. The two N.W.T. diamond mines (Diavik and Ekati) are situated in Tlicho territory, leading to negotiated impact and benefit agreements with the Tlicho people as well as training and employment guarantees.

(17) It is not known whether a precise breakdown of Aboriginal and non-Aboriginal residents is available.

E. The Tlicho Agreement

1. Negotiation and Ratification

The Dogrib Treaty 11 Council submitted the Tlicho regional claim in 1992. In 1997, the federal negotiating mandate was expanded in light of the 1995 self-government policy, and negotiations for a joint land claims and self-government agreement proceeded. In January 2000, the Dogrib people accepted the Agreement in Principle with the territorial and federal governments. The Tlicho Agreement was initialled in March 2003, ratified by 84% of eligible Tlicho voters in June 2003, and signed by the parties in August 2003. As required by the Agreement (Chapter 4), the N.W.T. Legislative Assembly ratified the Agreement with enactment of the *Tlicho Land Claims and Self-Government Agreement Act* (Bill 34) in October 2003. The federal government is similarly obliged to adopt settlement legislation, introduced as Bill C-14, in order to give effect to the Agreement.

2. Overlap Agreements

Prior to the final signing of the Agreement, the Tlicho and the four other N.W.T. Dene groups concluded agreements to decrease the potential for future overlap disputes. Such agreements are required to resolve boundary issues respecting shared or overlapping traditional use areas or traditional territories claimed. Agreements in these areas concluded in 2002 with the Deh Cho to the southwest and the Akaitcho Treaty 8 to the east are reflected in the terms of the Agreement; those reached with the Gwich'in and Sahtu Dene and Métis to the northwest confirm traditional harvesting rights in areas of overlap.

3. Substance: Selective Summary Overview

The Tlicho Agreement consists of 27 chapters that comprehensively define Tlicho rights, responsibilities and applicable processes in relation to Tlicho lands and Tlicho community lands, land and water and environmental management, natural resources, wildlife harvesting, taxation, dispute resolution and numerous other matters. While it is beyond the scope of this paper to provide a detailed summary of the Agreement's contents, the following sections outline some significant features related to lands under the Agreement, as well as General Provisions and Government chapters.

a. Lands in the Agreement

The traditional Tlicho territory identified by Chief Monfwi at the time of signing of Treaty 11, known as Mowhì Gogha Dè Niitlèè, is still considered as such by the Tlicho and was the basis for the Tlicho land claim negotiations.(18) That territory extends into what is now Nunavut to the northeast as well as into the settlement area under the Sahtu Dene and Métis land claim agreement to the northwest. The Tlicho will retain wildlife harvesting rights in those portions of their traditional harvesting territory, subject to the terms of Chapter 10 of the Tlicho Agreement. Other harvesting rights, for example with respect to trees and plants, may be exercised only in that portion of Mowhì Gogha Dè Niitlèè that is in the Northwest Territories (see Chapters 13 and 14).

The area over which the institutions of public government created by the Agreement will have jurisdiction, including the Land and Water Board legislated in Bill C-14, is called Wek'èezhìi.(19) It is bounded by Nunavut and the Sahtu settlement area and by lines agreed to with the Deh Cho and Akaitcho Dene to the southwest and southeast respectively.

Tlicho lands to which fee simple title is vested in the Tlicho Government under Chapter 18 of the Tlicho Agreement are in a single block totalling about 39,000 square kilometres, including subsurface resources, subject to the interests mentioned in s. 18.1.1. It is these lands over which the Tlicho Government exercises legislative authority.(20) Although the four Tlicho communities are located within the boundaries of Tlicho lands, they are not included in those lands.

Tlicho community lands to which fee simple title is vested in Tlicho community governments under Chapter 9 of the Agreement consist of most lands within community boundaries. That title does not include prescribed excluded parcels, mines and minerals, or interests existing, and leases granted, prior to the coming into effect of the Agreement.

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(18) The area is described in Part I of the Appendix to Chapter 1 of the Tlicho Agreement.

(19) The area is described in Part II of the Appendix to Chapter 1.

(20) In some cases, as set out in Chapter 7, the Tlicho Government's law-making power extends to Tlicho Citizens and to matters of culture without regard to location, while in others the exercise of that authority may affect wildlife harvesting over a larger area.

b. General Provisions (Chapter 2)

This pivotal chapter contains stipulations that:

- The Tlicho Agreement is a land claim agreement protected by section 35 of the *Constitution Act, 1982*, but other agreements provided for under its terms do not have that status (s. 2.1.1);

- The *Indian Act* ceases to apply to Tlicho Citizens except for the purpose of determining "Indian" status (s. 2.2.7), and Tlicho lands as defined in Chapter 1 are neither "Lands reserved for the Indians" under subsection 91(24) of the *Constitution Act, 1867*, nor "reserves" under the *Indian Act* (s. 2.3.1);

- The *Canadian Charter of Rights and Freedoms* applies to the Tlicho Government established under Chapter 7 (s. 2.15.1);

- The Agreement does not recognize or affect any Aboriginal or treaty rights of any Aboriginal group other than the Tlicho (s. 2.7.1);

- The Tlicho Government may agree to share rights under the Agreement with another Aboriginal people (s. 2.7.3);

- Federal and territorial legislation applies to the Tlicho unless the Agreement provides otherwise (s. 2.8.2);

- In the event of conflict between Bill C-14 or the Agreement and any other federal, territorial or Tlicho laws, Bill C-14 or the Agreement prevails, while the Agreement prevails in case of conflict with Bill C-14 (s. 2.8.3−.4);

- Subject to prescribed exceptions, the Agreement may only be amended with the Parties' consent (s. 2.10.1);

- The Parties may agree to negotiate amending the Agreement to incorporate a non-land right proposed by the Tlicho Government that is not set out in the Agreement (s. 2.10.2);

- Government must consult the Dogrib Treaty 11 Council or the Tlicho Government that replaces it in planning wildlife harvesting and land and water regulation bodies established under the Agreement, as well as the preparation of settlement or other legislation to implement its provisions (s. 2.11.1);

- Subject to a prescribed exception, the Tlicho Government and Tlicho community governments are not required to disclose information they must or may withhold under federal, territorial or Tlicho access to information or privacy laws (s. 2.12.1).

Significantly, the Agreement provides for an alternative to extinguishment provisions of prior land claim settlements that differs from the "modified rights" approach set out in the *Nisga'a Final Agreement*. Under this "certainty" alternative,

- Subject to provisions related to amending the Agreement, the Tlicho may not exercise or assert any Aboriginal or treaty rights other than those set out in the Agreement and defined rights under Treaty 11 (payments of annuities and teachers' salaries) (s. 2.6.1);

- The purpose of this non-assertion provision is to enable the Tlicho to exercise rights under the Agreement, to enable all others "to exercise and enjoy all their rights, authorities, jurisdictions and privileges" and to release the latter from any obligation to the Tlicho in relation to any non-assertable right (s. 2.6.4);

- Should the non-exercise/non-assertion provision not be enforceable in relation to a land right, with the result that the provision's purpose is not fulfilled or government or others are placed under an obligation to the Tlicho, the Tlicho "cede, release and surrender that land right to the extent necessary to achieve" the provision's purpose (s. 2.6.9);
- In the event that a continuing land right that is not assertable might have the same result, the Tlicho similarly surrender that right (s. 2.6.10);

- The Tlicho release government and others from claims arising from any act or omission occurring prior to the coming into force of the Agreement and that may have affected any Tlicho land right that was, at the time of the occurrence, an Aboriginal or treaty right (s. 2.6.5);

- The Tlicho release government and others from claims arising from any act or omission occurring after the Agreement takes effect and that may have affected any right that is non-assertable (s. 2.6.6).

c. Tlicho Government (Chapter 7)

- On the coming into force of the Agreement, the Dogrib Treaty 11 Council and the four member *Indian Act* First Nations communities cease to exist and are succeeded by the Tlicho Government (s. 7.14.1);

- The Tlicho Constitution approved by the Dogrib Treaty 11 Council (s. 7.1.1) and over which the Agreement prevails (s. 7.1.4) provides for, at a minimum:
  - the authority, duties, composition, membership procedures and accountability of governing bodies;
  - human rights protection for the Tlicho and others subject to Tlicho laws no less than that of the Canadian Charter;
  - government accountability to Tlicho Citizens;

  - the challenging of Tlicho laws by affected persons;
  - participation of persons directly affected by Tlicho programs in decision-making processes related to those programs;
  - possible appointment/election of non-Tlicho citizens to Tlicho Government bodies;
  - amendment of the Tlicho Constitution by Tlicho Citizens (s. 7.1.2);

- The Tlicho Government consists, at a minimum, of a Grand Chief elected at large by Tlicho Citizens, and the Chief and one other elected representative from each Tlicho community (s. 7.1.3);

- The Tlicho Government may delegate any of its powers except its law-making power (s. 7.3.1) over, *inter alia*,
  - government structure and management (s. 7.4.1);
  - use and management of Tlicho lands and resources (s. 7.4.2);
  - prescribed fish and fish habitat matters on Tlicho lands and other fish management topics agreed to and legislated by government (s. 7.4.3);
  - culture, language, traditional medicine, training, social assistance, child and family services and guardianship for Tlicho Citizens on Tlicho lands, adoption in the Northwest Territories of a minor Tlicho Citizen by a Tlicho Citizen, primary and secondary education for Tlicho Citizens, succession, solemnization of marriage on Tlicho lands or in Tlicho communities (s. 7.4.4);
  - direct taxation of Tlicho Citizens on Tlicho lands or in Tlicho communities (s. 7.4.5);
  - enforcement of Tlicho laws in these areas (s. 7.4.6);

- Limitations and conditions apply to the Tlicho Government's exercise of legislative authority (s. 7.5), and include the obligation to consult with government before enacting laws related to land management and a number of matters set out in s. 7.4.4;

- Unless expressly limited to Tlicho Citizens, Tlicho laws under s. 7.4 authority may apply to persons other than Tlicho Citizens (s. 7.5.9);

- Section 7.4 authority does not include jurisdiction over criminal laws or procedure, establishment of a court, intellectual property or broadcasting, certain access matters, imposition of conditions on the exercise of prescribed interests in Tlicho lands, regulation of professions, and other matters (s. 7.5.10);

- The legislative powers of the Tlicho Government are concurrent with those of federal and territorial government (s. 7.7.1);

- In the event of conflict between federal legislation of general application as defined in Chapter 1 and a Tlicho law, the former prevails, but Tlicho law prevails in instances of conflict with any other federal legislation (s. 7.7.2);

- Subject to the terms of the Agreement, Tlicho law prevails over conflicting territorial legislation of general application (s. 7.7.3), while territorial legislation implementing an international obligation of Canada prevails over a conflicting Tlicho law (s. 7.7.4);

- Where practicable, government and the Tlicho Government should exercise their respective powers so as to provide for coordinated program and service delivery (s. 7.9.1), and may enter into agreements to that end (s. 7.9.3);

- The first 10-year renewable intergovernmental services agreement signed by the Parties (s. 7.10.1, 7.10.5) and binding on them (s. 7.10.9) is intended to provide all residents on Tlicho lands with a single delivery system for programs related to health, education, welfare, family and other social programs and services (s. 7.10.2−.3);

- The first 5-year renewable financing agreement signed by and binding on Canada and the Dogrib Treaty 11 Council (s. 7.11.1−.2, 7.11.11) was negotiated taking into account, *inter alia*, Tlicho own-source revenue capacity, opportunities for economies and other financing provided to the Tlicho Government (s. 7.11.4);

- The financing agreement sets out Canada's funding contributions to operate the Tlicho Government and institutions, accountability measures and dispute resolution procedures (s. 7.11.6);

- Neither the intergovernmental services agreement nor the financing agreement forms part of the Agreement (s. 7.10.8, 7.11.10);

- Canada must allow the Tlicho Government to voice its views concerning a prospective international treaty that may affect a right of the Tlicho under the Agreement before agreeing to be bound by that treaty (s. 7.13.2);

- Should Canada consider that it is unable to perform an international legal obligation owing to a Tlicho law or other Tlicho Government activity, Canada and the Tlicho Government must discuss remedial measures: where there is agreement as to Canada's inability to meet its obligation, the Tlicho must remedy their law accordingly (s. 7.13.3). Where there is disagreement, the matter is to be resolved *via* arbitration under Chapter 6 of the Agreement (s. 7.13.4).

d. Tlicho Community Governments (Chapter 8)

- The Agreement requires that the four Tlicho community governments be established by territorial legislation[21] (s. 8.1.1), setting out community boundaries, governments' powers and structures, and other matters (s. 8.1.2);

(21) The *Tlicho Community Government Act*, Bill 5, was assented to on 2 June 2004.

- Each community government consists of: a Chief who is a Tlicho Citizen elected by Tlicho Citizens who are eligible voters (s. 8.2.4); and an even number of councillors (s. 8.2.1), who must themselves be eligible voters (s. 8.2.5) and at least 50% of whom must be Tlicho Citizens (s. 8.2.7). Only Canadian citizens or permanent citizens who fulfil age and residency requirements are eligible to vote for a Tlicho community government (s. 8.2.3);

- Community governments may make laws for their operation, borrowing of money, granting of interests in community lands, and matters of a local nature specific to each community such as land use planning, public order, housing, transportation, and taxation (s. 8.4.1), but they may not enact criminal laws (s. 8.4.2);

- Federal and territorial legislation prevails over conflicting Tlicho community government laws (s. 8.5.1, 8.5.3), territorial legislation establishing Tlicho community governments prevails over conflicting Tlicho laws (s. 8.5.2), and Tlicho law prevails over conflicting Tlicho community government legislation (s. 8.5.4).

DESCRIPTION AND ANALYSIS

The Tlicho Land Claims and Self-Government Act consists of 111 clauses, preceded by a Preamble. The following review is intended to provide a general overview of selected significant features of Bill C-14, including noteworthy proposed amendments to the MVRMA, and does not discuss every clause in the legislation. References in square parentheses are to provisions of the Tlicho Agreement.

A. Preamble

Bill C-14's substantive clauses are preceded by a six-paragraph preamble that will enter the annual statute book as an integral part of the legislation. Statutory preambles are used – including in statutes relating to Aboriginal peoples – as a way of establishing a context and rationale for legislation and may also underscore parliamentary intent in enacting it. Preambles are considered interpretive rather than substantive.

In this case, the preamble sets out the factual context for the proposed legislation, noting the Agreement's negotiation and conclusion and ratification processes completed by the other two parties to it. The preamble further affirms the Agreement's section 35 status and notes that its validity depends upon the enactment of federal ratification legislation [s. 2.1.2, 4.3.2].

B. Ratification (Clause 3)

Clause 3(1) of Bill C-14 approves the Agreement, gives it effect, declares it to be valid and acknowledges it to have the force of law. The provision mirrors its equivalent in the October 2003 Northwest Territories settlement statute on whose adoption the Agreement's validity also depends [s. 2.1.2, 4.3.1]. It is identical to its counterpart in the 2000 *Nisga'a Final Agreement Act*, and substantially consistent with those in the predecessor Gwich'in and Sahtu Dene and Métis ratification statutes(22) as well as the legislation ratifying the land claim agreements of Yukon First Nations(23) and the Inuvialuit.(24)

Bill C-14 further stipulates, for greater certainty:

- that the rights, benefits, and the duties and liabilities set out in the Agreement have legal effect, that is, the former may be exercised and the latter must be performed or assumed (clause 3(2)). This applies not only to Tlicho Citizens, the Agreement's principal beneficiaries and duty-holders, but also, for example, to non-Tlicho persons with a right of access to Tlicho lands under Chapter 19 of the Agreement or voting rights under Chapter 8, as well as to government bodies with obligations under the Agreement. The measure reiterates similar or identical provisions in previous ratification legislation;

- that the Agreement is binding on all persons and bodies, that is, it is enforceable by and against all, and can be relied upon by all (clause 3(3)). This is a variation on the equivalent measure contained in the Nisga'a ratification act, which made no reference to "bodies," and Yukon settlement legislation, which declared the relevant agreements "binding on all persons and bodies that are not parties to it." Settlement laws for Gwich'in and Sahtu Dene and Métis agreements contain no such provision. Both they and the Yukon statute, however, specify that each "Act is binding on Her Majesty in right of Canada or a province." It is not clear whether such a measure, which is also absent from the Nisga'a legislation, may have been viewed as redundant in light of clause 3(3).

C. Conflict of Laws (Clause 5)

As has been the case in all previous legislation for the ratification of land claim settlements, Bill C-14 contains provisions for dealing with potential inconsistency or conflict between itself (when enacted) or the Agreement, and other statutory instruments. In accordance with the terms of the Agreement [s. 2.8.3−.4], the bill makes it clear that the Agreement or the

(22) See notes 12 and 13. They do not explicitly describe the agreements as having the force of law.

(23) *Yukon First Nations Land Claims Settlement Act,* S.C. 1994, c. 34.

(24) *Western Arctic (Inuvialuit) Claims Settlement Act*, S.C. 1984, c. 24.

legislation, as well as regulations made under its authority, are to prevail over any inconsistent or conflicting federal or territorial laws and regulations, as well as over Tlicho laws made under the Agreement's authority. In the event of conflict between the legislation and the Agreement, the latter, a constitutionally protected document, will prevail.

D. Appropriation (Clause 6)

Bill C-14 provides for payment of Canada's financial obligations under the Agreement out of the Consolidated Revenue Fund. The specific obligations referred to in clause 6 are those set out in: Chapter 9 (Tlicho Community Lands), which requires a one-time payment to the Tlicho Government in lieu of property tax payments for lands in Tlicho communities reserved by Indian Affairs for Indian Housing [s. 9.7]; Chapter 18 (Tlicho Lands), which provides for the regular payment to the Tlicho Government of royalties or non-refunded rents received by government for existing interests on Tlicho lands [s. 18.7]; Chapter 24 (Financial Payments), under which capital transfer payments of $152 million are to be paid over 14 years [s. 24.1 and Appendix to Chapter]; Chapter 25 (Mineral Royalties), which requires annual payment to the Tlicho Government of a share of mineral royalties received by government [s. 25.1.1]; and Chapter 26 (Economic Measures), which calls for a one-time payment of $5 million to the Tlicho Government for the establishment of a Strategic Economic Development Investment Fund [s. 26.2.1].

E. Tax Treatment Agreement (Clause 7)

The Tlicho Agreement called for government and the Dogrib Treaty 11 Council to conclude an agreement for the tax treatment of the Tlicho Government, corporations and capital trusts, and for settlement legislation to give effect to it [s. 27.5.1]. The Tax Treatment Agreement (TTA) was reached, and Bill C-14 satisfies the requirement that it be given effect by way of legislation. Clause 7 also gives the TTA force of law for the period that it is in effect, a minimum of 10 years. Legislation ratifying the Nisga'a agreement also gave effect to the taxation agreement concluded by the parties, but did not explicitly declare it to have the force of law. Bill C-14 stipulates that the TTA is not part of the Agreement and is not protected by section 35 [s. 27.5.4].

F. Wekeezhii Renewable Resources Board (Clause 8)

Unlike the Mackenzie Valley resource management boards established by the MVRMA in accordance with the terms of the relevant land claim agreements, this renewable resources board is established as an institution of public government by the Tlicho Agreement itself [s. 12.1.2]. Bill C-14's provision giving this body the legal capacity of a natural person, thus enabling it to enter into contracts and conduct other transactions, mirrors that of the MVRMA giving all boards established by it the same capacity (see s. 10).

G. Regulations (Clause 12)

The Governor in Council is authorized to make "any orders and regulations that are necessary" in order to implement the Agreement or the TTA. A similar general power has been conferred by legislation ratifying prior land claim accords. The bill does not specify what person or body would determine when or what regulations are necessary.

H. Judicial Proceedings (Clauses 9–10, 14)

Bill C-14 provides for judicial notice of the Agreement, the TTA and Tlicho laws (clauses 9 and 10), signifying that evidence of their existence and contents need not be presented in court in the event of litigation. The bill further requires that the Attorneys General of Canada and the Northwest Territories and the Tlicho Government be notified in advance of any legal proceeding in which the interpretation, validity or applicability of the Agreement, or the validity or applicability of federal ratification legislation or Tlicho law, is at issue (clause 14).

I. Amendments to the *Mackenzie Valley Resource Management Act* (Clauses 15–94)

As previously mentioned, the MVRMA was enacted to implement provisions of the Gwich'in and Sahtu Dene and Métis land claim agreements calling for the statutory creation of institutions of public government that would provide an integrated system for land and water management and environmental assessment in the Mackenzie Valley. The several parts of the Act:

- outline general provisions respecting all boards established under the MVRMA (Part 1);

- set up land use planning boards and land and water boards for the Gwich'in and Sahtu Dene and Métis settlement areas (Parts 2 and 3);

- establish a Mackenzie Valley-wide land and water board of which the Gwich'in and Sahtu Dene and Métis boards continue as regional panels (Part 4); and

- establish the Mackenzie Valley Environmental Impact Review Board (Part 5).

Under the amendments to be effected by Bill C-14, the terms of Chapter 22 of the Tlicho Agreement respecting land and water regulation and environmental matters, including terms related to the specific role of the Tlicho Government in those matters, will also be reflected in the MVRMA.

In many respects, Chapter 22 is similar to equivalent chapters in the prior Gwich'in and Sahtu Dene and Métis treaties, further to the federal policy requiring that regional negotiations with Mackenzie Valley Aboriginal groups include pan-regional environmental assessment and land and water management measures. In this light, many of the modifications to the MVRMA simply make the necessary consequential technical and language amendments to extend the Act's institutional mechanisms and processes that already govern the Gwich'in and the Sahtu Dene and Métis to the Tlicho. In a number of instances, provisions specific to the Tlicho Agreement result in altered or new processes under the MVRMA that apply only to the Tlicho.[25] See, in particular, clause 19 relating to board appointments; clause 47 relating to Tlicho Government policy directions; clauses 78, 84 and 87–89 relating to environmental reports to the Tlicho Government; and clauses 81 and 86 relating to Tlicho Government disposition of recommendations in certain reports.

The following paragraphs consider these and other selected amendments to the MVRMA, using its structure as a guideline.

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(25) On occasion, modifications to the MVRMA resulting from the Tlicho Agreement are extended to the Gwich'in and Sahtu as well. For example, s. 22.3.9 and 22.1.7 of the Agreement require that the Wekeezhii Land and Water Board exercise its authority considering the importance of conservation as well as traditional knowledge. New section 60.1 proposed by clause 35 of Bill C-14 applies these requirements to the Gwich'in and Sahtu boards as well. See also clause 77.

1. Introductory (Clauses 15–19)

a. Interpretation (Clause 15)

Definitions of Tlicho persons, government bodies and lands by way of references to the relevant chapters of the Agreement are added to section 2. Certain existing definitions are changed; for example, the definition of "local government" is expanded to include Tlicho community governments. The definition of "first nation" – which currently applies to the Gwich'in, the Sahtu "or bodies representing other Dene or Métis of the North Slave, South Slave or Deh Cho region," including the Tlicho – is modified to exclude the Tlicho, with a view to enabling references to the Tlicho Government or other of the Agreement's specific terms with respect to the Tlicho as necessary throughout the Act.

b. Agreement(s) With Other Aboriginal Groups (Clause 17)

A new section 5.1 takes account of the fact that, under the Agreement, the Tlicho may agree to share their rights under it, including those set out in the MVRMA, with another Aboriginal group [s. 2.7.3].

2. Part 1: General Provisions Respecting Boards (Clauses 19–28)

a. Board Membership (Clauses 19–24)

Under the MVRMA, the federal Minister of Indian Affairs is solely responsible, with two exceptions, for appointing members to boards created under the Act.[26] Specified numbers of board members are appointed under Parts 2 through 5 either upon the nomination of a First Nation, or after consultation with First Nations. The land claim agreements of the Gwich'in and the Sahtu Dene and Métis do not authorize them to appoint board members. The Tlicho Agreement does provide for that authority in the case of the Wekeezhii Land and Water Board [s. 22.3.3]. Accordingly, Bill C-14 amends section 11 of the MVRMA to allow for an additional exception to the exclusive federal appointment power in the case of members directly appointed to that board by the Tlicho Government under proposed new subsection 57.1(2),

(26) The two exceptions are chairs and persons having a right of representation under a land claim agreement. In fact, under s. 12 of the MVRMA, chairs are appointed by the Minister from persons nominated by a majority of board members. Special members under existing s. 15 are appointed by the board on nomination of the Aboriginal group with a right of representation.

discussed below (clause 19). Similarly, under a new subsection 12(2.1) of the MVRMA, the Chair of the Wekeezhii Land and Water Board will be appointed jointly by the Minister and the Tlicho Government (clause 20) [s 22.3.6].

The Gwich'in and Sahtu Dene and Métis Agreements both provide that, under prescribed circumstances, Aboriginal groups with an adjacent land claim settlement have a right of representation on Gwich'in and Sahtu boards [s. 24.1.6 and 25.1.6 respectively]. The Tlicho Agreement contains a provision similar to those of the previous agreements [s. 22.3.4]. Existing section 15 of the MVRMA acknowledges the right of representation and sets out rules for appointments of special members. Clause 22 replaces section 15 to ensure that boards themselves have the authority to determine how to implement their respective treaty provisions giving that right. This approach is more in keeping with the language of all three agreements.

b. Disclosure of Information (Clause 25)

Bill C-14 replaces section 22 of the MVRMA to add the Tlicho Government to the list of governments from which boards may obtain information, and to add Tlicho laws to the list of laws to which that right is subject.

c. Jurisdiction (Clause 28)

The Tlicho Agreement calls for the Northwest Territories Supreme Court to have exclusive jurisdiction over any judicial proceeding related to the interpretation or application of the Agreement, including the jurisdiction of, *inter alia,* the Mackenzie Valley Environmental Impact Review Board and the Wekeezhii Land and Water Board and, by extension [see s. 22.4.1], the Mackenzie Valley Land and Water Board [s. 2.14.1]. Bill C-14's proposed subsection 32(2) of the MVRMA confers exclusive jurisdiction only in relation to the jurisdiction of the Mackenzie Valley-wide boards.

3. Part 2: Land Use Planning

Under the terms of the Gwich'in and Sahtu Dene and Métis land claim agreements, the MVRMA established land use planning boards for the affected settlement areas. The Tlicho Agreement does not call for the establishment of a land use planning board. As a combined land claim and self-government accord, the Agreement gives the Tlicho Government

law-making authority over land use, management, and protection [s. 7.4.2]. Accordingly, Bill C-14 does not amend Part 2 of the MVRMA. Land use planning does feature in clause 35, considered below.

4. Part 3: Land and Water Regulation (Clauses 29–54)

a. Definitions (Clause 29)

Bill C-14 introduces the generic term "management area" for purposes of Part 3 of the MVRMA (the definition is extended to Part 4 under clause 55), meaning the area in respect of which a land and water board is established. In the case of the Tlicho, the management area is Wekeezhii; in the case of the Gwich'in and Sahtu Dene and Métis, the management area corresponds to the "settlement area" described in Appendix A of their respective agreements.

b. Wekeezhii Land and Water Board (WLWB) (Clauses 31 and 35)

As suggested above, the establishment of the WLWB in proposed new section 57.1 of the MVRMA includes the Tlicho Government's unique entitlement to appoint, excluding the Chair, 50% of the board's membership, or two members [s. 22.3.3(b)]. This entitlement is subject to any agreement, including an overlap agreement [s. 2.7.3] between the Tlicho Government and another Aboriginal people. A second aspect resulting from the Tlicho Agreement that is unique to the WLWB is the obligation for government and the Tlicho Government to consult one another prior to making their appointments to the WLWB (clause 31) [s. 22.3.5].

Section 61 of the MVRMA stipulates that existing land and water boards may only issue permits and licences that conform to land use plans under Part 2 of the Act. Bill C-14 replaces section 61 to integrate the WLWB into the Act's scheme, with the requirement that any licences or permits issued by it must conform to any land use plan established under federal, territorial or Tlicho law [s. 22.5.4]. New section 61.1 further requires that the WLWB's discretionary authority respecting land use be exercised in accordance with any Tlicho land laws (clause 35) [s. 22.3.16].

c. Compensation (Clause 44)

As required under the Gwich'in and Sahtu agreements, sections 77−79 of the MVRMA authorize existing land and water boards to issue licences for water use or waste deposit that could interfere with the right to unaltered waters flowing through First Nation lands, provided an agreement has been reached to compensate the affected First Nation for any resulting loss or damage. Substantially similar measures will apply to the WLWB under new sections 79.1−.2 of the MVRMA [s. 21.5.4−.5]. A unique feature applicable to the Tlicho under new section 79.3 requires that, in the absence of a compensation agreement, the applicant and the Tlicho Government undertake mediation before either may apply to the WLWB for a determination as to the amount of compensation [s. 22.5.6].

d. Policy Directions (Clause 47)

Section 82 of the MVRMA authorizes the federal Minister, after consulting the Gwich'in and/or Sahtu land and water boards, to issue written binding policy directions with respect to any of their functions. Bill C-14 replaces the relevant section to take account of provisions specific to the Tlicho Agreement that call for involvement of the Tlicho Government in policy development. Accordingly, the Minister must consult the Tlicho Government prior to issuing policy directions to the WLWB [s. 22.3.15]. The MVRMA further provides for Tlicho Government authority to issue policy directions with respect to the use of Tlicho lands,[27] after consulting with the federal Minister and the WLWB [s. 22.3.10, 22.3.15]. This measure is consistent with the Tlicho Government's legislative authority over the use and management of Tlicho lands. In the event of conflict between policy directions of the Tlicho Government and the Minister, the former prevail [s. 22.3.11], while federal or territorial legislation prevails over conflicting policy directions of either the Tlicho Government or the Minister [s. 23.3.12].

5. Part 4: Mackenzie Valley Land and Water Board (MVLWB) (Clauses 55–63)

Noteworthy Bill C-14 amendments to sections in this portion of the MVRMA provide for the continuation of the WLWB, as in the case of the Gwich'in and Sahtu boards, as a regional panel of the MVLWB, and for the WLWB's continued jurisdiction in Wekeezhii (clause

(27) These directions are also binding, provided compliance does not result in budget excesses.

56) [s. 22.4.1−.3]. Under proposed new section 109.1, the Tlicho Government has the same authority with respect to policy directions to the larger board, and to the WLWB as its regional panel, that it may exercise with respect to the WLWB under Part 3 of the Act (clause 63) [s. 22.4.1]. Bill C-14 inserts a new section 101.1 that defines the policy objectives for the MVLWB as being to "provide for the conservation, development and utilization of land and water resources" for the benefit of residents of the Mackenzie Valley and all Canadians [s. 22.4.4]. Similar "purpose" provisions of the Gwich'in and Sahtu agreements respecting the objectives of regional boards that were not previously legislated are also incorporated in section 101.1 (clause 58).

6. Part 5: Mackenzie Valley Environmental Impact Review Board (MVEIRB) (Clauses 64–94)

Part 5 of the MVRMA sets up a complex scheme for environmental assessment and impact review in the Mackenzie Valley. This section does not purport to detail the many processes provided for under Part 5, but focuses primarily on significant changes within those processes in light of the Tlicho Agreement, drawing attention as relevant to distinctions with the two prior regional agreements in the Mackenzie Valley.

a. Application (Clause 65)

Bill C-14 amends section 111 of the MVRMA to clarify that the environmental assessment regime in Part 5 applies to developments to be carried out wholly or partly in the Mackenzie Valley [s. 22.2.1].

b. Consultation and Appointments (Clauses 74, 77 and 80)

The Tlicho Agreement, like the Gwich'in and Sahtu predecessor agreements, requires that consultations take place within the environmental review process. Consultation provisions under the Tlicho Agreement are more stringent than those in the earlier agreements [s. 22.2.23−.24, s. 22.2.11, s. 22.2.13].[(28)] Each agreement also sets out various rules respecting nominations for appointment to environmental bodies by Aboriginal groups, depending on the

(28) See s. 24.3.13(c) and s. 25.3.13(c) of the Gwich'in and Sahtu agreements, respectively.

nature and location of the development [s. 22.2.16–.17, 22.2.21].(29) Under Bill C-14 amendments adding new sections 123.1 and 123.3, the MVRMA will explicitly stipulate that consultation and nomination requirements in any of the land claim agreements must be respected (clause 74).

Under proposed new section 127.1, an explicit consultation obligation prior to the completion of assessment of a project under the Tlicho Agreement is extended to the Gwich'in and Sahtu (clause 77). Proposed new subsection 130(1.1) implements the Agreement provision obliging the Minister to consult the Tlicho Government prior to ordering an environmental impact review of a development to be carried out on Tlicho lands. Bill C-14 does not extend that obligation to the Gwich'in and Sahtu with respect to developments on their lands.

c. Referrals (Clause 76)

Section 126 of the MVRMA requires the MVEIRB to conduct an environmental assessment of, *inter alia*, a proposal referred to it by the Gwich'in or Sahtu First Nation that the First Nation considers might have an "adverse impact on the environment" in its settlement area. Neither the Gwich'in or Sahtu agreement, nor the Tlicho Agreement, requires a pre-determination of "adverse" impact as a condition of referral [s. 22.2.9]. Bill C-14 amendments to section 126 add the Tlicho Government to those Aboriginal groups that are entitled to refer a proposal for assessment, and remove the "adverse impact" pre-condition of referral for all three groups. In addition, because none of the agreements whose provisions the MVRMA is intended to implement requires preliminary screening of a proposal prior to referral, the bill also clarifies that preliminary screening need not have been commenced or completed. In fact, the language of the Tlicho Agreement authorizes referral by the Tlicho Government whether or not preliminary screening has occurred and notwithstanding any results [s. 22.2.9].

d. Environmental Reports to Tlicho Government (Clauses 78, 84 and 87–89)

Clause 78 of Bill C-14 amends section 128 of the MVRMA, thereby implementing the Tlicho Agreement requirement that the MVEIRB make a report on an environmental assessment of developments on Tlicho lands to the Tlicho Government [s. 22.2.27]. No such obligation exists under the Gwich'in or Sahtu agreements, nor does the bill

(29) See s. 24.3.2(b) and .7 and s. 25.3.2(b) and .7 of the Gwich'in and Sahtu agreements.

extend such a blanket requirement to the Gwich'in or Sahtu First Nations. The MVRMA does provide for copies of this report to be provided to any referring bodies, which can include those Aboriginal groups.

Similarly, clauses 84 and 87 through 89 amend the MVRMA to require that reports of review panels – including those established under the *Canadian Environmental Assessment Act* – and of joint panels engaged in environmental review under the Act be made to Tlicho Government when proposed developments are on Tlicho lands [s. 22.2.27].

e. Tlicho Government Disposition of Recommendations (Clauses 81 and 86)

Another significant feature of the Tlicho Agreement and for the Tlicho Government under Bill C-14 amendments to the MVRMA provides for Tlicho Government authority to accept, modify or reject certain recommendations by environmental bodies.

Under proposed new section 131.1, the Tlicho Government must, after considering a MVEIRB report recommending that approval of a proposed development on Tlicho lands be subject to the imposition of measures to mitigate significant adverse impact: adopt the recommendation or refer it back to the Board, or adopt the recommendation with modifications, or reject it (clause 81). Unlike the federal Minister or a designated regulatory agency dealing with a similar recommendation, the Tlicho Government may not order an environmental impact review. The Tlicho Government is similarly authorized to adopt, modify or reject an environmental impact review report with respect to a development on Tlicho lands (clause 86) [s. 22.2.29]. Neither the Gwich'in nor the Sahtu land claim agreement confers similar authority on those First Nations.

J. Transitional Provisions (Clauses 95–96)

Under clause 95, the WLWB established by proposed section 57.1 of the MVRMA will exercise administrative functions only for six months following the coming into force of Bill C-14. During that period, the MVLWB will exercise the WLWB's substantive powers (clause 95) [s. 22.3.2].

Clause 96 of Bill C-14 deems validly made and effective those Northwest Territories ordinances that are required to give effect to the Tlicho Agreement and to implement specific chapters under it, even if those ordinances were made prior to the coming into force of Bill C-14. As previously indicated, the N.W.T. Legislative Assembly has enacted ordinances to give the Agreement effect and to establish Tlicho community governments.

K. Consequential Amendments (Clauses 97–109)

Generally speaking, these Bill C-14 amendments to eight federal statutes simply incorporate the language needed to reflect terms of the Tlicho Agreement. Among them, clause 102 is noteworthy. Subsection 91(24) of the *Constitution Act, 1867* gives Parliament exclusive legislative authority over "Indians and Lands reserved for the Indians." By way of exception, clause 102 amendments to the *Northwest Territories Act* authorize the territorial Legislative Assembly to pass ordinances – such as those mentioned under clause 96 above – that relate to matters within the scope of subsection 91(24) of the *Constitution Act, 1867* for the purpose of implementing the Tlicho Agreement.

L. Coming Into Force (Clause 111)

With the exception of four coordinating amendments, the provisions of Bill C-14 come into force on a day to be fixed by order of the Governor in Council.

COMMENTARY

Virtually no public reaction to Bill C-14, or to the Tlicho Agreement itself, was noted in the period immediately following the bill's introduction. **Subsequent, infrequent editorial and press coverage essentially reflected opposition criticisms of aspects of the Tlicho Agreement voiced over the course of the bill's passage through the House of Commons. These included, in particular, questions related to: the Agreement's alleged creation of a new order of government as well as "segregated" government institutions; uncertainty under the Agreement as to the Charter's application to the Tlicho Government; the implications for Canadian sovereignty of provisions on international legal obligations; and confusing rules of paramountcy. Supporters of Bill C-14 described these concerns as without merit, pointing to provisions in the Agreement for clarification. Despite their questions, critics acknowledged the good faith of the Tlicho people throughout the protracted land claim process, and declined to stand in the way of the bill's passage.**

A measure of discontent with the October 2003 adoption of the Northwest Territories ordinance giving effect to the Tlicho Agreement was also reported. Some viewed the process as lacking in public input and unduly unhurried in light of the precedent-setting importance of the Agreement for the Territory.

Objections to completion of the Agreement had been raised by the North Slave Métis Alliance, which had sought to be included in the Tlicho land claim process several years after negotiations had commenced. In 2001, the group unsuccessfully applied for an injunction to put a halt to the process until it was either included or given its own negotiation table.(30) Further judicial proceedings initiated in December 2003 raised a number of legal and constitutional issues. **A September 2004 change in the elected leadership of the Alliance appeared to signal a lessening of opposition to the Agreement, with the current President of the Alliance confirming in testimony before parliamentary committees considering Bill C-14 that these proceedings were in the process of being discontinued. In his view, the Alliance's rights might be protected by means of either a Métis-specific adhesion to the Tlicho Agreement, or federal-Métis treaty negotiations.**

(30) *Paul* v. *Canada (Attorney General)*, 2001 FCT 1280 (T.D.).