

1.0 Introduction

- 1.1 Authority for the Establishment of the Nunavut Surface Rights Tribunal (NSRT)
- 1.2 Purpose of the NSRT
- 1.3 Status of the NSRT
 - 1.3.1 Institution of Public Government
 - 1.3.2 Access to Government Services and Information
- 1.4 NSRT Powers
- 1.5 Authority for the *NSRT Rules of Process and Procedure*
- 1.6 Purpose of the *NSRT Rules of Process and Procedure*
- 1.7 Application of the *Rules of Process and Procedure*
- 1.8 Conflicts
- 1.9 Defects or Irregularities in Form
- 1.10 Non-Compliance with *NSRT Rules of Process and Procedure*
- 1.11 Publication of *Rules of Process and Procedure*
 - 1.11.1 Proposed Rule
 - 1.11.2 Public Representations
 - 1.11.3 Enacted Rule
- 1.12 Availability of *NSRT Rules of Process and Procedure*
- 1.13 Practice Directions
 - 1.13.1 Practice Directions Are Not Rules
 - 1.13.2 Conflicts

2.0 NSRT JURISDICTION

- 2.1 Application for Access
 - 2.1.1 Access to Inuit-Owned Lands

- 2.1.1.1 To Exercise Mineral Rights
- 2.1.1.2 To Prospect for Minerals
- 2.1.1.3 To Cross Inuit-Owned Lands to Exercise Mineral Rights on Non-Inuit-Owned Lands
- 2.1.1.4 For Commercial Purposes Other than the Exercise of Mineral Rights
- 2.1.1.5 For the Purpose of Removing Construction Materials

2.1.2 Access to Non-Inuit-Owned Lands

2.2 Claim for Compensation

- 2.2.1 Compensation for Loss or Damage Involving Wildlife
- 2.2.2 Compensation for Loss or Damage Involving Carving Stone and Other Specified Substances on Inuit-Owned Land
- 2.2.3 Compensation for Loss or Damage Involving Carving Stone on Crown Land
- 2.2.4 Compensation for Permit to Cross Inuit Owned Land for Commercial Purposes Other than the Exercise of Mineral Rights
- 2.2.5 Compensation for Permit to Cross Inuit Owned Land for the Purpose of Removing Construction Materials

3.0 Application Procedures

3.1 Introduction

3.2 Application for Access

- 3.2.1 Negotiation
- 3.2.2 Filing Application
- 3.2.3 Service
- 3.2.4 Advertisement

3.3 Claim for Compensation

- 3.3.1 Negotiation
- 3.3.2 Filing Claim
- 3.3.3 Service
- 3.3.4 Advertisement

3.4 Application to Review an NSRT Order

- 3.4.1 Negotiation
- 3.4.2 Filing Application
- 3.4.3 Service
- 3.4.3 Advertisement

3.5 Application to Terminate an NSRT Order

- 3.5.1 Negotiation
- 3.5.2 Filing Application
- 3.5.3 Service
- 3.5.3 Advertisement

4.0 Negotiation

4.1 Introduction

4.2 Conduct of Negotiations

- 4.2.1 *Bona Fide* Negotiations
- 4.2.2 Mediation
- 4.2.3 Negotiations Without Prejudice

4.3 Joinder of Applications/Claims for Negotiation

- 4.3.1 Joinder of Applications for Access
- 4.3.2 Joinder of Claims for Compensation

5.0 Pre-Hearing Process and Procedure

5.1 Commencing an Application/Claim

- 5.1.1 Application for Access
- 5.1.2 Claim for Compensation
- 5.1.3 Application to Review an NSRT Order
- 5.1.4 Application to Terminate an NSRT Order

5.2 Interlocutory Applications

- 5.2.1 Interlocutory Application Procedure
- 5.2.2 Hearing of Interlocutory Application
- 5.2.3 Notice of Interlocutory Hearing
- 5.2.4 Form of Hearing
- 5.2.5 Appointment of NSRT Member to Hear Interlocutory Application
- 5.2.6 Decision
- 5.2.7 Notification and Distribution of Decision

5.3 Submission of Documents

- 5.3.1 Introduction
 - 5.3.1.1 Applicant/Claimant Documents
 - 5.3.1.2 Respondent Documents
 - 5.3.1.3 Intervenor Documents

5.4 Joinder of Applications/Claims for Hearing

- 5.4.1 Application for Access
- 5.4.2 Claim for Compensation

5.5 Pre-Hearing Conference

- 5.5.1 Introduction

5.6 Communications

6.0 Hearing Procedures

6.1 Introduction

6.2 Form of Hearing

6.3 Membership of NSRT Panel

- 6.3.1 Assignment to NSRT Panel
- 6.3.2 Number of Panel Members
- 6.3.3 Residency of Panel Members
- 6.3.4 Absence of Panel Member

- 6.3.4.1 Absent Member Not to Participate in Decision
- 6.3.4.2 Hearing Process in the Event of Absent Panel Member

6.3.5 Conflict of Interest

- 6.3.5.1 Assignment to Panel
- 6.3.5.2 No Conflict Due to Status or Interest in Land
- 6.3.5.3 Continuation on Panel

6.3.6 Confidentiality of Panel Membership

6.4 General Powers of Tribunal

6.5 Location of Hearing

6.6 Hearing in Absence of Party

- 6.7 Parties to a Matter in Dispute and Standing to Make Submissions
 - 6.7.1 Parties to a Matter in Dispute
 - 6.7.1.1 Applicants and Respondents to Applications for Access
 - 6.7.1.2 Claimants and Respondents to Claims for Compensation
 - 6.7.1.3 Intervenors
 - 6.7.1.4 Applicant to Review a NSRT Order
 - 6.7.1.5 Applicant to Terminate an NSRT Order
 - 6.7.1.6 Persons Notified of Five Year Review
 - 6.7.2 Standing to Make Submissions
 - 6.7.3 Representation of Parties
- 6.8 Form of Submissions
- 6.9 Order of Submissions
- 6.10 Rules for Submissions
 - 6.10.1 Identity of Witnesses
 - 6.10.2 Relevance of Submissions
 - 6.10.3 Audio Visual Assistance
 - 6.10.4 Written Submissions
 - 6.10.4.1 Authorship of Written Submission
 - 6.10.4.2 Availability of Primary Author of Written Submission
 - 6.10.4.3 Schedule for Written Submissions
- 6.11 Expert Witnesses
 - 6.11.1 Notice of Expert Witness
 - 6.11.2 Qualification of Expert Witnesses
- 6.12 Traditional Knowledge/Inuit Qaujimajatuqangit Witnesses
 - 6.12.1 Notice of TK/IQ Witness
 - 6.12.2 Background of TK/IQ Witness
- 6.13 Witnesses
 - 6.13.1 Attendance and Examination
 - 6.13.2 Sworn Evidence
 - 6.13.3 Questioning

- 6.13.3.1 Purpose of Questioning
- 6.13.3.2 Who May be Questioned
- 6.13.3.3 Limits on Questioning

6.14 Language

- 6.14.1 Language of NSRT Business
- 6.14.2 Language in which Evidence is Heard
- 6.14.3 Translation of Verbal Evidence
- 6.14.4 Translation of Documents
- 6.14.5 Translation of Orders

6.15 Documents

- 6.15.1 Compelling Production and Inspection
- 6.15.2 Public Record and Access
- 6.15.3 Availability to Parties

6.16 Recording of NSRT Proceedings

- 6.16.1 Hearings
- 6.16.2 Interlocutory Proceedings
- 6.16.3 Availability of Transcript

7.0 Decisions

7.1 Application for Access

7.1.1 Inuit-Owned Land

- 7.1.1.1 To Exercise Mineral Right
- 7.1.1.2 To Prospect for Minerals
- 7.1.1.3 To Cross Inuit-Owned Land to Exercise Mineral Rights on Non-Inuit-Owned Land
- 7.1.1.4 For Commercial Purposes Other than the Exercise of Mineral Rights
- 7.1.1.5 For the Purpose of Removing Construction Materials
- 7.1.1.6 Types of Orders Which May be Granted
- 7.1.1.7 Factors Taken into Consideration in Considering Compensation in an Application for Access
- 7.1.1.8 Allocation of Compensation

7.1.2 Non-Inuit-Owned Land

- 7.1.2.1 Types of Orders which May be Granted
- 7.1.2.2 Factors Taken into Consideration in Considering Compensation in Application for Access

7.1.2.3 Allocation of Compensation

7.2 Claim for Compensation

7.2.1 Compensation for Loss or Damage Involving Wildlife

7.2.1.1 Jurisdiction of NSRT to Issue Order

7.2.1.2 Liability of Developer

7.2.1.3 Exemptions from Liability

7.2.1.4 Limits on Compensation

7.2.1.5 Time Limitation to Bring a Claim

7.2.1.6 Liability of the Minister

7.2.1.7 Minimization of Loss or Damage

7.2.1.8 Ship-source Oil Pollution Fund

7.2.1.8.1 Liability of Fund

7.2.1.8.2 Subrogation of Fund

7.2.1.9 Other Remedies Not Affected

7.2.2 Compensation for Loss or Damage Involving Carving Stone and Other Specified Substances on Inuit-Owned Land

7.2.2.1 Jurisdiction of NSRT to Issue Order

7.2.3 Compensation for Loss or Damage Involving Carving Stone on Crown Land

7.2.3.1 Jurisdiction of NSRT to Issue Order

7.3 Time for Decisions

7.3.1 Applications for Access

7.3.2 Claims for Compensation (Wildlife)

7.3.3 Claims for Compensation (Non-Wildlife)

7.3.4 Applications for Reconsideration

7.3.5 Interlocutory Applications

7.4 Reasons for Decisions

7.5 Distribution and Publication of Decisions

7.5.1 Distribution

7.5.2 Publication

7.6 Orders Binding Upon Successors in Title

7.7 Enforcement of Orders

7.7.1 Order of the Nunavut Court of Justice

7.7.2 Assistance Enforcing Order

7.8 Filing of Orders

7.9 Proof of Orders

7.10 Review of Decisions

7.10.1 Decisions of Tribunal Final and Binding

7.10.2 Decisions of Tribunal Subject to Judicial Review

7.10.3 Application to Review Order Where Material Change in
Facts/Circumstances

7.10.4 Application to Terminate Order for Access

7.10.5 Five Year Review of Compensation in Orders for Access to Inuit-Owned
Land

8.0 Costs

8.1 Legislative Authority

8.1.1 Awarding of Costs

8.1.2 Rules for Awarding Costs

8.2 Award of Costs

8.2.1 When Awarded

8.2.2 Submissions as to Costs

8.2.3 Cost Guidelines

8.2.4 Decision

8.2.5 Notification and Distribution of Decisions

Schedules

A.1 Application for Access

A.2 Claim for Compensation

A.3 Application for Review of NSRT Order

A.4 Application for Termination of NSRT Order

- A.5 Interlocutory Application
- A.6 List of Witnesses
- A.7 Affidavit of Service

1.0 INTRODUCTION

1.1 Authority for the Establishment of the Nunavut Surface Rights Tribunal (NSRT)

The *Nunavut Surface Rights Tribunal* (hereafter variously referred to in this document as the "NSRT" or the "Tribunal") is established pursuant to s. 99(1) of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* (hereafter also referred to in this document as the "Act") and pursuant to the *Nunavut Land Claims Agreement* (as adopted by the *Nunavut Act* (S.C. 1993, c. 28)).

1.2 Purpose of the NSRT

The NSRT is established for the purpose of providing an independent mechanism for the resolution of disputes (such as where an Inuit Impact and Benefit Agreement cannot be reached) arising from:

- a) access to surface land in Nunavut; and
- b) claims for compensation arising from loss or damage to wildlife, carving stone and other specified substances from development in Nunavut.

1.3 Status of the NSRT

1.3.1 Institution of Public Government

Pursuant to section 113 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* the NSRT is an institution of public government but is not an agent of Her Majesty in Right of Canada.

1.3.2 Access to Government Services and Information

The *Nunavut Waters and Nunavut Surface Rights Tribunal Act* authorizes the NSRT to use the services and facilities of departments, boards and agencies of the Government of Canada and the Government of Nunavut (section 111):

"111. In exercising its powers or performing its duties or functions, the Tribunal may, where appropriate, use the services and facilities of departments, boards and agencies of the Government of Canada or the Government of Nunavut and may, subject to any other Act of Parliament, obtain from any such department, board or agency any information that is required to exercise those powers or perform those duties or functions."

1.4 NSRT Powers

The *Nunavut Waters and Nunavut Surface Rights Tribunal Act* grants to the NSRT the powers, rights and privileges of a superior court with respect to matters relating to applications before the NSRT (section 120):

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

1.5 Authority for the NSRT Rules of Process and Procedure

Pursuant to the authority set out in section 130 (1)(2) of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*, the NSRT may adopt the process and procedure to be employed by the Tribunal in carrying out its duties and responsibilities pursuant to the provisions of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* and amendments thereto and regulations enacted thereunder, and pursuant to the *Nunavut Land Claims Agreement* (as adopted by the *Nunavut Act* (S.C. 1993, c. 28)):

“130. (1) The Tribunal may make rules

(a) respecting the practice and procedure in relation to applications to and hearings before the Tribunal, including the service of documents and the imposition of reasonable time limits;

(b) establishing procedures that may be followed in the mediation of matters in dispute;

And

(c) respecting the allowance of costs, including rules

(i) establishing a schedule of fees and other expenses incurred by a party in relation to applications to or hearings before the Tribunal that may be allowed as part of that party’s costs under this Part, and

(ii) respecting the circumstances under which the Tribunal may allow costs with respect to matters dealt with in the schedule of fees and other expenses on a basis other than that established by the schedule.

(2) The Tribunal shall make rules establishing procedures to be followed in the conduct of negotiations for the purposes of subsection 117(1), either generally or with respect to any class of applications.”

These *NSRT Rules of Process and Procedure* have been adopted by the NSRT as Schedule 1 of the *NSRT By-laws*.

The NSRT is also governed by various provisions of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*, which sets out some of the process and procedure to be employed by the NSRT.

1.6 Purpose of the *NSRT Rules of Process and Procedure*

The NSRT has developed these *Rules of Process and Procedure* for the purpose of establishing a fair, open, equitable, accessible and understandable process and procedure by which persons may address to the NSRT issues which fall within the Tribunal's jurisdiction. In attempting to achieve this goal these *NSRT Rules of Process and Procedure* have been structured to incorporate the following:

- a) Relevant provisions of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*;
- b) Relevant provisions of the *Nunavut Land Claims Agreement* and
- c) *Rules of Process and Procedure* adopted by the NSRT as Schedule 1 of the *NSRT By-laws*.

1.7 Application of the *Rules of Process and Procedure*

These *Rules of Process and Procedure* apply to all matters and proceedings falling within the jurisdiction of the NSRT (hereafter referred to as NSRT "Proceedings").

1.8 Conflicts

In the event that any rule(s) found in these *NSRT Rules of Process and Procedure* is in conflict with any Federal legislation (including the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*), the *Nunavut Land Claims Agreement* or the *NSRT By-laws*, the provisions of the Federal legislation (including the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*), the *Nunavut Land Claims Agreement* or the *NSRT By-laws* shall prevail.

1.9 Defects or Irregularities in Form

No NSRT Proceeding to which these *NSRT Rules of Process and Procedure* apply shall be invalid solely by reason of a procedural defect or other irregularity in form.

1.10 Non-Compliance with *NSRT Rules of Process and Procedure*

In the event that a Party fails to comply with these *Rules of Process and Procedure* or fails to comply with a Practice Direction pursuant to Rule 1.13 herein, the NSRT may:

- a) Impose such conditions as will ensure compliance;
- b) Order the payment of costs by the non-compliant Party;
- c) In the event of a pattern of non-compliance, terminate Party status;
- d) In the event of non-compliance where contempt of the Proceedings is demonstrated, pursue civil contempt proceedings before a Court of Superior Jurisdiction.

1.11 Publication of *Rules of Process and Procedure*

1.11.1 Proposed Rule

Prior to the initial adoption of the *NSRT Rules of Process and Procedure* and the adoption of any subsequent rule in the *NSRT Rules of Process and Procedure* the NSRT shall give notice of at least sixty (60) days prior to enacting the rule by publishing the proposed rule in a newspaper or other periodical that, in the opinion of the Tribunal, has a large circulation in Nunavut, and sending a copy of the proposed rule to the council of each municipality in Nunavut, as required by section 132(1) of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*.

1.11.2 Public Representations

The notice referred to in Rule 1.11.1 herein shall include an invitation to interested persons to make representations in writing to the Tribunal about the proposed rule within sixty (60) days after publication of the notice (section 132(2) *Nunavut Waters and Nunavut Surface Rights Tribunal Act*), and the NSRT may not make a rule until after it has responded to any representations made within the time limit (section 132(3) *Nunavut Waters and Nunavut Surface Rights Tribunal Act*).

1.11.3 Enacted Rule

As soon as possible after a Rule has been made, the Tribunal shall:

- a) publish it in a newspaper or other periodical that, in the opinion of the

Tribunal, has a large circulation in Nunavut, and

- b) publish a notice in the Canada Gazette that the rule has been made, indicating the newspaper or periodical in which it has been published

(section 132(3) *Nunavut Waters and Nunavut Surface Rights Tribunal Act*).

1.12 Availability of NSRT Rules of Process and Procedure

The *NSRT Rules of Process and Procedure* will be made available to all persons in the English, French and Inuktitut languages for the purpose of assisting in understanding the purpose, jurisdiction and operation of the NSRT, and to assist those intending to participate in NSRT processes. Anyone wishing to obtain a copy of the *NSRT Rules of Process and Procedure* may visit the NSRT website or may contact the NSRT via telephone at (867) 975-2102 or (867) 979-2498, via fax at (867) 975-2102, via e-mail at administrator@nsrt.ca, or via mail at P.O. Box 1692, Iqaluit, Nunavut X0A 0H0.

1.13 Practice Directions

For the purpose of facilitating its process and procedure the NSRT may, from time to time, issue Practice Directions for the purpose of addressing procedural issues either with respect to NSRT Proceedings generally or pertaining to specific Proceedings, which Practice Directions form part of, and are to be read in conjunction with, these *NSRT Rules of Process and Procedure*.

1.13.1 Practice Directions Are Not Rules

Practice Directions which apply to NSRT proceedings generally or with respect to a specific proceeding are only directions and shall not constitute rules as contemplated in Rule 1.6 herein, and shall not be appended to these *Rules of Process and Procedure*. Practice Directions which apply to NSRT proceedings generally shall be available to the public by contacting the NSRT as set out in Rule 1.11 herein. Practice Directions which apply to specific NSRT Proceedings shall be provided to all Parties to a Proceeding.

1.13.2 Conflicts

In the event that any Practice Direction is in conflict with these *Rules of Process and Procedure*, the provisions of these *Rules of Process and Procedure* shall prevail to the extent of the conflict.

2.0 NSRT JURISDICTION

The *Nunavut Waters and Nunavut Surface Rights Tribunal Act* provides that the following matters fall within the jurisdiction of the NSRT:

2.1 Application for Access

2.1.1 Access to Inuit-Owned Lands

2.1.1.1 To Exercise Mineral Rights

An application may be made to the NSRT for access to Inuit-owned lands in order to exercise mineral rights (section 133):

“133. On application by any person

- (a) who has a mineral right granted by Her Majesty in right of Canada in relation to Inuit-Owned land, and*
- (b) who has been unable to obtain the consent of the designated Inuit organization,*

the Tribunal shall make an entry order setting out the terms and conditions for the use and occupation of that land to the extent necessary for the purpose of exercising the mineral right.”

2.1.1.2 To Prospect for Minerals

An application may be made to the NSRT for access to Inuit-Owned lands in order to prospect for minerals (section 134):

“134. (1) A person who has a right to prospect for minerals and who applies under section 133 for an entry order to exercise that right on Inuit-owned land shall make a separate application in respect of each parcel of that land.

(2) In disposing of an application made by a person who has a right to prospect for minerals, the Tribunal shall take into account the need to provide confidentiality for that person.

(3) In subsection (1), “parcel” means the portion of land represented by a code of letters and numbers in the property description, as defined in section 19.1.1 of the Agreement, used for the purposes of conveying title to Inuit owned land.”

2.1.1.3 To Cross Inuit-Owned Lands to Exercise Mineral Rights on Non-

Inuit-Owned Lands

An application may be made to the NSRT to cross Inuit-owned lands in order to exercise mineral rights on non-Inuit-owned lands (section 135):

- “135.(1) *Subject to subsection (2), on application by any person*
- (a) *who requires access to Inuit-owned land in order to exercise a mineral right, granted under an Act of Parliament, in relation to any other land, and*
 - (b) *who has been unable to obtain the consent of the designated Inuit organization,*

the tribunal shall make an entry order setting out the terms and conditions for access to that Inuit-owned land to the extent necessary for the purpose of exercising the mineral right.”

- (2) *The Tribunal shall not make an entry order under subsection (1) unless the applicant satisfies the Tribunal that the access is reasonably required.”*

2.1.1.4 For Commercial Purposes Other than the Exercise of Mineral Rights

An application may be made to the NSRT for access to Inuit-owned lands for other commercial purposes (section 136):

- “136.(1)*Subject to subsection (2), on application by any person*
- (a) *who requires access across Inuit-owned land for a commercial purpose, and*
 - (b) *who has been unable to obtain the consent of the designated Inuit organization,*

the Tribunal shall make an entry order setting out the terms and conditions for the access.

- (2) *The Tribunal shall not make an entry order under subsection (1) unless an arbitration panel established under Article 38 of the Agreement has, in accordance with the Agreement,*

- (a) *established that the applicant attempted for a period of not less than sixty days to negotiate the access in good faith;*

- (b) *determined that the access is essential to the commercial purposes of the applicant and that access by any other means is physically or financially impractical; and*
 - (c) *designated a route of access that will minimize any damage to the Inuit-owned land and interference with Inuit use of that land.”*
- (3) *An entry order made under subsection (1) shall include terms and conditions to minimize any damage to the Inuit-owned land and interference with Inuit use of that land.*
- (4) *Where the designated Inuit organization has consented to permit a person to cross Inuit owned land for commercial purposes but that organization and that person are unable to agree on appropriate compensation, the Tribunal shall, on application by that organization or person, make an order resolving the matter.”*

2.1.1.5 For the Purpose of Removing Construction Materials

An application may be made to the NSRT for access to Inuit-owned lands for the purpose of removing construction materials (section 137):

“137.(1) Subject to subsection (2), on application by the Minister or the territorial minister designated by the Commissioner of the Northwest Territories, on the advice of the government leader of the Northwest Territories, in any case where the designated Inuit organization has refused entry on Inuit-owned land to remove sand, gravel or other like construction materials, the Tribunal shall make an entry order setting out the terms and conditions, including the payment of compensation, for entry on that land by agents of the Northwest Territories to remove those construction materials.

(2)The Tribunal shall not make an entry order under subsection (1) unless it determines that the construction materials are required for public purposes and that no alternative supply is reasonably available.

(3) An entry order made under subsection (1) shall include terms and conditions to minimize any damage to the Inuit-owned land and interference with Inuit use of that land and shall require the rehabilitation of the site by the government that removed the construction materials.

(4) In determining the amount of compensation that is payable as a term or condition of an entry order made under subsection (1), the Tribunal shall not take into account any amount that is payable for the construction materials.”

2.1.2 Access to Non-Inuit-Owned Lands

An application may be made to the NSRT for access to non-Inuit-owned lands in order to exercise mineral rights (section 144):

“144. *On application by any person*

- (a) who has a mineral right granted by Her Majesty in right of Canada,*
- (b) who has, under another Act of Parliament, for the purpose of exercising that mineral right, a right of access to non-Inuit-owned land that is subject to the consent of the owner or occupant, and*
- (c) who has been unable to obtain the consent of the owner or occupant,*

the Tribunal shall make an entry order setting out the terms and conditions for the exercise of the right of access to the extent necessary for the purpose of exercising the mineral right.”

2.2 Claim for Compensation

2.2.1 Compensation for Loss or Damage Involving Wildlife

The *Nunavut Waters and Nunavut Surface Rights Tribunal Act* provides that when a development activity causes damage to the surface of land which falls within the jurisdiction of the NSRT, the developer is liable for that damage (section 153(1)):

“153.(1) *Subject to this section, a developer is absolutely liable, without proof of fault or negligence, for any of the following losses or damage suffered by a claimant as a result of a development activity of a developer:*

- (a) loss of or damage to property or equipment used in harvesting wildlife or to wildlife that has been harvested;*
- (b) present and future loss of income from the harvesting of wildlife; and*

(c) *present and future loss of wildlife harvested for personal use by claimants.*”

The Act defines the term "development activity" as follows (section 152 (1)):

"152. (1) "development activity" means any of the following carried out on land or water in the Nunavut Settlement Area or in Zone I or Zone II, within the meaning assigned by section 1.1.1 of the Agreement:

- (a) *a commercial or industrial undertaking or any extension of the undertaking, provided it is not a marine transportation undertaking;*
- (b) *a municipal, territorial, provincial or federal government undertaking or any extension of the undertaking, provided it is not a marine transportation undertaking; and*
- (c) *marine transportation directly associated with an undertaking described in paragraph (a) or (b).*

It does not include any wildlife measure or use approved in accordance with Article 5 of the Agreement.”

The legislation goes on to define the term “developer” (section 152 (1)):

“developer” means any person engaged in a development activity and includes, in the case of marine transportation as described in paragraph (c) of the definition “development activity”, the owner of a ship.”

In these *Rules of Process and Procedure* where a claim is made against a developer, the developer may also be referred to as the “Respondent” to the claim.

2.2.2 Compensation for Loss or Damage Involving Carving Stone and Other Specified Substances on Inuit-Owned Land

The *Nunavut Waters and Nunavut Surface Rights Tribunal Act* delegates to the NSRT the authority to determine the status of specified substances affected by mineral development on Inuit-Owned Lands and to award compensation. Section 150 of the Act sets out the authority of the NSRT to award compensation as follows:

"150. On application by the designated Inuit organization or any person who has a mineral right granted by Her Majesty in right of Canada in relation to Inuit-owned land, the Tribunal shall

(a) determine whether the specified substances in that land are removed, worked or used for a purpose strictly incidental to the exercise of the mineral right;

(b) determine whether the specified substances are used for a purpose directly related to the exercise of the mineral right; or

(c) fix the amount of compensation to be paid for specified substances that are used for a purpose not directly related to the exercise of the mineral right.."

Section 2(1) of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* defines "specified substances" as follows:

"specified substances" means construction stone, sand, gravel, limestone, marble, gypsum, shale clay, volcanic ash, earth, soil, diatomaceous earth, ochre, marl, peat and carving stone."

2.2.3 Compensation for Loss or Damage Involving Carving Stone on Crown Land

Section 151 of the Act provides:

"151. (1) On application by a designated Inuit organization that holds a permit or a lease for the quarrying of carving stone on Crown lands or by a person who has a mineral right granted by Her Majesty in right of Canada in relation to those lands, the Tribunal shall make an order resolving any conflict between the designated Inuit organization and that person respecting the mineral right and the rights flowing from the permit or lease.

(2) In this section, "Crown lands" means any lands in the Nunavut Settlement Area belonging to Her Majesty in right of Canada or of which the Government of Canada or the Government of Nunavut has power to dispose."

The *Nunavut Waters and Nunavut Surface Rights Tribunal Act* defines "carving stone" as follows (section 2(1)):

"2.(1) "carving stone" means serpentinite, argillite or soapstone that is

suitable for carving."

2.2.4 Compensation for Permit to Cross Inuit Owned Land for Commercial Purposes Other than the Exercise of Mineral Rights

Section 136.(1)(4) of the Act states:

"136.(1) Subject to subsection (2), on application by any person

- (a) who requires access across Inuit-owned land for a commercial purpose, and*
- (b) who has been unable to obtain the consent of the designated Inuit organization,*

the Tribunal shall make an entry order setting out the terms and conditions for the access.

(4) Where the designated Inuit organization has consented to permit a person to cross Inuit owned land for commercial purposes but that organization and that person are unable to agree on appropriate compensation, the Tribunal shall, on application by that organization or person, make an order resolving the matter."

2.2.5 Compensation for Permit to Cross Inuit Owned Land for the Purpose of Removing Construction Materials

Section 137.(1)(4) of the Act states:

"137.(1) Subject to subsection (2), on application by the Minister or the territorial minister designated by the Commissioner of the Northwest Territories, on the advice of the government leader of the Northwest Territories, in any case where the designated Inuit organization has refused entry on Inuit-owned land to remove sand, gravel or other like construction materials, the Tribunal shall make an entry order setting out the terms and conditions, including the payment of compensation, for entry on that land by agents of the Northwest Territories to remove those construction materials.

(4) In determining the amount of compensation that is payable as a term or condition of an entry order made under subsection (1), the Tribunal shall not take into account any amount that is payable for the construction materials."

3.0 APPLICATION PROCEDURES

3.1 Introduction

Applications for Access as set out in Rule 6.7.1.1 herein, Claims for Compensation as set out in Rule 6.7.1.2 herein, Applications to Review an NSRT Order as set out in Rule 6.7.1.4 herein and Applications to Terminate an NSRT Order as set out in Rule 6.7.1.5 herein, may be made in either of the official languages of Canada or in Inuktitut, and shall be made in accordance with the following:

3.2 Application for Access

3.2.1 Negotiation

Prior to making an Application for Access the Applicant and the Respondent must negotiate in an attempt to resolve the matter in accordance with Rule 4.0 herein. In this regard section 117 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* states:

“117.(1) No person may apply to the Tribunal for an order unless the person has attempted to resolve the matter in dispute by negotiation in accordance with the rules made under section 130 or, until such rules have been made, in a manner satisfactory to the Tribunal.”

3.2.2 Filing Application

In the event that a negotiated resolution is not reached pursuant to Rule 3.2.1 herein, an Application for Access to Inuit-Owned Lands:

- To Exercise Mineral Rights (Rule 2.1.1.1);
- To Prospect for Minerals (Rule 2.1.1.2);
- To Cross Inuit-Owned Lands to Exercise Mineral Rights on Non-Inuit-Owned Lands (Rule 2.1.1.3);
- For Commercial Purposes Other than the Exercise of Mineral Rights (Rule 2.1.1.4);

- For the Purpose of Removing Construction Materials (Rule 2.1.1.5);

or an Application for Access to Non-Inuit-Owned Lands (Rule 2.1.2),

may be made to the NSRT. Such an Application shall be in writing on the form set out in Schedule A.1 of these *NSRT Rules of Process and Procedure*. A copy of the completed *Application for Access* shall be filed with the NSRT.

3.2.3 Service

A true copy of an Application for Access filed with the NSRT pursuant to Rule 3.2.2 herein shall be served personally upon the Respondent(s) against whom the Application for Access is made with a sworn Affidavit of Service on the form set out in Schedule A.7 of these *NSRT Rules of Process and Procedure* to be filed with the NSRT.

3.2.4 Advertisement

Upon receiving a copy of an Application for Access in accordance with Rule 3.2.2 herein, the NSRT shall cause notice of the Application for Access to be advertised in the English, French and Inuktitut languages in the newspaper of largest circulation and radio station which broadcast is heard in those communities located in the geographic region which is the subject of the Application for Access.

3.3 Claim for Compensation

3.3.1 Negotiation

Prior to making a Claim for Compensation the Claimant and the Respondent must negotiate in an attempt to resolve the matter in accordance with Rule 4.0 herein. In this regard section 117 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* states:

“117.(1) No person may apply to the Tribunal for an order unless the person has attempted to resolve the matter in dispute by negotiation in accordance with the rules made under section 130 or, until such rules have been made, in a manner satisfactory to the Tribunal.”

3.3.2 Filing Claim

In the event that a negotiated resolution is not reached pursuant to Rule 3.3.1 herein a Claim for Compensation for:

- Compensation for Loss or Damage Involving Wildlife (Rule 2.2.1);

- Compensation for Loss or Damage Involving Carving Stone and Other Specified Substances on Inuit-Owned Land (Rule 2.2.2); or
- Compensation for Loss or Damage Involving Carving Stone on Crown Land (Rule 2.2.3)

may be made to the NSRT. Such an Application shall be in writing on the form set out in Schedule A.2 of these *NSRT Rules of Process and Procedure*. A copy of the completed Claim for Compensation shall be filed with the NSRT.

3.3.3 Service

A true copy of the Claim for Compensation filed with the NSRT pursuant to Rule 3.3.2 herein shall be served personally upon the Respondent(s) against whom the Claim for Compensation is made within three (3) years of the date of the loss or when the loss becomes known to a Claimant, as per s. 153. (3) of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*:

“153.(3)Any claim for compensation by a claimant, or by a designated Inuit organization or a Hunters and Trappers Organization, within the meaning assigned to that expression by section 1.1.1 of the Agreement acting on behalf of the claimant, for loss or damage described in subsection (1) must be made in writing to the developer within three years after the later of the date the loss or damage occurs and the date that it comes to the knowledge of the claimant.”

with a sworn Affidavit of Service on the form set out in Schedule A.7 of these *NSRT Rules of Process and Procedure* to be filed with the NSRT.

3.3.4 Advertisement

Upon receiving a copy of a Claim for Compensation in accordance with Rule 3.3.2 herein, the NSRT shall cause notice of the Claim for Compensation to be advertised in the English, French and Inuktitut languages in the newspaper of largest circulation in those communities located in the geographic region which is the subject of the Claim.

3.4 Application to Review an NSRT Order

3.4.1 Negotiation

Prior to making an Application to Review an NSRT Order the Applicant and the Respondent must negotiate in an attempt to resolve the matter in accordance with Rule 4.0 herein. In this regard section 117 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* states:

“117.(1) No person may apply to the Tribunal for an order unless the person has attempted to resolve the matter in dispute by negotiation in accordance with the rules made under section 130 or, until such rules have been made, in a manner satisfactory to the Tribunal.”

3.4.2 Filing Application

In the event that a negotiated resolution is not reached pursuant to Rule 3.4.1 herein, an Application to Review an NSRT Order may be made to the NSRT. Such an Application shall be in writing on the form set out in Schedule A.3 of these *NSRT Rules of Process and Procedure*. A copy of the completed Application to Review an NSRT Order shall be filed with the NSRT.

3.4.3 Service

A true copy of an Application to Review an NSRT Order filed with the NSRT pursuant to Rule 3.4.2 herein shall be served personally upon the Respondent(s) against whom the Application to Review an NSRT Order is made with a sworn Affidavit of Service on the form set out in Schedule A.5 of these *NSRT Rules of Process and Procedure* to be filed with the NSRT.

3.4.4 Advertisement

Upon receiving a copy of an Application to Review an NSRT Order in accordance with Rule 3.4.2 herein, the NSRT shall cause notice of the Application to Review an NSRT Order to be advertised in the English, French and Inuktitut languages in the newspaper of largest circulation and radio station which broadcast is heard in those communities located in the geographic region which is the subject of the Application to Review an NSRT Order.

3.5 Application to Terminate an NSRT Order

3.5.1 Negotiation

Prior to making an Application to Terminate an NSRT Order the Applicant and the Respondent must negotiate in an attempt to resolve the matter in accordance with Rule 4.0 herein. In this regard section 117 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* states:

“117.(1) No person may apply to the Tribunal for an order unless the person has attempted to resolve the matter in dispute by negotiation in accordance with the rules made under section 130 or, until such rules have

been made, in a manner satisfactory to the Tribunal.”

3.5.2 Filing Application

In the event that a negotiated resolution is not reached pursuant to Rule 3.5.1 herein, an Application to Terminate an NSRT Order may be made to the NSRT. Such an Application shall be in writing on the form set out in Schedule A.4 of these *NSRT Rules of Process and Procedure*. A copy of the completed Application to Terminate an NSRT Order shall be filed with the NSRT.

3.5.3 Service

A true copy of an Application to Terminate an NSRT Order filed with the NSRT pursuant to Rule 3.5.2 herein shall be served personally upon the Respondent(s) against whom the Application to terminate an NSRT Order is made with a sworn Affidavit of Service on the form set out in Schedule A.7 of these *NSRT Rules of Process and Procedure* to be filed with the NSRT.

3.5.4 Advertisement of Application

Upon receiving a copy of an Application to Terminate an NSRT Order in accordance with Rule 3.5.2 herein, the NSRT shall cause notice of the Application to Terminate an NSRT Order to be advertised in the English, French and Inuktitut languages in the newspaper of largest circulation and radio station which broadcast is heard in those communities located in the geographic region which is the subject of the Application to Terminate an NSRT Order.

4.0 NEGOTIATION

4.1 Introduction

As described in Rules 3.2.1 and 3.3.1 herein, the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* provides that no person may make an Application for Access, a Claim for Compensation, Application to Review an NSRT Order or Application to Terminate an NSRT Order to the NSRT without first attempting to resolve the dispute with the other person(s) involved in the dispute (section 117):

“117.(1) No person may apply to the Tribunal for an order unless the person has attempted to resolve the matter in dispute by negotiation in accordance with the rules made under section 130 or, until such rules have been made, in a manner satisfactory to the Tribunal.”

The Act requires that the NSRT make rules for the conduct of negotiations between Parties to a dispute (section 130. (2)):

“130.(2)The Tribunal shall make rules establishing procedures to be followed in the conduct of negotiations for the purposes of subsection 117(1), either generally or with respect to any class of applications.”

These rules are set out below.

4.2 Conduct of Negotiations

Negotiations with respect to an Application for Access, a Claim for Compensation, an Application to Review an NSRT Order or Application to Terminate an NSRT Order shall be conducted in accordance with the following.

4.2.1 Bona Fide Negotiations

Every person making or responding to an Application for Access, a Claim for Compensation, an Application to Review an NSRT Order or Application to Terminate an NSRT Order, shall attempt to resolve the matter in dispute through negotiation, with such attempts to be both *bona fide* in nature and reasonable in the circumstances. Negotiations shall include the making of a minimum of one offer in writing:

- by a person wishing to obtain or maintain access to lands to the person in control of the lands to which access is sought; or
- by a person with a claim to the person against whom a claim is being made,

as the case may be.

4.2.2 Mediation

In the event that all persons participating in negotiations conducted with respect to an Application for Access, Claim for Compensation, Application to Review an NSRT Order or Application to Terminate an NSRT Order wish to obtain the services of a mediator to assist in negotiations, such persons may pursue mediation.

4.2.3 Negotiations Without Prejudice

All negotiations conducted pursuant to Rule 4.0 of these *NSRT Rules of Process and Procedure* shall be conducted on a “without prejudice” basis, whereby the nature and details of the substance of negotiations between all

persons participating in these negotiations shall not be made known to the NSRT, and in any event shall not be admissible as evidence before a Panel of the NSRT in any Hearing with respect to an Application for Access or a Claim for Compensation.

4.3 Joinder of Applications/Claims for Negotiation

4.3.1 Joinder of Applications for Access

In the event that two (2) or more persons either make or receive Applications for Access pursuant to Rule 3.2 herein with respect to the same or closely related purpose or property for which access is sought, two (2) or more of the persons making or receiving such Applications for Access may make an Interlocutory Application to the NSRT to have the Applications for Access joined for the purpose of the negotiation process contemplated in Rule 4.1 herein.

4.3.2 Joinder of Claims for Compensation

In the event that two (2) or more persons either make or receive Claims for Compensation pursuant to Rule 3.3 herein with respect to the same or closely related event or occurrence upon which the claims are based, two (2) or more of the persons either making or receiving such Claims for Compensation may make an Interlocutory Application to the NSRT to have the Claims for Compensation joined for the purpose of the negotiation process contemplated in Rule 4.1 herein.

5.0 **PRE-HEARING PROCESS AND PROCEDURE**

5.1 Commencing an Application/Claim

5.1.1 Application for Access

Applications for Access are to be commenced by:

- filing with the NSRT a completed Application for Access as set out in Schedule A.1 herein, including a copy of the most recent written offer of compensation made to the designated Inuit organization or to the occupant of the land that would be subject to the order (as per ss. 138 and 145 of the Act), and
- personally serving upon the person(s) to whom the Application for Access is being made a copy of the Application for Access filed with the NSRT, and

- filing with the NSRT a sworn Affidavit of Service with respect to the Application for Access as set out in Schedule A.7 herein.

5.1.2 Claim for Compensation

Claims for Compensation are to be commenced by:

- filing with the NSRT a completed Claim for Compensation as set out in Schedule A.2 herein, and
- personally serving upon the person(s) to whom the Claim for Compensation is being made a copy of the Claim for Compensation filed with the NSRT.
- filing with the NSRT a sworn Affidavit of Service with respect to the Claim for Compensation as set out in Schedule A.7 herein.

5.1.3 Application to Review an NSRT Order

Applications to Review an NSRT Order are to be commenced by:

- filing with the NSRT a completed Application for Access as set out in Schedule A.3 herein, and
- personally serving upon the person(s) to whom the Application to Review an NSRT Order is being made a copy of the Application to Review an NSRT Order filed with the NSRT, and
- filing with the NSRT a sworn Affidavit of Service with respect to the Application to Review an NSRT Order as set out in Schedule A.7 herein.

5.1.4 Application to Terminate an NSRT Order

Applications to Terminate an NSRT Order are to be commenced by:

- filing with the NSRT a completed Application to Terminate an NSRT Order as set out in Schedule A.4 herein, and
- personally serving upon the person(s) to whom the Application to Terminate an NSRT Order is being made a copy of the Application to Terminate an NSRT Order filed with the NSRT, and
- filing with the NSRT a sworn Affidavit of Service with respect to the

Application to Terminate an NSRT Order as set out in Schedule A.7 herein.

5.2 Interlocutory Applications

In the event that one or more Parties to any NSRT Proceedings wish to raise an issue relating primarily to matters of process or procedure, any Party may bring an Interlocutory Application to address the issue. Matters relating primarily to the substance of an Application for Access, Claim for Compensation, Application to Review an NSRT Order, Application to Terminate an NSRT Order or a 5 Year Review may not be dealt with by the NSRT by way of Interlocutory Application.

5.2.1 Interlocutory Application Procedure

Interlocutory Applications are to be commenced by:

- filing with the NSRT a completed Interlocutory Application as set out in Schedule A.5 herein, and
- personally serving upon the person(s) to whom the Interlocutory Application is being made a copy of the Interlocutory Application filed with the NSRT.
- filing with the NSRT a sworn Affidavit of Service with respect to the Claim for Compensation as set out in Schedule A.7 herein.

5.2.2 Hearing of Interlocutory Application

Upon receiving an Interlocutory Application the NSRT may, in its discretion, choose to hear the matter by way of Interlocutory Hearing, or may deal with the matter by any other means deemed appropriate by the NSRT.

5.2.3 Notice of Interlocutory Hearing

In the event that the NSRT decides to hold an Interlocutory Hearing it shall provide notice of the Interlocutory Hearing to all Parties to the Application for Access, Claim for Compensation, Application to Review an NSRT Order, Application to Terminate an NSRT Order or a 5 Year Review.

5.2.4 Form of Hearing

In the event that the NSRT decides in its discretion, to hold an Interlocutory Hearing, it may, in its discretion, hold Interlocutory Hearings either in person (“In-Person

Interlocutory Hearing”), or via electronic means (“Electronic Interlocutory Hearing”), or in writing (“Written Interlocutory Hearing”), or by any combination of the three (“Combination Interlocutory Hearing”), at such time and location as directed by the NSRT, and may set out the process to be followed for that Interlocutory Hearing, which may include adopting any or all of the rules which apply to a Hearing of an Application for Access, Claim for Compensation, Application to Review an NSRT Order, Application to Terminate an NSRT Order or a 5 Year Review as set out in Rule 6.0 of these *Rules of Process and Procedure*.

5.2.5 Appointment of NSRT Member to Hear Interlocutory Application

An Interlocutory Application for which a decision is made to hold an Interlocutory Hearing shall be heard by one (1) Member of the NSRT, appointed by the Chairperson/Interim Chairperson/Acting Chairperson of the NSRT. A Member of the NSRT who hears an Interlocutory Application may not be appointed to a Panel of the NSRT to hear the Application for Access or Claim for Compensation to which the Interlocutory Application is related.

5.2.6 Decision

Upon hearing an Interlocutory Application the Member of the NSRT hearing the Application shall render a decision with respect to the Interlocutory Application, which decision shall be in writing and shall include reasons for the decision.

5.2.7 Notification and Distribution of Decision

A copy of a decision in writing referred to in Rule 5.2.6 herein shall be provided by the NSRT to every Party participating in the Interlocutory Application, with copies also available to members of the public upon request.

5.3 Submission of Documents

5.3.1 Introduction

Parties to NSRT Proceedings may wish to submit documents to the NSRT for the Tribunal’s consideration. Submission of documents to the NSRT with respect to NSRT Proceedings shall be as follows:

5.3.1.1 Applicant/Claimant Documents

All documents which the Applicant/Claimant wishes to present in its Application for Access, Claim for Compensation, Application to Review an NSRT Order, Application to Terminate an NSRT Order or 5 Year Review must be filed with the

NSRT and personally served upon all other Parties not later than sixty (60) days prior to the commencement of a Hearing by a Panel of the NSRT, (or as otherwise directed by the NSRT), with a sworn Affidavit of Service on the form set out in Schedule A.7 of these *NSRT Rules of Process and Procedure* to be filed with the NSRT (or as otherwise directed by the NSRT).

5.3.1.2 Respondent Documents

All documents which a Respondent wishes to present in responding to an Application for Access, Claim for Compensation, Application to Review an NSRT Order, Application to Terminate an NSRT Order or 5 Year Review must be filed with the NSRT and personally served upon all other Parties not later than thirty (30) days prior to the commencement of a Hearing by a Panel of the NSRT, (or as otherwise directed by the NSRT), with a sworn Affidavit of Service on the form set out in Schedule A.7 of these *NSRT Rules of Process and Procedure* to be filed with the NSRT (or as otherwise directed by the NSRT).

5.3.1.3 Intervenor Documents

All documents which an Intervenor wishes to present with respect to an Application for Access, Claim for Compensation, Application to Review an NSRT Order, Application to Terminate an NSRT Order or a 5 Year Review must be filed with the NSRT and personally served upon all other Parties not later than fifteen (15) days prior to the commencement of a Hearing by a Panel of the NSRT, (or as otherwise directed by the NSRT), or such other time as directed by the NSRT, with a sworn Affidavit of Service on the form set out in Schedule A.7 of these *NSRT Rules of Process and Procedure* to be filed with the NSRT (or as otherwise directed by the NSRT).

5.4 Joinder of Applications/Claims for Hearing

5.4.1 Application for Access

In the event that the Negotiation Process set out in Rule 4.0 fails to result in a resolution of an Application for Access, and in the event that two (2) or more persons either make or receive Applications for Access pursuant to Rule 3.2.2 herein with respect to the same or closely related purpose or property for which access is sought, two (2) or more of the persons either making or receiving such Applications for Access may make an Interlocutory Application to the NSRT to have the Applications for Access joined for the purpose of the hearing process contemplated in Rule 6.0 herein.

5.4.2 Claim for Compensation

In the event that the Negotiation Process set out in Rule 4.0 fails to result in a resolution of a Claim for Compensation, and in the event that two (2) or more persons either make or receive Claims for Compensation pursuant to Rule 3.3 herein with respect to the same or closely related event or occurrence upon which the claims are based, two (2) or more of the persons either making or receiving such Claims for Compensation may make an Interlocutory Application to the NSRT to have the Claims for Compensation joined for the purpose of the hearing process contemplated in Rule 6.0 herein.

5.5 Pre-Hearing Conference

5.5.1 Introduction

The NSRT may, in its discretion, require that Parties to a Proceeding before the NSRT attend one or more Pre-Hearing Conferences prior to the holding of a Hearing by the NSRT. Information relating to the details of a Pre-Hearing Conference will be provided by the NSRT to the Parties in advance of the Pre-Hearing Conference.

5.6 Communications

All communications to the NSRT should be addressed to the NSRT Administrator, as follows:

- Mailing Address

Nunavut Surface Rights Tribunal
Box 1692
Iqaluit
Nunavut
X0A 0H0

- Telephone

(867) 975-2102
(867) 979-2498

- Fax

(867) 975-2102

- E-Mail

administrator@NSRT.ca

6.0 HEARING PROCEDURES

6.1 Introduction

Upon receiving an Application for Access (Schedule A.1) or a Claim for Compensation (Schedule A.2), or an Application to Review NSRT Order (Schedule A.3) or an Application to Terminate an NSRT Order (Schedule A.4) or Notification of a 5 Year Review, which is not resolved through negotiation pursuant to Rule 4.0 herein (if applicable), the NSRT shall hold a Hearing in accordance with the following.

6.2 Form of Hearing

The NSRT may, in its discretion, hold Hearings with respect to Applications for Access, Claims for Compensation, Applications to Review NSRT Orders, Applications to Terminate NSRT Orders or 5 Year Reviews (collectively “Hearings”) either in person (“In-Person Hearing”), or via electronic means (“Electronic Hearing”), or in writing (“Written Hearing”), or by any combination of the three (“Combination Hearing”), at such time and location as directed by the NSRT.

6.3 Membership of NSRT Panel

6.3.1 Assignment to NSRT Panel

The *Nunavut Waters and Nunavut Surface Rights Tribunal Act* provides that members of the NSRT are to be assigned to panels to hear Applications/Claims as follows:

“125(1) Members shall be assigned to panels in accordance with the by-laws of the Tribunal or, in the absence of by-laws respecting the assignment of members to panels, by the Chairperson.”

The NSRT By-laws (s. 7.1.6) provide that Members of the NSRT shall be appointed to a Panel of the NSRT for the hearing of Applications for Access, Claims for Compensation, Applications to Review NSRT Orders, Applications to Terminate NSRT Orders or 5 Year Reviews by the Chairperson/Interim Chairperson/Acting Chairperson of the NSRT.

6.3.2 Number of Panel Members

The *Nunavut Waters and Nunavut Surface Rights Tribunal Act* requires that Applications for Access, Claims for Compensation, Applications to Review NSRT Orders, Applications to Terminate NSRT Orders or 5 Year Reviews shall be heard by a panel of 3 Members, or if the parties consent, by one Member:

“124. (1) An application to the Tribunal shall be heard by a panel

consisting of three members or, if the parties consent, by one member.”

6.3.3 Residency of Panel Members

In the event that an Application for Access, Claim for Compensation, Application to Review NSRT Orders, Application to Terminate NSRT Orders or 5 Year Review involves Inuit-owned land, at least two members of a three member Panel, or the sole member of a one member Panel must be resident in Nunavut, as per s. 124. (3) of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*:

“124. (3) Where an application involves Inuit-owned land, at least two of the members of the panel hearing the application, or in the case of an application heard by one member, that member, shall be resident in Nunavut.”

6.3.4 Absence of Panel Member

6.3.4.1 Absent Member Not to Participate in Decision

If for any reason a Member of an NSRT Panel hearing an Application for Access, Claim for Compensation, Application to Review NSRT Orders, Application to Terminate NSRT Orders or 5 Year Review is not present during the entire Hearing, that Member may not participate in the NSRT decision with respect to that Application/Claim, as per s. 124(2) of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*:

“123. (2) A member who is not present during the entire hearing of an application may not participate in the disposition of the application.”

6.3.4.2 Hearing Process in the Event of Absent Panel Member

In the event that for any reason a Member of an NSRT Panel hearing an Application for Access, Claim for Compensation, Application to Review NSRT Orders, Application to Terminate NSRT Orders or 5 Year Review is absent from all or a portion of a Hearing, with the consent of all of the Parties the Hearing may continue with one (1) of the Members who has been present at all of the Hearing, as chosen by the NSRT Chairperson/Interim Chairperson/Acting Chairperson. If all of the Parties do not so consent, the Application/Claim shall be reheard by another Panel appointed by the NSRT Chairperson/Interim Chairperson/Acting Chairperson as per s. 124.(1) of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*:

“124. (1) ... If one of the members of a panel is absent, the hearing may continue with only one of the members if the parties consent, but

if the parties do not consent, the application shall be reheard by another panel or member.”

6.3.5 Conflict of Interest

6.3.5.1 Assignment to Panel

The *Nunavut Waters and Nunavut Surface Rights Tribunal Act* requires that a Member of the NSRT shall not be assigned to a panel or continue on a panel if such an appointment would place that Member in a conflict of interest:

“125. (2) A member shall not be assigned to, or continue on, a panel if doing so would place the member in a material conflict of interest.”

6.3.5.2 No Conflict Due to Status or Interest in Land

A Member of the NSRT is not placed in a conflict of interest due to status under the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* as an Inuk or due to an interest in land in Nunavut:

“125. (3) A member is not placed in a material conflict of interest merely because the member has the status under the Agreement of an Inuk or has an interest in land in Nunavut.”

6.3.5.3 Continuation on Panel

In the event that:

- a) a Member of the NSRT assigned to a Panel becomes aware that the Member is potentially in a conflict of interest during any NSRT process, that Member shall advise the Chairperson/Interim Chairperson/Acting Chairperson of the NSRT,
- b) the Chairperson/Interim Chairperson/Acting Chairperson of the NSRT otherwise becomes aware that a Member assigned to a Panel is potentially in a conflict of interest during any NSRT process,

the Chairperson/Interim Chairperson/Acting Chairperson of the NSRT shall consider the issue and determine whether the Member should continue on the Panel or be removed from the Panel forthwith, and if so removed the provisions of Rule 6.3.4.2 herein shall apply.

6.3.6 Confidentiality of Panel Membership

Appointments of Members of the NSRT to a Panel of the NSRT shall remain confidential to the NSRT until the date of the Hearing of an Application/Claim, at which time the identity of NSRT Members appointed to a Panel shall be made public by a representative of the NSRT.

6.4 General Powers of Tribunal

Pursuant to s. 120 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* the NSRT has the powers, rights and privileges of a superior court with respect to all matters relating to matters brought before the Tribunal:

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

6.5 Location of Hearing

The *Nunavut Waters and Nunavut Surface Rights Tribunal Act* provides that unless the Parties otherwise agree, a Claim for Compensation or an Application for the Review of an NSRT Order relating to compensation is to be heard in a community that is convenient to the Claimant, with all other applications (including Applications for Access, Review NSRT Orders relating to access, Applications to Terminate NSRT Orders) to be heard in the community closest to the location of the land involved:

“123. Unless the parties agree otherwise,

*(a) an application under section 155 or 167 in relation to an order made under section 155 shall be heard in a community that is convenient to the claimant;
and*

(b) any other application shall be heard in the community that is closest to the land involved.”

6.6 Hearing In Absence of Party

The NSRT may not hold a Hearing in the absence of any Party unless the absent Party consents or notice or the absent Party has been notice of the Hearing which is satisfactory to the Tribunal:

“122. The Tribunal may not hear an application in the absence of any party

unless

(a) that party consents to the holding of the hearing in their absence; or

(b) notice of the hearing was given to that party in accordance with the rules of the Tribunal or, in the absence of rules respecting the giving of such notice, in a manner satisfactory to the Tribunal.”

6.7 Parties to a Matter in Dispute and Standing to Make Submissions

6.7.1 Parties to a Matter in Dispute

The following persons shall be considered by the NSRT to be Parties to a matter in dispute with standing to make submissions to the NSRT:

6.7.1.1 Applicants and Respondents to Applications for Access

Persons making or responding to any of the following Applications for Access:

- Access to Inuit-Owned Lands To Exercise Mineral Rights (pursuant to s. 133 *Nunavut Waters and Nunavut Surface Rights Tribunal Act*).
- Access to Inuit-Owned Lands To Prospect for Minerals (pursuant to s. 134 *Nunavut Waters and Nunavut Surface Rights Tribunal Act*).
- Access to Inuit-Owned Lands To Cross Inuit-Owned Lands to Exercise Mineral Rights on Non-Inuit Owned Lands (pursuant to s. 135 *Nunavut Waters and Nunavut Surface Rights Tribunal Act*).
- Access to Inuit-Owned Lands For Commercial Purposes Other than the Exercise of Mineral Rights (pursuant to s. 136 *Nunavut Waters and Nunavut Surface Rights Tribunal Act*).
- Access to Inuit-Owned Lands For the Purpose of Removing Construction Materials (pursuant to s. 137 *Nunavut Waters and Nunavut Surface Rights Tribunal Act*).
- Access to Non-Inuit-Owned Lands (pursuant to s. 144 *Nunavut Waters and Nunavut Surface Rights Tribunal Act*).

6.7.1.2 Claimants and Respondents to Claims for Compensation

Persons making or responding to any of the following Claims for Compensation:

- Compensation for Loss or Damage Involving Wildlife (pursuant to s. 153 *Nunavut Waters and Nunavut Surface Rights Tribunal Act*).
- Compensation for Loss or Damage Involving Carving Stone and Other Specified Substances on Inuit-Owned Land (pursuant to s. 150 *Nunavut Waters and Nunavut Surface Rights Tribunal Act*).
- Compensation for Loss or Damage Involving Carving Stone on Crown Land (pursuant to s. 151 *Nunavut Waters and Nunavut Surface Rights Tribunal Act*).

6.7.1.3 Intervenors

Persons who are directly affected by an Application for Access as set out in Rule 6.7.1.1 herein or by a Claim for Compensation as set out in Rule 6.7.1.2 herein, or an Application to Review an NSRT Order as set out in Rule 6.7.1.4 herein, or an Application to Terminate an NSRT Order as set out in Rule 6.7.1.5 herein, or a 5 Year Review as set out in Rule 6.7.1.6 herein and who wish to make representations with respect to such an Application for Access commenced pursuant to Rule 5.1.1 herein or a Claim for Compensation commenced pursuant to Rule 5.1.2 herein or an Application to Review an NSRT Order commenced pursuant to Rule 5.1.3 herein or an Application to Terminate an NSRT Order commenced pursuant to Rule 5.1.4 herein or a 5 Year Review shall be Intervenors, and shall participate in NSRT Proceedings by so advising the NSRT of its request to be an Intervenor in a manner prescribed by the NSRT in its discretion.

6.7.1.4 Applicant to Review a NSRT Order

Persons (or their Successors) who have been a Party to a Hearing held in respect of an Application for Access (as set out in Rule 6.5.1.1 herein) or a Claim for Compensation (as set out in Rule 6.5.1.2 herein) who wish to make an application to the NSRT to review (herein referred to as “Application for Review”) its Order for Access or Order for Compensation (pursuant to s. 167 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*).

6.7.1.5 Applicant to Terminate an NSRT Order

Persons (or their Successors) who have been a Party to a Hearing held in respect of an Application for Access (as set out in Rule 6.5.1.1 herein) who wish to make an Application for Termination of an Order for Access granted by the NSRT resulting from that Hearing (herein referred to as “Application for Termination”) on the basis

that the Order is no longer being used for the purpose for which the Order was made (pursuant to s. 168 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*).

6.7.1.6 Persons Notified of Five Year Review

Persons (or their successors) who received notice from the NSRT of a five (5) year review (as required by s.169 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*) of an Order of the NSRT with respect to compensation awarded pursuant to an Application for Access to Inuit-owned land (as set out in ss. 133, 134, 135, 136 and 137 of the *Act*).

6.7.2 Standing to Make Submissions

Standing to make submissions to the NSRT at a Hearing shall only be made by Parties to a dispute as set out in Rules. 6.7.1.1, 6.7.1.2, 6.7.1.3, 6.7.1.4, 6.7.1.5 and 6.7.1.6 herein.

6.7.3 Representation of Parties

Parties may be represented in all matters before the NSRT by any person(s) selected by the Party being represented (“Representative”). Any Party who has retained a Representative who is not a member of the Law Society of Nunavut shall provide to the NSRT a document in writing signed by that Party indicating that the Representative may represent the Party before the Tribunal.

6.8 Form of Submissions

Subject to Rule 6.2 herein, submissions at a Hearing may, in the discretion of the NSRT, be verbal, in writing or both verbal and in writing. Irrespective of the form of the submission, in order for the submission to be considered by the NSRT, the person making the submission must respond to questioning with respect to the submission as provided in these *NSRT Rules of Process and Procedure* and as directed in the discretion of the NSRT.

6.9 Order of Submissions

The NSRT may, in its discretion, advise hearing participants with respect to the order of submissions and questioning at Hearings. In the absence of specific direction by the NSRT, the standard procedure is for Applicant(s) or Claimant(s) (as the case may be) to present their case first, followed by questions from the NSRT, the Respondent(s) and Intervenors. The second presentation is made by the Respondent(s), who in turn may be questioned by the NSRT, the Applicant(s)/Claimant(s) and Intervenors. The next presentations are made by Intervenors who are questioned by the NSRT, the Applicant(s)/Claimant(s), the Respondent(s) and other Intervenors.

6.10 Rules for Submissions

Submissions shall be conducted in accordance with the following:

6.10.1 Identity of Witnesses

The NSRT may, in its discretion set out the process for Parties to identify those person(s) who the Parties wish to give evidence to the NSRT on its behalf, which may include submission of a list of witnesses as set out in Schedule A.6 herein.

6.10.2 Relevance of Submissions

Submissions must be relevant to the matter under consideration by the NSRT Panel at the Hearing. Irrelevant information will not be considered by the NSRT Panel in reaching its decision.

6.10.3 Audio Visual Assistance

Evidence may, with the approval of the NSRT, be made with audio and/or visual assistance. Any Party wishing audio or visual assistance should contact the NSRT no later than thirty (30) days prior to the date when such assistance is required to make the necessary arrangements.

6.10.4 Written Submissions

Written submissions shall be made in accordance with the following requirements:

6.10.4.1 Authorship of Written Submission

The name of the author(s) and all other persons involved in the research and/or preparation of written submissions should be clearly identified at the beginning of written submissions. The signature of the Primary Author or Primary Authors and date of the written submission should appear at the end of the submission.

6.10.4.2 Availability of Primary Author of Written Submission

Subject to the discretion of the NSRT, the Primary Author(s) of written submissions submitted at Hearings must be available at the Hearing for questioning by the NSRT and by other Parties as provided herein.

6.10.4.3 Schedule for Written Submissions

Subject to direction to the contrary by the NSRT, written submissions shall be submitted to the NSRT in accordance with the timelines established by the NSRT in its discretion, with respect to each Hearing.

6.11 Expert Witnesses

Persons giving evidence who, as a result of their special skills, training or expertise may be able to assist the NSRT with respect to a scientific/technical issue relevant to the matter being considered by the NSRT (herein referred to as “Expert Witnesses”) shall be made in accordance with the following:

6.11.1 Notice of Expert Witness

A Party wishing to include within its submission a presentation by an Expert Witness must so indicate its intention in the List of Witnesses (Schedule A.6), including the area of expertise of the Expert Witness and provide a *curriculum vitae*/resume of the Expert Witness.

6.11.2 Qualification of Expert Witnesses

Any Party seeking to include within its submission a presentation by an Expert Witness must have that witness ‘qualified’ as an expert by the NSRT as follows:

- The Party wishing to have the witness qualified as an expert shall provide to the NSRT a precise description of the area in which qualification as an expert is sought;
- the Expert Witness present his/her qualifications to the NSRT, either verbally, in writing or both;
- upon presenting qualifications (above) the Expert Witness may be questioned on his/her qualifications by the NSRT and any Party; and
- the NSRT shall make a determination as to whether the witness is qualified to give evidence as an Expert Witness, and the description of the area in which qualification is granted.

6.12 Traditional Knowledge/Inuit Qaujimagatuqangit Witnesses

Person (Inuit and non-Inuit) giving evidence who possess a body of knowledge and/or unique cultural insights of Inuit into the workings of nature, humans and animals may be able to assist the NSRT with respect to an issue relevant to the matter being considered by the NSRT (herein referred to as “TK/IQ Witness”) shall be made in accordance with the following:

6.12.1 Notice of TK/IQ Witness

A Party wishing to include within its submission a presentation by a TK/IQ Witness must so indicate its intention in the List of Witnesses (Schedule A.6), including the area in which the TK/IQ Witness will give evidence.

6.12.2 Background of TK/IQ Witness

Any Party seeking to include within its submission a presentation by a TK/IQ Witness TK/IQ witness should be able to demonstrate to the NSRT that the TK/IQ witness possesses knowledge and/or unique cultural insights of Inuit into the workings of nature, humans and animals such as to be able to assist the NSRT with respect to an issue being considered by the NSRT.

6.13 Witnesses

6.13.1 Attendance and Examination

The *Nunavut Waters and Nunavut Surface Rights Tribunal Act* grants to the NSRT the powers, rights and privileges of a superior court with respect to the attendance and examination of witnesses (s. 120):

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

6.13.2 Sworn Evidence

All witnesses appearing before the NSRT to give evidence with respect to a matter before the NSRT shall be either sworn or affirmed, and all evidence provided by such witnesses shall be under oath.

6.13.3 Questioning

Questioning by any Party (or its representative) of any witness making a submission to an NSRT Panel during either an In-Person or Electronic Hearing is permitted only in accordance with the following requirements:

6.13.3.1 Purpose of Questioning

Questioning should be conducted for the purpose of clarifying and testing the

submissions made by any Party or their representative and for the purpose of eliciting material and relevant information not brought out during those submissions.

6.13.3.2 Who May be Questioned

Any witness except a TK/IQ witness may be questioned by the NSRT Panel and the Parties. TK/IQ witnesses may only be questioned by a NSRT Panel.

6.13.3.3 Limits on Questioning

The following limits on questioning shall apply to NSRT Hearings:

- a) Questioning of witnesses shall not be conducted with respect to matters which are not relevant to the matter before the NSRT Panel;
- b) Questioning of witnesses shall not be conducted in a manner which is abusive, offensive or otherwise discourteous to the witness being questioned.
- c) Questioning of TK/IQ witnesses may only be carried out by the NSRT.
- d) Following questioning of any witness as set out above, re-direct questioning of that witness may be conducted by the Party (or their representative) which conducted the questioning only with respect to information raised during the questioning.

6.14 Language

6.14.1 Language of NSRT Business

The *Nunavut Waters and Nunavut Surface Rights Tribunal Act* requires that the Tribunal shall conduct its business in both the English and French languages, and on request by any designated Inuit organization, in Inuktitut (section 106(1)):

“106.(1)The Tribunal shall conduct its business in both of the official languages of Canada in accordance with the Official Languages Act and any directives of the Minister and, on request by any designated Inuit organization, in Inuktitut.”

6.14.2 Language in which Evidence is Heard

The *Nunavut Waters and Nunavut Surface Rights Tribunal Act* requires that in all proceedings before the NSRT that the Tribunal ensure that all persons giving evidence are heard in either English, French or Inuktitut, and that the person will not be placed at a

disadvantage by not being heard in another of those languages (section 106 (3)):

“106 (3) The Tribunal has, in any proceedings before it, the duty to ensure that any person giving evidence before it may be heard in Inuktitut or in either official language, and that in being so heard the person will not be placed at a disadvantage by not being heard in another of those languages.”

6.14.3 Translation of Verbal Evidence

The NSRT has the obligation to make available facilities for the simultaneous translation of verbal evidence given in Inuktitut into either English or French; from English or French into Inuktitut; and from English into French and French into English (*Nunavut Waters and Nunavut Surface Rights Tribunal Act* section 106. (4)):

“106. (4) The Tribunal has, in any proceedings before it, the duty to ensure that, at the request of any party to the proceedings, facilities are made available for the simultaneous interpretation of the proceedings, including the evidence given and taken, from Inuktitut into one of the official languages, from one of the official languages into Inuktitut or from one of the official languages into the other.”

6.14.4 Translation of Documents

The NSRT will make available facilities for the translation of documents submitted to it in Inuktitut into one or both of English and French; from English or French into Inuktitut; and from English into French and French into English (section 106. (5)):

“106. (5) The Tribunal has, in any proceedings before it, the duty to provide a translation of any documents prepared in Inuktitut or in one of the official languages for the purpose of the proceedings by a party to the proceedings into one or both of the official languages or into Inuktitut or the other official language where necessary to enable another party to the proceedings to understand and deal with the document.”

6.14.5 Translation of Orders

Upon request by any Party the NSRT must translate its orders into Inuktitut (section 13(6)):

“106. (6) The Tribunal shall, on the request of a party to any proceeding before it, provide a translation into Inuktitut of any order made in the proceedings, including any reasons given for the order.”

6.15 Documents

6.15.1 Compelling Production and Inspection

The *Nunavut Surface Rights Tribunal Act* grants to the NSRT the powers, rights and privileges of a superior court with respect to the production and inspection of documents (section 120):

“120. The Tribunal has, with respect to the ... production and inspection of documents and all other matters necessary or proper in relation to applications before the Tribunal, all the powers, rights and privileges of a superior court.”

6.15.2 Public Record and Access

In accordance with the provisions of section 129 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* the Tribunal shall maintain care and custody of all documents submitted to it, with such documents being a matter of public record to which the Tribunal shall grant access to the public (section 129):

“129. (1) The Tribunal shall

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

(2) Any fee received by the Tribunal under paragraph (1)(b) may be used by the Tribunal for its operations.”

6.15.3 Availability to Parties

Section 127 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* provides that any information which it intends to use in the disposition of an application (any matter being considered by the NSRT) shall be made available to the Parties and that the Parties will be provided with a reasonable opportunity to respond to the information:

“127. Before disposing of an application, the Tribunal shall make any information that it intends to use in the disposition available to the parties and provide them with a reasonable opportunity to respond to the information.”

6.16 Recording of NSRT Proceedings

6.16.1 Hearings

Hearings may, in the discretion of the NSRT be recorded by electronic means and transcripts prepared in accordance with the language provisions set out in Rule 6.14 of these *Rules of Process and Procedure*.

6.16.2 Interlocutory Proceedings

Interlocutory proceedings may, in the discretion of the NSRT be recorded by electronic means and transcripts prepared in accordance with the language provisions set out in Rule 6.14 of these *Rules of Process and Procedure*.

6.16.3 Availability of Transcripts

Transcripts prepared pursuant to Rule 6.16.1 or 6.16.2 herein shall be available to all Parties, and to those members of the public who are not Parties, upon payment of costs associated with the production of the transcript. Cost of transcripts shall not include any costs incurred by the NSRT with respect to the translation of transcripts.

7.0 DECISIONS

7.1 Application for Access

7.1.1 Inuit-owned Land

7.1.1.1 To Exercise Mineral Right

When an Application for an Order to resolve a dispute is made to the NSRT with respect to an Application for Access to Inuit-owned land to exercise mineral rights, the Tribunal is required to make an order setting out the terms and conditions, including the payment of compensation to a landowner with respect to that access. Specifically, section 133 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* states:

“133. On application by any person

- (a) who has a mineral right granted by Her Majesty in right of Canada in respect to Inuit-owned land, and*
- (b) who has been unable to obtain the consent of the designated Inuit organization,*

The Tribunal shall make an entry order setting out the terms and conditions for the use and occupation of that land to the extent necessary for the purpose of exercising the mineral right.”

7.1.1.2 To Prospect for Minerals

When an Application for an Order to resolve a dispute is made to the NSRT with respect to an Application for Access to Inuit-owned land to prospect for minerals, the Tribunal is required to make an order setting out the terms and conditions, including the payment of compensation to a landowner with respect to that access. Specifically, section 134 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* states:

“134. (1) A person who has a right to prospect for minerals and who applies under section 133 for an entry order to exercise that right on Inuit-owned land shall make a separate application in respect of each parcel of that land.

(2) In disposing of an application made by a person who has a right to prospect for minerals, the Tribunal shall take into account the need to provide confidentiality for that person.

(3) In subsection (1), “parcel” means the portion of land represented by a code of letters and numbers in the property description, as defined in section 19.1.1 of the Agreement, used for the purposes of conveying title to Inuit-owned land.”

7.1.1.3 To Cross Inuit-Owned Land to Exercise Mineral Rights on Non-Inuit Owned Land

When an Application for an Order to resolve a dispute is made to the NSRT with respect to an Application for Access to cross Inuit-owned land to exercise mineral rights on non-Inuit-owned Land, the Tribunal is required to make an order setting out the terms and conditions, including the payment of compensation to a landowner with respect to that access. Specifically, section 135 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* states:

“135. (1) Subject to subsection (2), on application by any person

(a) who requires access to Inuit-owned land in order to exercise a mineral right, granted under an Act of Parliament, in relation to any other land, and

(b) who has been unable to obtain the consent of the designated Inuit organization,

the Tribunal shall make an entry order setting out the terms and conditions for access to that Inuit-owned land to the extent necessary for the purpose of exercising the mineral right.

(2) The Tribunal shall not make an entry order under subsection (1) unless the applicant satisfies the Tribunal that the access is reasonably required.”

7.1.1.4 For Commercial Purposes Other than the Exercise of Mineral Rights

When an Application for an Order to resolve a dispute is made to the NSRT with respect to an Application for Access to Inuit-owned land for a commercial purpose other than the exercise of mineral rights, the Tribunal is required to make an order determining whether access should be granted, and if so, under what terms and conditions, including the payment of compensation to a landowner with respect to that access. Specifically, section 136 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* states:

“136. (1) Subject to subsection (2), on application by any person

(a) who requires access across Inuit-owned land for a commercial purpose, and

(b) who has been unable to obtain the consent of the designated Inuit organization,

the Tribunal shall make an entry order setting out the terms and conditions for the access.

(2) The Tribunal shall not make an entry order under subsection (1) unless an arbitration panel established under Article 38 of the Agreement has, in accordance with the Agreement,

(a) established that the applicant attempted for a period of not less than sixty days to negotiate the access in good faith;

(b) determined that the access is essential to the commercial purposes of the applicant and that access by any other means is physically or financially impractical; and

(c) designated a route of access that will minimize any damage to

the Inuit-owned land and interference with Inuit use of that land.

(3) An entry order made under subsection (1) shall include terms and conditions to minimize any damage to the Inuit-owned land and interference with Inuit use of that land.

(4) Where the designated Inuit organization has consented to permit a person to cross Inuit-owned land for commercial purposes but that organization and that person are unable to agree on appropriate compensation, the Tribunal shall, on application by that organization or person, make an order resolving the matter.”

7.1.1.5 For the Purpose of Removing Construction Materials

When an Application for an Order to resolve a dispute is made to the NSRT with respect to an Application for Access to Inuit-owned land for the purpose of removing construction materials, the Tribunal is required to make an order determining whether access should be granted, and if so, under what terms and conditions, including the payment of compensation to a landowner with respect to that access. Specifically, section 137 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* states:

“137. (1) Subject to subsection (2), on application by the Minister or the territorial minister designated by an instrument of the Executive Council of Nunavut, in any case where the designated Inuit organization has refused entry on Inuit-owned land to remove sand, gravel or other like construction materials, the Tribunal shall make an entry order setting out the terms and conditions, including the payment of compensation, for entry on that land by agents of the Government of Canada or of the Government of Nunavut to remove those construction materials.

(2) The Tribunal shall not make an entry order under subsection (1) unless it determines that the construction materials are required for public purposes and that no alternative supply is reasonably available.

(3) An entry order made under subsection (1) shall include terms and conditions to minimize any damage to the Inuit-owned land and interference with Inuit use of that land and shall require the rehabilitation of the site by the government that removed the construction materials.

(4) *In determining the amount of compensation that is payable as a term or condition of an entry order made under subsection (1), the Tribunal shall not take into account any amount that is payable for the construction materials.”*

7.1.1.6 Types of Orders Which May be Granted

Types of Orders which may be granted by the NSRT with respect to an Order for Access on Inuit-owned land are set out in s. 139 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*:

“139. The Tribunal may include in an entry order, in addition to the terms and conditions required by this Part,

- (a) terms and conditions respecting any of the following matters, namely,*
 - (i) the times when the right may be exercised,*
 - (ii) the giving of notice,*
 - (iii) limitations on the location in which the right may be exercised and on routes of access,*
 - (iv) limitations on the number of persons exercising the right,*
 - (v) limitations on the activities that may be carried on and the equipment that may be used,*
 - (vi) the giving of security in accordance with the regulations and the purposes for which the security is given,*
 - (vii) abandonment and restoration work, and*
 - (viii) the right of the designated Inuit organization or occupant of the land to verify, by inspection or otherwise, whether the other terms and conditions have been complied with; and*
- (b) any other terms and conditions that the Tribunal considers appropriate to minimize any damage to or interference with*

the use and peaceful enjoyment of the land by the occupant of the land or Inuit”

7.1.1.7 Factors Taken into Consideration in Considering Compensation in an Application for Access

The factors which shall be taken into consideration by a Panel of the NSRT in determining the amount of compensation payable with respect to an Order for Access on Inuit-owned land are set out in the Act as follows (section 140 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*):

“140. (1) Subject to subsection (2), in determining the amount of compensation that is payable under an order, the Tribunal may consider such factors as it considers appropriate and, without limiting the generality of the foregoing, shall consider

- (a) the market value of the land;*
- (b) the loss of the use of the land to the designate Inuit organization, the occupant of the land and Inuit;*
- (c) the effect on wildlife harvesting by Inuit;*
- (d) the adverse effect of the use or occupancy on any other Inuit-owned land*
- (e) any damage that may be caused to the land;*
- (f) any nuisance and inconvenience, including noise, to the designated Inuit organization, the occupant of the land and Inuit:*
- (g) the cultural attachment of Inuit to the land:*
- (h) the peculiar and special value of the land to Inuit;*
- (i) any reasonable expenses that may be incurred by the designated Inuit organization or occupant of the land as or on account of costs of an inspection under subparagraph 139(a)(viii); and*

- (f) *any reasonable costs incurred by the designated Inuit organization in connection with the application and the hearing.*
- (2) *In determining the amount of compensation payable, the Tribunal shall not consider the reversionary value of the land or any entry fee payable.*
- (3) *The Tribunal may require compensation to be paid by one lump sum payment or by periodic payments of equal or different amounts and may require the payment of interest, at a rate to be determined in accordance with the regulations, on compensation payments made after the day on which they are required to be made.”*

7.1.1.8 Allocation of Compensation

In the event that the Tribunal determines that both a designated Inuit organization and the occupant of the land are affected by an Order for Access, the Tribunal may allocate any compensation payable between them (as per s. 141 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*).

7.1.2 Non-Inuit-Owned Land

When an Application for an Order to resolve a dispute is made to the NSRT with respect to an Application for Access to non-Inuit-owned land to exercise mineral rights, the Tribunal is required to make an order setting out what terms and conditions, including the payment of compensation to a landowner with respect to that access. Specifically, section 144 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* states:

“144. On application by any person

- (a) *who has a mineral right granted by Her Majesty in right of Canada,*
- (b) *who has, under another Act of Parliament, for the purpose of exercising that mineral right, a right of access to non-Inuit-owned land that is subject to the consent of the owner or occupant, and*
- (c) *who has been unable to obtain the consent of the owner*

or occupant,

the Tribunal shall make an entry order setting out the terms and conditions for the exercise of the right of access to the extent necessary for the purpose of exercising the mineral right.

7.1.2.1 Types of Orders which May be Granted

Types of Orders for Access which may be granted by the NSRT with respect to Applications for Access to non-Inuit-owned land and non-Inuit-owned land are set out in s. 146 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*:

“146. The Tribunal may include in an entry order, in respect of a right of access

- (a) terms and conditions respecting any of the following matters, namely,*
 - (i) the times when the right may be exercised,*
 - (ii) the giving of notice,*
 - (iii) limitations on the location in which the right may be exercised and on routes of access,*
 - (iv) limitations on the number of persons exercising the right,*
 - (v) limitations on the activities that may be carried on and the equipment that may be used,*
 - (vi) the giving of security in accordance with the regulations and the purposes for which the security is given,*
 - (vii) abandonment and restoration work, and*
 - (viii) the right of the owner or occupant of the land to verify, by inspection or otherwise, whether the other terms and conditions have been complied with; and*
- (b) any other terms and conditions that the Tribunal*

considers appropriate to minimize any damage to or interference with the use and peaceful enjoyment of the land by the owner or occupant of the land.”

7.1.2.2 Factors Taken into Consideration in Considering Compensation in Application for Access

The factors which shall be taken into consideration by a Panel of the NSRT in determining the amount of compensation payable with respect to an Order for Access made pursuant to an Application for Access to non-Inuit-owned and non-Inuit-owned land are set out in section 147 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* as follows:

“147. (1) Subject to subsection (2), in determining the amount of compensation that is payable under an entry order, the Tribunal may consider such factors as it considers appropriate and, without limiting the generality of the foregoing, shall consider

- (a) the market value of the land;*
- (b) the loss of the use of the land to the owner or occupant of the land;*
- (c) any damage that may be caused to the land;*
- (d) any nuisance and inconvenience, including noise, to the owner or occupant of the land;*
- (e) any reasonable expenses that may be incurred by the owner or occupant of the land as or on account of costs of an inspection under subparagraph 146(a)(viii); and*
- (f) any reasonable costs that may be incurred by the owner or occupant of the land in connection with the application and the hearing.*

(2) In determining the amount of compensation payable, the Tribunal shall not consider the reversionary value of the land.

(3) The Tribunal may require compensation to be paid by one lump sum payment or by periodic payments of equal or different amounts and may require the payment of interest, at a rate to be determined in accordance with the regulations, on compensation payments made

after the day on which they are required to be made.”

7.1.2.3 Allocation of Compensation

In the event that the Tribunal determines that both the owner and the occupant of the land are affected by an Order for Access, s. 148 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* provides that the Tribunal may allocate any compensation payable between them:

“148. If the Tribunal finds that both the owner and the occupant of the land are affected by the access, it may allocate any compensation payable between them.”

7.2 Claim for Compensation

7.2.1 Compensation for Loss or Damage Involving Wildlife

7.2.1.1 Jurisdiction of NSRT to Issue Order

When an Application for an Order to resolve a dispute is made to the NSRT with respect to a Claim for Compensation regarding loss or damage involving wildlife, the Tribunal is required to make an order determining the payment of compensation to an Inuk or Inuit. Specifically, s. 155 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* states:

“155. On application, made not less than thirty days after the making of a claim in accordance with subsection 153(3),

(a) by the claimant, or by a designated Inuit organization or a Hunters and Trappers Organization, within the meaning assigned to that expression by section 1.1.1 of the Agreement, on behalf of the claimant,

(b) by a developer, or

(c) by the Minister or the Administrator of the Ship-source Oil Pollution Fund, where the Minister, under subsection 154(1), or the Fund, under subsection 154(2), may be liable,

the Tribunal shall make an order determining liability for loss or damage and the amount of compensation payable in respect of it.”

7.2.1.2 Liability of Developer

Specifically, section 153 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* states:

“153.(1) Subject to this section, a developer is absolutely liable, without proof of fault or negligence, for any of the following losses or damage suffered by a claimant as a result of a development activity of a developer:

- (a) loss of or damage to property or equipment used in harvesting wildlife or to wildlife that has been harvested;*
- (b) present and future loss of income from the harvesting of wildlife; and*
- (c) present and future loss of wildlife harvested for personal use by claimants.”*

The Act defines the term "development activity" as follows (section 152 (1)):

"152. (1) "development activity" means any of the following carried out on land or water in the Nunavut Settlement Area or in Zone I or Zone II, within the meaning assigned by section 1.1.1 of the Agreement:

- (a) a commercial or industrial undertaking or any extension of the undertaking, provided it is not a marine transportation undertaking;*
- (b) a municipal, territorial, provincial or federal government undertaking or any extension of the undertaking, provided it is not a marine transportation undertaking; and*
- (c) marine transportation directly associated with an undertaking described in paragraph (a) or (b).*

It does not include any wildlife measure or use approved in accordance with Article 5 of the Agreement.”

The legislation defines the term “developer” as follows (section 152 (1)):

“developer” means any person engaged in a development activity and includes, in the case of marine transportation as described in paragraph (c) of the definition “development activity”, the owner of a ship.”

7.2.1.3 Exemptions from Liability

The *Nunavut Waters and Nunavut Surface Rights Tribunal Act* (s. 153. (2)) places certain statutory limits on the liability of a developer, as set out in s. 153. (2) of the Act:

“153. (2) A developer is not liable under subsection (1)

(a) where the developer establishes that the loss or damage was wholly the result of an act of war, hostilities, a civil war, an insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character;

(b) where the loss or damage was caused by a ship, to the extent that the developer would not, but for subsection (1), have been liable as a result of a defence or limitation of liability available at law; or

(c) to the extent that the aggregate loss or damage for each incident exceeds the applicable limit of liability prescribed by, or determined pursuant to, regulations under paragraph 170(e).”

7.2.1.4 Limits on Compensation

The *Nunavut Waters and Nunavut Surface Rights Tribunal Act* places limits on the amount of liability which a developer may be assessed. Section 153.(2) of the Act limits liability for each incident to the limits prescribed in the Regulations:

“153. (2) A developer is not liable under subsection (1)

(c) to the extent that the aggregate loss or damage for each incident exceeds the applicable limit of liability prescribed by, or determined pursuant to, regulations under paragraph 170(e).”

Section 153.(4) of the Act requires Claimants to mitigate their losses and prohibits compensation in perpetuity:

“153. (4) The following principles apply to the determination of the amount of compensation payable as a result of loss or damage described in subsection (1):

(a) a claimant is required to make all reasonable attempts to mitigate any loss or damage; and

(b) in general, compensation shall not be a guaranteed annual income in perpetuity.”

7.2.1.5 Time Limitation to Bring a Claim

The *Nunavut Waters and Nunavut Surface Rights Tribunal Act* (s. 153. (3)) provides that Claims for Compensation must be made within three (3) years:

“153. (3) Any claim for compensation by a claimant, or by a designated Inuit organization or a Hunters and Trappers Organization, within the meaning assigned to that expression by section 1.1.1 of the Agreement, acting on behalf of the claimant, for loss or damage described in subsection (1) shall be made in writing to the developer within three years after the later of the date on which the loss or damage occurs and the date on which it comes to the knowledge of the claimant.

7.2.1.6 Liability of the Minister

Section 154.(1) of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* sets out the liability of the Minister:

“154. (1) Without limiting the liability of the Minister where the Minister is the person engaged in the development activity or the owner of the ship that caused the loss or damage, the Minister is liable, in relation to any loss or damage that is attributable to marine transportation as described in paragraph (c) of the definition “development activity” in subsection 152(1) other than that resulting from a discharge of oil from a ship, for any portion of the loss or damage for which a developer is not liable because of the application of paragraph 153(2)(b) and for which no other person is liable.”

7.2.1.7 Minimization of Loss or Damage

The Tribunal has the discretion to take steps as set out in s. 156 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* to minimize a Claimant’s loss:

“156. (1) In order to minimize any loss or damage suffered by a claimant, the Tribunal may

(a) dispose of any portion of the application that concerns loss or damage described in paragraph 153(1)(a) before any portion that concerns any other loss;

(b) require that interest be paid on compensation, at a rate set by the Tribunal, from the later of the date the loss or damage occurred and the date that it came to the knowledge of the claimant; and

(c) provide for additional compensation

(i) for any additional loss or damage, and

(ii) for costs, including costs of collecting,

that may result from any delay in carrying out the terms of an order determining the amount of compensation.

(2) The Tribunal may require compensation to be paid by one lump sum payment or by periodic payments of equal or different amounts and may order that, where the limit referred to in paragraph 153(2)(c) has been met, compensation be prorated.

(3) If the Tribunal determines that more than one developer caused the loss or damage, it shall apportion liability in accordance with generally accepted legal principles.”

7.2.1.8 Ship-source Oil Pollution Fund

7.2.1.8.1 Liability of Fund

Section 154.(2) of the Act provides as follows with respect to the liability of the Ship-source Oil Pollution Fund:

“154. (2) In relation to loss or damage resulting from a discharge of oil from a ship that is engaged in marine transportation as described in paragraph (c) of the definition “development activity” in subsection 152(1), the Ship-source Oil Pollution Fund established under Part 7 of the Marine Liability Act is liable to the same extent that a developer would be liable under section 153 if paragraph 153(2)(b) did not apply.”

7.2.1.8.2 Subrogation of Fund

Section 154.(3) of the Act states:

“154. (3) The Administrator of the Ship-source Oil Pollution Fund is subrogated, to the extent of any payment made by the Fund under subsection (2), to any rights of the claimant in respect of the loss or damage for which that payment was made and, for that purpose, the Administrator may maintain an action in the Administrator’s name or in the name of the claimant.”

7.2.1.9 Other Remedies Not Affected

Section 158.(1) of the Act further states:

“158. (1) Nothing in this Division shall be construed as limiting or restricting any remedy that a developer, the Minister or the Ship-source Oil Pollution Fund may have against any person other than the claimant.

(2) Subject to section 166, this Division is without prejudice to any other right or remedy that a claimant may have under a law of general application.”

7.2.2 Compensation for Loss or Damage Involving Carving Stone and Other Specified Substances on Inuit-Owned Land

7.2.2.1 Jurisdiction of NSRT to Issue Order

When an Application for an Order to resolve a dispute is made to the NSRT with respect to a Claim for Compensation regarding compensation for loss or damage involving carving stone and other specified substances on Inuit-owned land, the Tribunal is required to make an order determining the payment of compensation to a Claimant. Specifically, section 150 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* states:

“150. On application by the designated Inuit organization or any person who has a mineral right granted by Her Majesty in right of Canada in relation to Inuit-owned land, the Tribunal shall

(a) determine whether the specified substances in that land are removed, worked or used for a purpose strictly incidental to the exercise of the mineral right;

(b) determine whether the specified substances are used for a purpose directly related to the exercise of the mineral right, or

(c) fix the amount of compensation to be paid for specified substances that are used for a purpose not directly related to the exercise of the mineral right.”

7.2.3 Compensation for Loss or Damage Involving Carving Stone on Crown Land

7.2.3.1 Jurisdiction of NSRT to Issue Order

When an Application for an Order to resolve a dispute is made to the NSRT with respect to a Claim for Compensation regarding loss or damage involving carving stone on Crown Land, the Tribunal is required to make an order determining the payment of compensation to a Claimant. Specifically, section 151 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* states:

“151. (1) On application by a designated Inuit organization that holds a permit or a lease for the quarrying of carving stone on Crown lands or by a person who has a mineral right granted by Her Majesty in right of Canada in relation to those lands, the Tribunal shall make an order resolving any conflict between the designated Inuit organization and that person respecting the mineral right and the rights flowing from the permit or lease.

(2) In this section, “Crown lands” means any lands in the Nunavut Settlement Area belonging to Her Majesty in right of Canada or of which the Government of Canada or the Government of Nunavut has power to dispose.”

7.3 Time for Decisions

7.3.1 Applications for Access

The NSRT shall render a decision with respect to an Application for Access to Inuit-owned land and non-Inuit-owned land in an expeditious fashion as determined in the circumstances by the NSRT panel chair following the conclusion of submissions to a Hearing.

7.3.2 Claims for Compensation (Wildlife)

The *Nunavut Waters and Nunavut Surface Rights Tribunal Act* (section 157) requires that a NSRT Panel render a decision with respect to a Claim for Compensation made pursuant to Division 5 of that Act (Wildlife Compensation) within thirty (30) days of the conclusion of a Hearing:

“157. The Tribunal shall render a decision on an application within thirty

days after completing the hearing of the application.”

7.3.3 Claims for Compensation (Non-Wildlife)

The NSRT shall render a decision with respect to a Claim for Compensation not involving wildlife within ninety (90) days of the conclusion of a Hearing.

7.3.4 Applications for Reconsideration

The NSRT shall render a decision with respect to an Application for Reconsideration within thirty (30) days of the conclusion of a Hearing.

7.3.5 Interlocutory Applications

The NSRT shall render a decision with respect to an Interlocutory Application in an expeditious fashion as determined in the circumstances by the NSRT panel chair following the conclusion of submissions to an Interlocutory Application.

7.4 Reasons for Decisions

Upon hearing an Application for Access or a Claim for Compensation a Panel of the NSRT will consider the Application/Claim and issue a decision in writing, which decision shall include the reasons for the decision of the Panel as required by s. 160 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*:

“160. The Tribunal shall give written reasons for every decision that it makes in relation to an application.”

7.5 Distribution and Publication of Decisions

7.5.1 Distribution

As soon as practicable after making a decision with respect to an Application for Access, a Claim for Compensation, an Application for Reconsideration or an Interlocutory Application a copy of the decision in writing (including reasons for the decision) shall be provided by the NSRT to every Party, pursuant to s. 161 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*:

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

7.5.2 Publication

Copies of every decision in writing referred to herein shall be placed on the NSRT Website and written copies made available to members of the public upon request.

7.6 Orders Binding Upon Successors in Title

An Order of the NSRT ‘runs with the land’ which is the subject of the Order, and is binding upon all persons who acquire a legal interest in the land which is the subject of the Order (herein referred to as “Successor”), as per s. 163 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*:

“163. An order of the Tribunal is binding on, and the rights and obligations under it extend to, any person who subsequently acquires the ownership of or other interest or right in the land that is subject to the order and, in the case of an entry order, the right of access and the right for which the right of access was acquired.”

7.7 Enforcement of Orders

7.7.1 Order of the Nunavut Court of Justice

An Order of the NSRT may be made an Order of the Nunavut Court of Justice by filing a certified copy of the Order with the registrar of the Court, in which case the Order is enforceable in the same manner as an Order of that Court, as per s. 164. (1) of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*:

“164. (1) An order of the Tribunal may be made an order of the Nunavut Court of Justice by filing a certified copy of the order with the registrar of the Court and the order is enforceable in the same manner as an order of that Court.”

7.7.2 Assistance Enforcing Order

The NSRT may provide assistance enforcing Orders made with respect to s. 155 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* (wildlife compensation):

“165. The Tribunal may provide assistance in the enforcement of an order made under section 155.”

7.8 Filing of Orders

Upon receiving a request from a Claimant, the NSRT shall file a certified copy of an Order made pursuant to s. 155 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* (wildlife compensation) with the registrar of the Nunavut Court of Justice,

as provided by s. 164.(2) of the Act:

“164. (2) At the request of a claimant, the Tribunal shall file a certified copy of an order made under section 155 with the registrar of the Nunavut Court of Justice.”

7.9 Proof of Orders

A document which purports to be a true copy of an order or other decision of the NSRT is evidence of the decision and of its contents, pursuant to s. 162 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*:

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

7.10 Review of Decisions

7.10.1 Decisions of Tribunal Final and Binding

The *Nunavut Waters and Nunavut Surface Rights Tribunal Act* provides that, subject to certain exceptions, decisions of the NSRT are final and binding with respect to any questions of fact, applications under s. 155 of the Act and issues relating to loss or damage in s. 153.(1):

“166. Subject to sections 167 to 169 and the Federal Courts Act, a determination of the Tribunal on the following questions is final and binding:

(a) on any question of fact within its jurisdiction; and

(b) in an application under section 155, on any question in relation to loss or damage described in subsection 153(1).”

7.10.2 Decisions of Tribunal Subject to Judicial Review

One of the exceptions to section 166 of the Act is that the *Federal Court Act* provides that the Federal Court of Canada has the jurisdiction to hear applications for Judicial Review of decisions made by Federal administrative tribunals, including the NSRT:

“18. (1) Subject to section 28, the Federal Court has exclusive original jurisdiction

(a) to issue an injunction, writ of certiorari, writ of prohibition, writ of mandamus or writ of quo warranto, or grant declaratory relief, against any federal board, commission or other tribunal; and

(b) to hear and determine any application or other proceeding for relief in the nature of relief contemplated by paragraph (a), including any proceeding brought against the Attorney General of Canada, to obtain relief against a federal board, commission or other tribunal.

(3) The remedies provided for in subsections (1) and (2) may be obtained only on an application for judicial review made under section 18.1.”

“18.1 (1) An application for judicial review may be made by the Attorney General of Canada or by anyone directly affected by the matter in respect of which relief is sought.

(2) An application for judicial review in respect of a decision or an order of a federal board, commission or other tribunal shall be made within 30 days after the time the decision or order was first communicated by the federal board, commission or other tribunal to the office of the Deputy Attorney General of Canada or to the party directly affected by it, or within any further time that a judge of the Federal Court may fix or allow before or after the end of those 30 days.

(3) On an application for judicial review, the Federal Court may

(a) order a federal board, commission or other tribunal to do any act or thing it has unlawfully failed or refused to do or has unreasonably delayed in doing; or

(b) declare invalid or unlawful, or quash, set aside or set aside and refer back for determination in accordance with such directions as it considers to be appropriate, prohibit or restrain, a decision, order, act or proceeding of a federal board, commission or other tribunal.

(4) The Federal Court may grant relief under subsection (3) if it is satisfied that the federal board, commission or other tribunal

(a) acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;

(b) failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe;

(c) erred in law in making a decision or an order, whether or not the error appears on the face of the record;

(d) based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it;

(e) acted, or failed to act, by reason of fraud or perjured evidence; or

(f) acted in any other way that was contrary to law.

(5) If the sole ground for relief established on an application for judicial review is a defect in form or a technical irregularity, the Federal Court may

(a) refuse the relief if it finds that no substantial wrong or miscarriage of justice has occurred; and

(b) in the case of a defect in form or a technical irregularity in a decision or an order, make an order validating the decision or order, to have effect from any time and on any terms that it considers appropriate.”

7.10.3 Application to Review Order Where Material Change in Facts/Circumstances

Upon application as set out in Schedule A.3 herein by any Party to a Hearing resulting in an Order of the NSRT, the NSRT may review any of its orders if there has been a material change in the facts or circumstances relating to the Order, pursuant to s. 167 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*:

“167. The Tribunal may, on application made by any person who was a party to the hearing held in respect of the order or any successor to such a party referred to in section 163, review any of its orders, including an order made under this section, where it appears, in the opinion of the tribunal, that there has been a material change in the facts or circumstances relating to the order and shall

(a) where it determines that there has been a material change in the facts or circumstances relating to the order that would justify the amendment applied for, (i) if the effects on Inuit or on Inuit-owned land that would be caused as a result of the amendment are significantly detrimental, rescind that order and make a new order accordingly, or (ii) in any other case, amend the order accordingly; or

(b) in any other case, dismiss the application.”

7.10.4 Application to Terminate Order for Access

Upon application as set out in Schedule A.4 herein by a Party or Successor to a Party, Orders for Access may be terminated by the NSRT if the Tribunal is satisfied that the land subject to the Order is no longer being used for the purpose for which the Order was made (herein referred to as “Application for Termination”), as set out in s. 168. Of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*:

“168. The Tribunal shall, on application made by any person who was a party to the hearing held in respect of the order or any successor to such a party referred to in section 163, terminate an entry order under this Part if it is satisfied that the land subject to the order is no longer being used for the purpose for which the order was made.”

7.10.5 Five Year Review of Compensation in Orders for Access to Inuit-Owned Land

The *Nunavut Waters and Nunavut Surface Rights Tribunal Act* requires the NSRT to review the compensation awarded by Tribunal Order pursuant to an Application for Access to Inuit-owned land every five (5) years, as per s. 169 of the Act:

“169. (1) Except where every person to whom notice is given under subsection (2)

(a) waives the requirement for a review, or

(b) is deemed, under subsection (3), to have waived that requirement,

the Tribunal shall review the amount of compensation payable under an order providing for compensation in relation to Inuit-owned lands at the expiry of each five year period after the day on which the order was made.

(2) The Tribunal shall, not later than sixty days before the expiry of each period referred to in subsection (1), notify, in writing, each person to whom a copy of the order was sent and any successor to such a person referred to in section 163 who has notified the Tribunal of the succession that

(a) the Tribunal intends to review the amount of compensation payable under the order; and

(b) the person may make written representations in respect of the amount of compensation to the Tribunal within thirty days after the day on which the person receives the notice.

(3) Every person who does not make representations in the manner described in paragraph (2)(b) is deemed to have waived the requirement for a review.”

8.0 COSTS

8.1 Legislative Authority

8.1.1 Awarding of Costs

The *Nunavut Waters and Nunavut Surface Rights Tribunal Act* provides the NSRT with the authority to award costs with respect to Proceedings brought before the NSRT:

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

8.1.2 Rules for Awarding Costs

The Act also empowers the NSRT to establish rules with respect to the awarding of costs:

“130.(1)The Tribunal may make rules

(c) respecting the allowance of costs, including rules

(i) establishing a schedule of fees and other expenses incurred by a party in relation to applications to or hearings before the Tribunal that may be allowed as part of that party’s costs under this Act; and

(ii) respecting the circumstances under which the Tribunal may allow costs with respect to matters dealt with in the schedule of fees and other expenses on a basis other than that established by the schedule.”

8.2 Award of Costs

8.2.1 When Awarded

The matter of the awarding of Costs may be considered by the NSRT Panel upon issuing

a decision with respect to:

- a) a Hearing with respect to a Claim for Compensation;
- b) a Hearing with respect to an Application for Access; or
- c) an Interlocutory Application; or
- d) any other matter arising during a Proceeding before the NSRT.

8.2.2 Submissions as to Costs

Upon issuing a decision identified in Rule 8.2.1 herein, the NSRT Panel or Member may, in its discretion, invite Parties to make submissions with respect to the awarding of costs, either in person, via electronic means or in writing, or by any combination of the three, at such time and location as directed by the NSRT.

8.2.3 Cost Guidelines

The awarding of Costs shall be wholly within the discretion of the NSRT.

8.2.4 Decision

Upon receiving submissions with respect to costs, the NSRT will consider the submissions and issue a decision in writing, which decision shall include the reasons for the decision.

8.2.5 Notification and Distribution of Decisions

A copy of a decision in writing referred to in Rule 8.2.4 herein shall be forwarded by the NSRT via registered mail to every Party to the Hearing.

Copies of every decision in writing referred to in Rule 8.2.4 herein shall be made available to members of the public upon request.

Schedule A.1

APPLICATION FOR ACCESS

NUNAVUT SURFACE RIGHTS TRIBUNAL

APPLICATION FOR ACCESS

1. Applicant Information

Name: _____

Address: _____

Telephone: _____

Fax: _____

E-Mail: _____

Contact: _____
Person

2. Respondent Information (if known)

Name: _____

Address: _____

Telephone: _____

Fax: _____

E-Mail: _____

Contact: _____

3. **Type of Application** (check as many as apply)

- a) ___ Application for Access Order for Inuit-Owned Lands
- ___ Application for Access to Inuit-Owned Lands to Exercise Mineral Rights
- ___ Application for Access to Inuit-Owned Lands to Prospect for Minerals
- ___ Application for Access to Cross Inuit-Owned Lands to Exercise Mineral Rights on Non-Inuit-Owned Lands
- ___ Application for Access to Inuit-Owned Lands for Commercial Purposes Other than the Exercise of Mineral Rights
- ___ Application for Access to Inuit-Owned Lands for the Purpose of Removing Construction Materials
- b) ___ Application for Access Order for Non-Inuit Owned Lands
- c) ___ Other (please specify) _____
(attach additional pages if required):

4. Location of Land

Legal Description(s) of Land For Which Application is Made (attach additional pages if required):

Maps/Diagrams Provided:

Yes

No

5. Purpose

Purpose(s) For Which Access Is Sought (attach additional pages if required):

6. Filing of Application for Access

An Application for Access has been filed with the Nunavut Surface Rights Tribunal in accordance with Rule 3.2.2 of the *NSRT Rules of Process and Procedure*.

Yes

No

7. Personal Service of Application for Access

A true copy of the Application for Access filed with the NSRT has been personally served upon the

Respondent in accordance with Rule 3.2.3 the *NSRT Rules of Process and Procedure* with an Affidavit of Service on the form set out in Schedule A.7 of these *NSRT Rules of Process and Procedure* to be filed with the NSRT.

Yes No

8. Negotiation

Bona fide negotiations have been attempted between the Applicant and the Respondent with respect to an Application for Access in accordance with **Rule** 4.0 of the Nunavut Surface Rights Tribunal *Rules of Practice and Procedure*.

Yes No

The last written offer made to the Respondent is attached as part of this Application.

Yes No

Signature of Applicant or Representative

Date

Schedule A.2

CLAIM FOR COMPENSATION

NUNAVUT SURFACE RIGHTS TRIBUNAL

CLAIM FOR COMPENSATION

1. Claimant Information (person(s) making claim)

Name: _____

Address: _____

Telephone: _____

Fax: _____

E-Mail: _____

Contact: _____

Person

2. Respondent Information (person(s) against whom claim is made)

Name: _____

Address: _____

Telephone: _____

Fax: _____

E-Mail: _____

Contact: _____

3. Type of Claim (check as many as apply)

Claim for Compensation for:

- Loss or Damage Involving Wildlife
 - Loss or Damage Involving Carving Stone and Other Specified Substances on Inuit-Owned Land
 - Loss or Damage Involving Carving Stone on Crown Land
 - Compensation for Permit to Cross Inuit Owned Land for Commercial Purposes Other than the Exercise of Mineral Rights
 - Compensation for Permit to Cross Inuit Owned Land for the Purpose of Removing Construction Materials
 - Other (please specify) _____
-

4. Location of Land

Location of Land Relating to Claim. Include legal description(s) if known. (Attach additional pages if required):

Maps/Diagrams Provided:

- Yes No

5. Nature of Claim

Description of Loss Upon which Claim is Based. (Attach additional pages if required):

6. Filing of Claim for Compensation

A Claim for Compensation has been filed with the Nunavut Surface Rights Tribunal in accordance with Rule 3.3.2 of the *Rules of Process and Procedure*.

Yes No

7. Personal Service of Claim for Compensation

A true copy of the Claim for Compensation filed with the NSRT has been personally served upon the Respondent in accordance with Rule 3.3.3 of the *NSRT Rules of Process and Procedure* with an Affidavit of Service on the form set out in **Schedule A.7** of these *NSRT Rules of Process and Procedure* filed with the NSRT.

Yes No

8. Negotiation

Negotiations have been carried out with the Respondent with respect to your Claim for Compensation in accordance with section 4.0 of the Nunavut Surface Rights Tribunal *Rules of Practice and Procedure*.

Yes No

The last written offer made to the Respondent is attached as part of this Claim.

Yes No

Signature of Claimant or Representative

Date

Schedule A.3

APPLICATION FOR REVIEW OF AN NSRT ORDER

NUNAVUT SURFACE RIGHTS TRIBUNAL

APPLICATION FOR REVIEW OF AN NSRT ORDER

1. Applicant Information

Name: _____

Address: _____

Telephone: _____

Fax: _____

E-Mail: _____

Contact: _____
Person

2. Respondent Information (if known)

Name: _____

Address: _____

Telephone: _____

Fax: _____

E-Mail: _____

Contact: _____

3. Previous NSRT Order

Previous NSRT Order for which this Application to Review is sought:

4. Location of Land

Legal Description(s) of Land For Which Application is Made (attach additional pages if required):

Maps/Diagrams Provided:

Yes

No

5. Nature/Purpose

Nature/Purpose of Review being Requested (attach additional pages if required):

6. Filing of Application

An Application for a Review of NSRT Order has been filed with the Nunavut Surface Rights Tribunal in accordance with Rule 3.4.2 of the *NSRT Rules of Process and Procedure*.

Yes No

7. Personal Service of Application for Access

A true copy of the Application for Review of an NSRT Order filed with the NSRT has been personally served upon the Respondent in accordance with Rule 3.4.3 of the *NSRT Rules of Process and Procedure* with an Affidavit of Service on the form set out in Schedule A.7 of these *NSRT Rules of Process and Procedure* filed with the NSRT.

Yes No

8. Negotiation

Bona fide negotiations have been attempted between the Applicant and the Respondent with respect to an Application for Review of an NSRT Order in accordance with Rule 4.0 of the Nunavut Surface Rights Tribunal *Rules of Practice and Procedure*.

Yes No

The last written offer made to the Respondent is attached as part of this Application.

Yes No

Signature of Applicant or Representative

Date

Schedule A.4

APPLICATION FOR TERMINATION OF AN NSRT ORDER

NUNAVUT SURFACE RIGHTS TRIBUNAL

APPLICATION FOR TERMINATION OF AN NSRT ORDER

1. Applicant Information

Name: _____

Address: _____

Telephone: _____

Fax: _____

E-Mail: _____

Contact: _____
Person

2. Respondent Information (if known)

Name: _____

Address: _____

Telephone: _____

Fax: _____

E-Mail: _____

Contact: _____

3. Previous NSRT Order

Previous NSRT Order for which this Application to Terminate is sought:

4. Location of Land

Legal Description(s) of Land For Which Application is Made (attach additional pages if required):

Maps/Diagrams Provided:

Yes No

5. Nature/Purpose

Nature/Purpose of Termination being Requested (attach additional pages if required):

6. Filing of Application

An Application for Termination of an NSRT Order has been filed with the Nunavut Surface Rights Tribunal in accordance with Rule 3.5.2 of the *NSRT Rules of Process and Procedure*.

Yes No

7. Personal Service of Application for Access

A true copy of the Application for Termination of an NSRT Order filed with the NSRT has been personally served upon the Respondent in accordance with Rule 3.5.3 of the *NSRT Rules of Process and Procedure* with an Affidavit of Service on the form set out in Schedule A.7 of these *NSRT Rules of Process and Procedure* filed with the NSRT.

Yes No

8. Negotiation

Bona fide negotiations have been attempted between the Applicant and the Respondent with respect to an Application for Termination of an NSRT Order in accordance with Rule 4.0 of the Nunavut Surface Rights Tribunal *Rules of Practice and Procedure*.

Yes No

The last written offer made to the Respondent is attached as part of this Application.

Yes No

Signature of Applicant or Representative

Date

Schedule A.5

INTERLOCUTORY APPLICATION

NUNAVUT SURFACE RIGHTS TRIBUNAL

INTERLOCUTORY APPLICATION

1. Applicant Information (person making application)

Name: _____

Address: _____

Telephone: _____

Fax: _____

E-Mail: _____

Contact: _____

2. Nature of Application (check as many as apply)

a) Pre-Hearing Proceedings: _____

b) Hearing: _____

b) Other: _____
(please specify and attach additional pages if required)

3. Description of Application (provide details of what you are seeking) attach additional pages if required):

4. Personal Service of Application for Access

A true copy of the Interlocutory Application filed with the NSRT has been personally served upon all other Parties in accordance with the *NSRT Rules of Process and Procedure* with an Affidavit of Service on the form set out in Schedule A.7 of these *NSRT Rules of Process and Procedure* to be filed with the NSRT.

___ Yes

___ No

Signature of Party or Representative

Date

Schedule A.6

LIST OF WITNESSES

NUNAVUT SURFACE RIGHTS TRIBUNAL

LIST OF WITNESSES
(Attach Additional Pages if Required)

NSRT File #: _____

Name of Party: _____

Address: _____

Telephone: (work) _____

(cell) _____

Fax: _____

E-Mail: _____

Contact: _____
Person

Witness Information

Name of Witness: _____

Telephone: (work) _____

(cell) _____

Address: _____

Purpose _____

For Evidence: _____

Time Required _____

For Presentation: _____

Is the Witness a:

Scientific/Technical Expert Witness?: Yes _____ No _____

If “Yes” Describe Area of Expertise of Expert Witness:

If “Yes” is *Curriculum Vitae*/Resume Attached?: Yes _____ No _____

If “Yes” is Written Submission Attached?: Yes _____ No _____

Is the Witness a:

TK/IQ Witness?: Yes _____ No _____

If “Yes” in what area will the TK/IQ witness be giving evidence?

Signature of Party or Representative

Date

AFFIDAVIT OF SERVICE

AFFIDAVIT OF SERVICE

CANADA)	I, _____
NUNAVUT TERRITORY)	of _____, in the
TO WIT:)	Nunavut Territory,
)	MAKE OATH AND SAY:

1. THAT I personally served _____, who is personally known to me, or whose identification I have verified, with the annexed document, being a _____.
2. THAT the same was personally served at _____, in the Nunavut Territory, and that I am the subscribing witness thereto.
3. THAT I know the said _____ who is in my belief of the full age of nineteen (19) years.

Sworn before me at _____, in)	
the Nunavut Territory, this _____)	
day of _____, 20__.)	
)	
)	
)	
_____)	_____
A Commissioner for Oaths/Notary)	(signature of party serving document)
Public in and for the Nunavut)	
Territory.)	

Commission expires:
