Stevenson Kellogg Ernst & Whinney

# TOWARDS A PREFERRED YUKON LAND MANAGEMENT LEGISLATIVE FRAMEWORK

Policy Planning and Evaluation Branch
and Lands Branch,
Department of Community and
Transportation Services
Whitehorse, Yukon

## Project Report

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This report is a background study explaining approaches for a new Yukon land management legislative framework. The responsibility for this report as written, and all conclusions, is the consultants alone, and does not reflect the opinions of those who assisted during the course of this investigation, nor the Government of Yukon which funded this study. Specifically, the findings are not the position of the Lands Branch or the Policy and Planning Branch but only represent an external input.

Developing an integrated land management legislative framework is a complex undertaking. This report is a preliminary step in understanding. Any move to creating legislation would involve public review.

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# I

# INTRODUCTION

The Lands Branch of the Department of Community and Transportation Services is responsible for the management and disposition of Commissioner's lands which are Crown lands under the jurisdiction of the Government of Yukon. The federal government controls most of the Yukon Territory, with the exception of a small proportion of private lands and land under Yukon government administration. The Lands Branch wants to develop a new legislative framework for land management.

The existing system of land management legislation has gaps that need addressing. Further, Yukon Indians and the government are actively working on settling native land claims while the federal government is devolving various responsibilities to the Government of Yukon. Consequently, the moment is opportune to address how the optimum Yukon land and resource management legislative system should be structured.

In September 1988, the Policy and Planning Branch of the Department of Community and Transportation Services engaged the consulting firm of Stevenson Kellogg Ernst & Whinney, along with specialist advice from Mr. Bill Lane of Alexander, Holburn, Beaudin and Lang, Mr. David Percy of the University of Alberta Faculty of Law and Mr. David Loeks of Loeks Resource Analysis.

We were asked to address the following tasks:

- Review the current legislation and regulations pertaining to land planning, management and disposition.
- Examine the current, and projected, Yukon needs for land management legislation and regulations.
- Compare and contrast the land management legislation of other Canadian jurisdictions who may have addressed some of the concerns and issues arising in the Yukon milieu.
- Conduct an evaluation of the existing legislation as a basis for land use control and recommend a framework of legislation and regulations required to address the Yukon land management needs.
- Detail the options available to the Government of Yukon to address the shortfall between the current legislation and regulations and the desired and recommended framework for a comprehensive land management mechanism.

- Recommend interim measures that may be taken to alleviate critical areas of concern.

The full terms of reference are in Appendix A. As the study has evolved, the term "land management" has been broadened to include both land and its associated resources.

Developing a land management legislative framework will take time. The Department of Community and Transportation Services has outlined a three-phase approach:

- **Phase I — Land management legislation scoping study**

  An in-house concept strengthening exercise. To be directed and managed by the Lands Branch and the Policy, Planning and Evaluation Branch. Other departments will be consulted as required. However, it is the prime intent of this study to be a first step toward a solid Departmental and Branch position on the development of lands legislation. It is of considerable importance that there be a clear understanding of the directions and thrusts that are important and are to be developed by the Department of Community and Transportation Services, before extensive consultation and negotiations are begun.

- **Phase II — A government-wide approach to land management legislation**

  Development of a government-wide approach to land management legislation will be achieved through the preparation of a Cabinet document prepared in full consultation with the Departments of Justice and Renewable Resources. It is in this second phase that a multi-departmental working or steering group may be established to direct the development of the Cabinet document.

- **Phase III — Development of land management legislation**

  Legislation will be developed once Cabinet approval of the approach has been received. In conjunction, and with cooperation of the Department of Justice, the Department of Community and Transportation Services will develop a legislative and regulatory package for Yukon land management.

In this report we present our findings and recommendations. This represents a first step in the complicated process of creating a Yukon land management legislative framework that meets the needs of the Government of Yukon while being on the leading edge of land management legislation.

# II

# HIGHLIGHTS

## A. PURPOSE OF REPORT

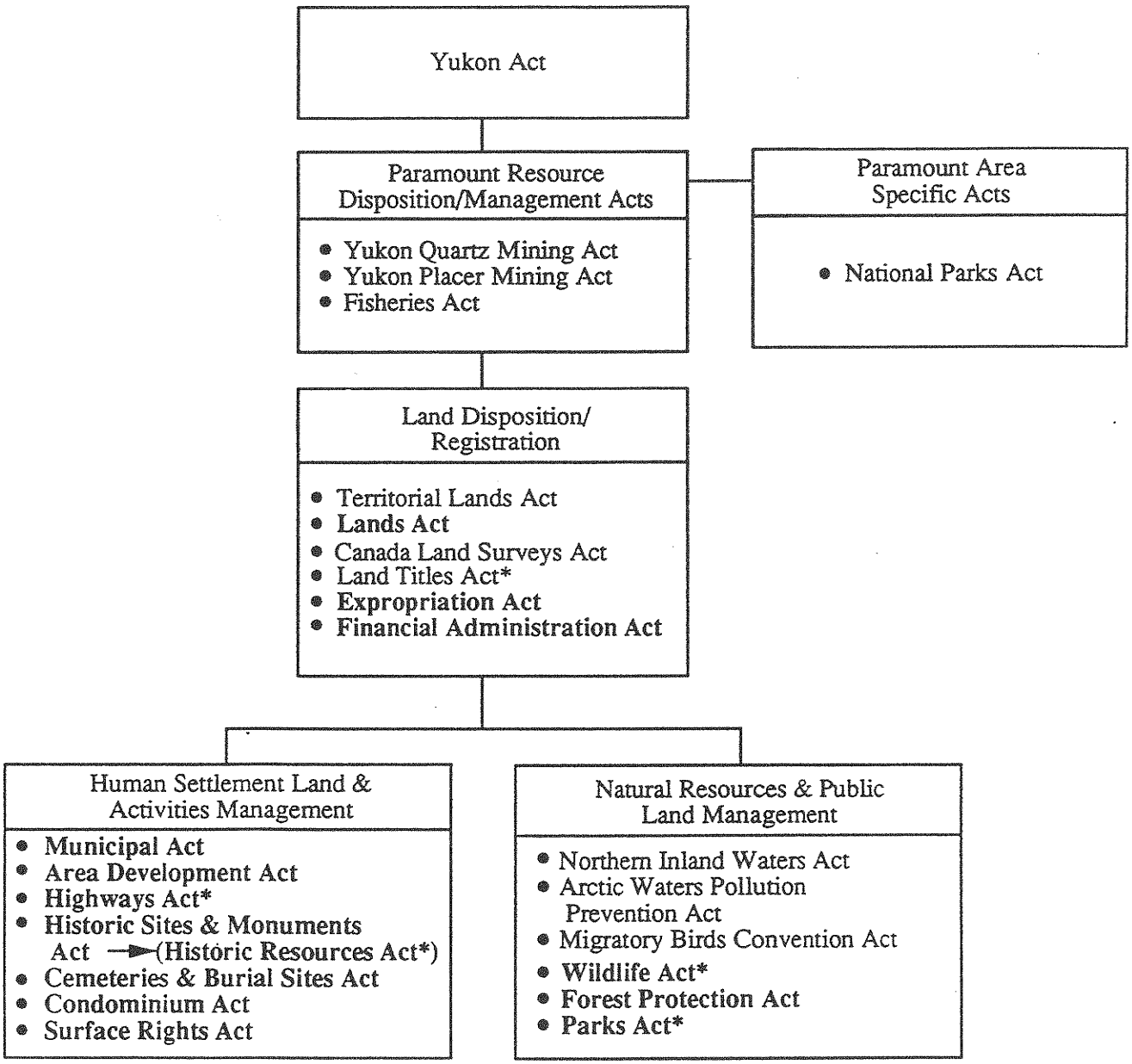
The Lands Branch of the Department of Community and Transportation Services currently is responsible for the management and disposition of Commissioner's lands which are Crown lands under the jurisdiction of the Government of Yukon. The existing system of lands management legislation has gaps while new requirements are developing as a result of the native land claims settlement and federal government devolution of powers and lands. We were asked to scope a new legislative framework for land management in the Yukon. This is a first step in a three-phase approach to development of new land management legislation.

## B. RATIONALE FOR A NEW FRAMEWORK

The existing Yukon land management legislative framework needs improvement. Requirements for better land management legislation for the Government of Yukon is growing. Although now having control over a small amount of land in the Yukon, the Government of Yukon is in the process of receiving additional powers and lands from the federal government. The finalization of the Yukon Native Land Claim Settlement is also close at hand, which will result in further lands being transferred from the federal government to native people. Facilitating the land management provisions of the Land Claim Sub-agreement will be critical. In addition, the need exists to examine the array of Crown dispositions that should be available and to ensure that gaps in the legislative framework are met. A comprehensive legislative regime will contribute to the Yukon's constitutional development. A further consequence is that an improved land management legislative framework ought to facilitate development of the Territory's economy.

The existing legislative framework is a combination of territorial and federal acts. Our presentation approach identified those acts that are federal and are paramount in the Yukon, those acts that address land disposition and registration needs and the corresponding series of federal and territorial acts that govern either human settlement land and activities management or natural resources and public land management. In total, 24 acts were identified (see Exhibit 1).

**EXHIBIT II-1**
**Framework of existing legislation that relates to the management of land in the Yukon**




**Boldface Type = Territorial Legislation,**
others are federal

* Acts currently being revised or drafted.

## C. ASSESSMENT OF EXISTING LEGISLATION

Several of the acts are being considered for transfer from the federal government, such as the Land Titles Act or the Northern Inland Waters Act, while others are being revised or drafted. To help in understanding the existing system, we presented the various features of the relevant acts under the following headings:

- Offers a form of land tenure.
- Allocates land or water use through a provision for plans.
- Manages habitat.
- Protects the environment.
- Controls harvesting of the resources.
- Creates decision-making bodies.

We then discussed the various strengths and weaknesses of the relevant Yukon Territory land and associated resource legislation, as well as related federal legislation. Existing Yukon legislation has the following characteristics:

- Land use and associated resource legislation is first generation.
- The focus is on solving specific problems.
- The nature of rights granted is rarely specified.
- Broad principles of environmental management are missing.

The federal legislation has the following features:

- Particular resources are paramount.
- Comprehensive tenure systems are established.
- Comprehensive resource management regimes are available.
- Extensive discretion is maintained.

For legislation governing human settlement, the Yukon's legislation is well advanced in incorporated areas but incomplete elsewhere. Since many of the needs of the Government of Yukon are in the rural areas, this is a topic of great concern.

A further feature of the current legislative framework is that tenure options for disposition are few. Generally, those permitted in Yukon's legislation are fewer than those provided by the federal government.

## D. KEY ISSUES

In developing a new framework, several complex issues must be addressed. Among the key issue areas that we examined were:

- Native land claims.
- Federal devolution of powers and land.
- Resource management and allocation.
- Planning outside of organized areas.
- Environmental impact assessment.
- Land disposition.

## E. LEGISLATIVE GAPS

We also determined that specific legislative gaps now exist in the land management framework. These must be addressed both in the short- and long-term. Some of the gaps were relevant to both human settlement and natural resource needs. These included such concerns as trespass or the lack of management objectives being spelled out. Other legislative gaps were identified specifically under the headings of human settlement and, separately, resource management.

## F. FRAMEWORK PRINCIPLES

In developing any new system, it is useful to have a basic set of principles to guide the framework. We developed at least four categories of principles that should be addressed. These were:

- Fairness and due process principles.
- Administrative principles.

- Land use principles.
- Resource management principles.

## G. MANAGEMENT GOALS

To guide the focus of this new framework, we proposed a series of goals to address overall land and resource management as well as explicitly human settlement and resource management. The overall land and resource management goal was:

- "To enhance the quality of life of the individual, the community and the territory as a whole."

The primary human settlement goal as proposed is:

- "To enhance the attractiveness and convenience of community and rural living by minimizing the conflict of local land uses within settlement areas and between settlement areas and their surroundings."

Similarly, the primary resource management goal is:

- "To promote sustainable economic development for the Yukon in accordance with: a) the Yukon Economic Strategy; b) World Conservation Strategy, of which Canada is a party; c) the Yukon Conservation Strategy; and d) Yukon's Land Claim Framework Agreement."

## H. OPERATIONAL PRINCIPLES

We also developed a series of operational principles under the headings of:

- Practical and efficient.
- Fair.
- Comprehensive.
- Adaptable to change.
- Integrative.
- Accountable.

- Enforceable.

These principles were used in assessing alternate frameworks.

## I. CONCEPTUAL FRAMEWORKS

We examined conceptual legislative frameworks, developed and evaluated alternative legislative structures, and formulated a preferred framework for Yukon land management legislation.

Several models of conceptual land management legislative frameworks exist. At least four distinctly different conceptual frameworks can be considered. They are:

- Sectoral.
- Semi-sectoral.
- Omnibus focusing on resources.
- Omnibus focusing on land planning.

In the sectoral framework, individual resource sectors and land management are addressed in separate statutes. In the semi-sectoral framework, certain pieces of land management legislation can apply to all resources or to all public land. This system usually contains some acts that apply across the board as well as a series of sectoral acts. In our opinion, the current Yukon framework is a weak version of a semi-sectoral framework.

Two other frameworks are also possible. In the omnibus approaches, the focus is on using the legislative process as one of the methods to enhance integration. As a consequence, the focus is on using one act to provide a single window for regulation. The items regulated could be resources or land planning. To-date, examples exist exploring the omnibus approach for resource management while land use statutes, although not omnibus in format, have become wider in scope. However, no Canadian legislature has adopted an umbrella statute providing for province-wide planning that encompasses both land use and resource matters.

We also note that frameworks can be described by the degree of control asserted. At least four variations are possible. These are:

- Government control of resources asserted.
- Declaration of ownership or other assertion of control.

- Government control of resource asserted plus public participation in government's exercise of discretion.

- Nature of the right that is granted by government to exploit a resource specified in legislation.

- Government control of resources asserted with detailed rules.

Before commencing design of the Yukon framework, we examined the land management legislative frameworks in six other jurisdictions. These were British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Alaska. Some of the ideas contained in other systems that appeared to have relevance to the Yukon were:

- Incentives to gain performance.

- Multiple categories of special area protection including scenic easements.

- A wide array of tenures for crown land disposition.

- Separation of the concepts of conveying public lands to interest holders and regulating authority over natural resources on public land.

- Clearly enunciated principles to focus departments towards integration and coordination.

- Alaska legislation uses chapters in omnibus style statutes.

## J. ALTERNATIVE LAND MANAGEMENT LEGISLATIVE STRUCTURES

Based on the conceptual framework models, Yukon's own situation and our findings in other jurisdictions, we identified four distinctly different land management legislative structures to evaluate. These were:

- **Status quo**

  Inward looking ad hoc semi-sectoral legislation with referral system having no legislative base.

- **Sectoral Acts coordinated by development assessment process**

  Ad hoc sectoral legislation with sophisticated integrative assessment process for significant use of resources.

- **Omnibus legislation focusing on resources only**

  Single window land and resource management legislation with no significant disturbance of lands and minerals permitted, except through sophisticated integrated assessment process.

- **Omnibus legislation addressing resources and human settlement**

  Single window land and resource management legislation with no significant resource disturbances or human settlement activities permitted except through sophisticated integrated assessment process.

These alternatives were designed to be sufficiently different but still potentially realistic in the sense that they met many of the Yukon's needs. To help understand more clearly the implications of selecting a particular direction, we compared each framework using the following headings:

- Type of legislation.
- Right to use.
- Management systems (planning mandated, planning binding).
- Type of tenure provided.
- Consultation with the public and government agencies.
- Extent of discretion afforded to delegated decision makers.
- Degree of integration.
- Environmental controls.

## K. CHARACTERISTICS OF EACH ALTERNATIVE

We also noted how each framework affects the land base itself, whether in municipalities, unorganized settlements or unorganized rural areas, as well as resource sectors. The four frameworks could be characterized as follows:

**Alternative 1, status quo**, is a variant of the existing land management system now in the Yukon. This approach would continue the trend to increasing sectoral legislation.

**Alternative 2, sectoral acts coordinated by a development assessment process**, would be a combination of increased sectoral legislation supported by an integrative mechanism such as a development assessment process.

**Alternative 3, omnibus legislation focusing on resources only**, would use a single omnibus act with supporting chapters focusing on resource sectors combined with a series of additional sectoral acts, especially to address planning and other land management activities.

**Alternative 4, omnibus legislation addressing resources and land settlement**, would be based on having a single omnibus act with sectoral and human settlement chapters.

We evaluated each of the frameworks against the principles and issues relevant to the Yukon. In evaluating the four framework options, only variations of Options 3 and 4 readily met most of the evaluation criteria. This would imply that an omnibus-style legislation should be pursued.

## L. RECOMMENDED FRAMEWORK

Our recommended legislative framework builds on the strength of alternative approaches and specifically acknowledges both human settlement and natural resource needs. The preferred framework is a combination of federal legislation where applicable and new Yukon legislation that in many cases incorporates new or evolving legislation or provides enabling provisions previously missing. The framework is developed around a small series of paramount acts supported by legislation addressing land registration and environmental management. These are supported by two omnibus acts, a land use and occupancy act and a natural resources act. In turn, these are supported by a small number of federal acts (see Exhibit II-2).

The backbone of the proposed framework would consist of three major proposed Yukon statutes:

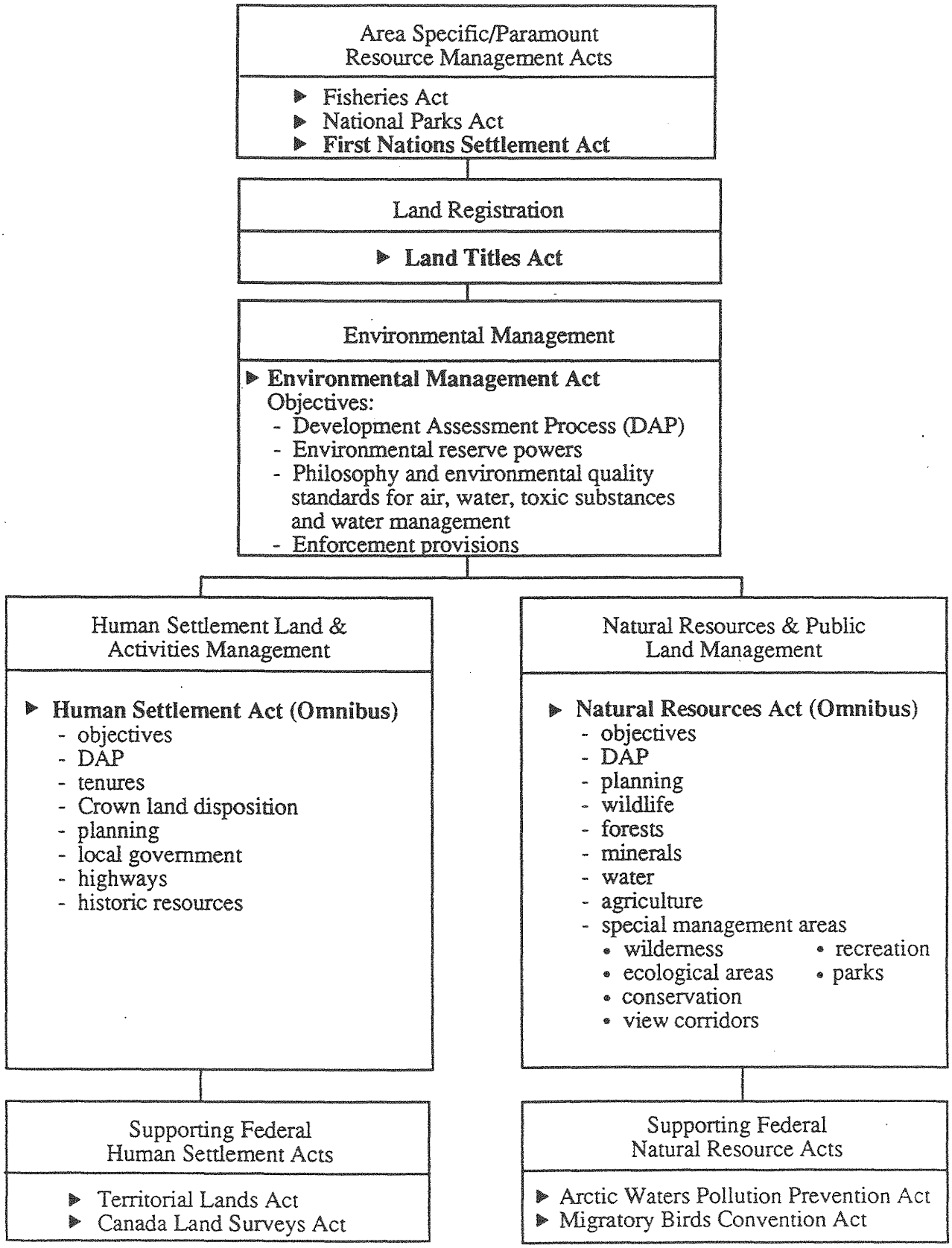
- **Environmental Management Act.**
- **Land Use and Occupancy Act (omnibus).**
- **Natural Resources Act (omnibus).**

## M. FEATURES OF THE RECOMMENDED FRAMEWORK

Similar to the analysis performed for each of the alternate frameworks, we described the features of the preferred framework.

In the preferred framework, a new Yukon **Environmental Management Act** would provide the umbrella focus for overall land and resource management. A **Land Use and Occupancy Act** (omnibus act) would provide a focus for all land and activity management that derives from all types of human settlements and

**EXHIBIT II-2**
**Preferred Yukon land and resource management legislative framework**



interaction. This act would replace at least nine existing Yukon acts, many of which would be incorporated as chapters of the **Land Use and Occupancy Act** (omnibus). The framework also includes a **Natural Resources Act** (omnibus) which would provide a focus for all natural resource and public land management where resource management (not human settlement) needs are paramount. This act would replace at least five acts, two of which would be the **Yukon Quartz Mining Act** and the **Yukon Placer Mining Act.**

## N. ADVANTAGES OF THE PROPOSED FRAMEWORK

The proposed framework not only clarifies relationships but builds on all the recent work on revising or developing related Yukon legislation. The framework also responds to and enables the development assessment process being brought into effect in the Yukon Native Land Claims Settlement.

In our assessment, this framework stands up well against the operational principles and issues.

## O. STEPS TOWARD IMPLEMENTATION

We would expect that the transition from the existing Yukon framework to the preferred full framework would take several years. To assist in the process, we identified a series of steps required to either draft new legislation, or revise legislation, so that the two new omnibus acts would have much of their elements established before being brought into effect themselves. Specifically, the approach is to set the framework and then develop new acts to cover the gaps. Once all gaps are covered, the transition of the relevant acts to appropriate chapter status can occur in the context of the two omnibus acts.

## P. IMMEDIATE NEEDS FOR ACTION

We also provided some suggestions on preferred first steps in dealing with short-term problems. Specifically, we focused on four needs:

- Subdivision control in rural areas.
- Trespass on Crown land.
- Temporary tenures.
- Restrictive covenants.

Our suggestions indicated actions that could be taken and identified legislation to modify.

III

# THE EXISTING YUKON LAND MANAGEMENT LEGISLATIVE FRAMEWORK NEEDS IMPROVEMENT

## A. THE REQUIREMENT FOR LAND MANAGEMENT LEGISLATION IN THE YUKON IS GROWING

The Yukon Territory, being a direct creation of the federal government, presently has most of its lands in federal ownership. Of the Yukon's 186,300 square miles (483,450 square kilometres), less than 0.1% of the Yukon is now privately held. The remainder consists of 1,200 square miles (3,114 square kilometres) or 0.25% in Commissioner's lands (Yukon Territory Crown lands). The remainder is mainly in federal Crown lands, some of which have dedicated purposes.

This existing pattern of land ownership is in a state of flux. The federal government is in the process of devolving a series of powers to the Government of Yukon. At the same time, a process of transferring blocks and parcels of federal lands to the Government of Yukon continues. This devolution is expected to proceed in a piecemeal fashion for a number of years until such times as the Yukon Native Land Claim is resolved.

Another critical process relevant to land ownership and management is the Yukon Native Land Claim Settlement itself. While not yet completed, this land claim negotiations process has identified 41,400 square kilometres or 8.6% of the total Yukon Territory to come under native ownership upon finalization of the claims settlement.

The Yukon Lands Branch has also been the primary land developer in the Territory and makes available private title to Commissioner's lands to meet the need for various types of residential, recreational, agricultural, industrial and commercial purposes. In addition, both the federal and the territorial governments have offered an array of other types of interest in Crown lands.

The history of land management regulation under the primary legislative tools of the Territorial Lands Act (Federal)[1] and the **Lands Act (Yukon)** has been one of incremental change and shifts in programs. These have resulted in a lack of cohesion and an increase in the possibilities of gaps.

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[1]Please note, for ease of understanding all federal acts are printed in light face while all territorial acts are highlighted in bold face. This approach is used consistently throughout the report when referring to legislation operable in the Yukon.

The future land management legislative framework should therefore be designed to be applicable throughout most of the Yukon with the primary exceptions being native-owned lands and specially designated federal lands such as national parks. Nonetheless, the Government of Yukon wants to create a legislative framework that facilitates the land management provisions described in the draft Land Claim Sub-agreements.

A further focus of this study is to ensure that the land management legislation supports the development of the Territory's economy through a simpler, more streamlined approach. With a simpler, more easily understood system, the potential to realize economic benefits more quickly should be enhanced.

## B. THE EXISTING LEGISLATIVE FRAMEWORK INCORPORATES BOTH TERRITORIAL AND FEDERAL ACTS

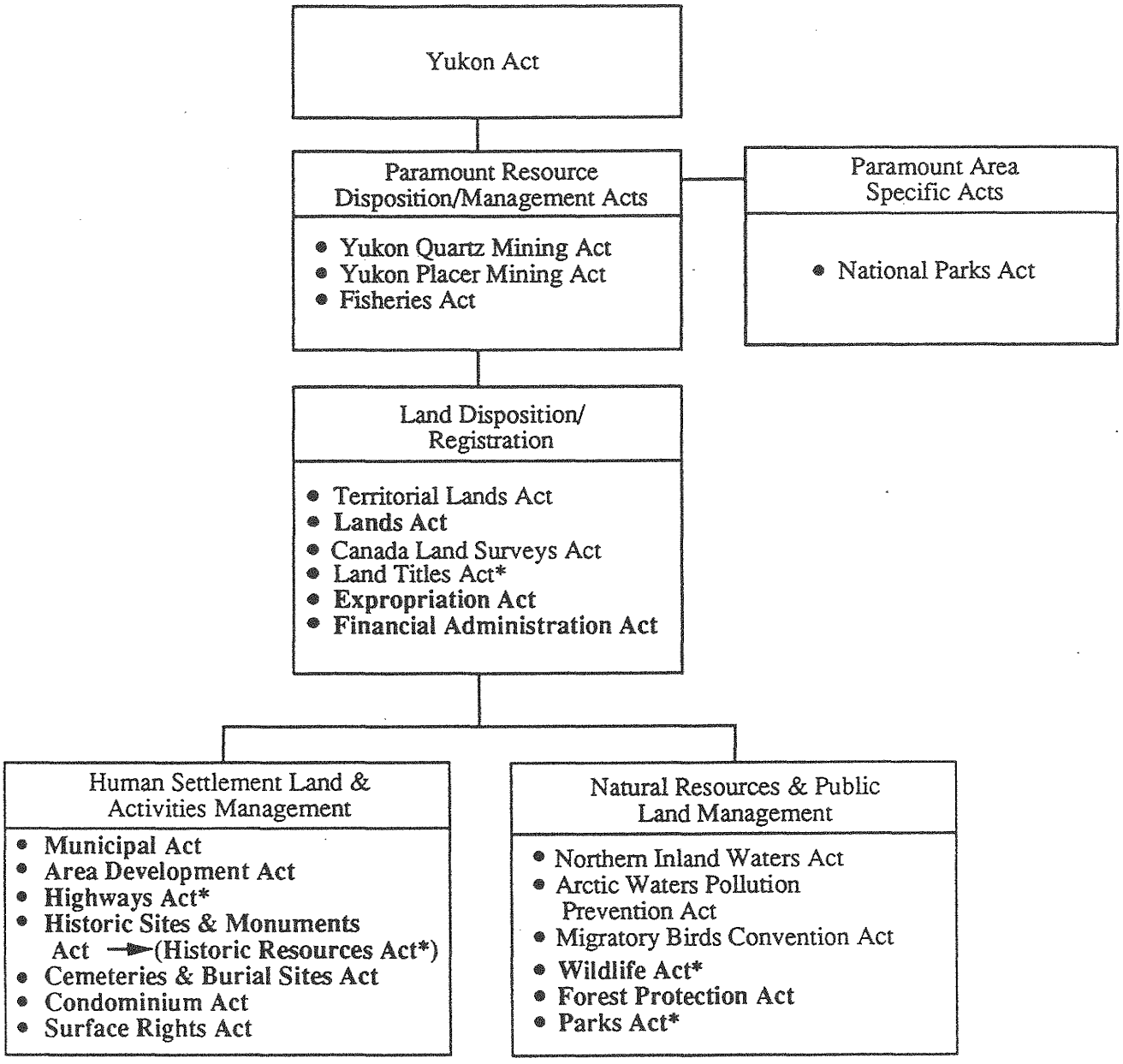
### 1. The framework has a hierarchy

The search for mineral wealth was the prime reason for non-native settlement of the Yukon Territory. With a small population, 28,725 people, the Yukon has remained a territory of the federal government. The result is that federal legislation plays a dominant role in the current land management system. The Yukon Act sets out the division of powers between the Yukon Commissioner and the federal government. In some cases, powers are administered by the federal government on behalf of the Yukon. Indeed, much of the federal legislation is quasi-provincial, as these statutes apply only to the Yukon. The legislation that is subject to devolution are the federal quasi-provincial acts.

Several federal resource disposition and management acts are paramount in the legislative hierarchy (see Exhibit III-1). This diagram highlights the relationships by clustering together the dominant federal resource legislation, the various acts that address land disposition in general and those that focus more on human settlement versus resource management issues.

The overall framework is held together by the federal Yukon Act that sets out the federal/territorial government division of powers. The two federal acts, Yukon Quartz Mining Act and the Yukon Placer Mining Act, provide almost unlimited access to subsurface mineral rights throughout the Yukon accompanied by necessary surface access no matter who owns the land. The effects of these acts are only limited in a few defined areas such as national parks, within municipal boundaries and in areas that have been specifically exempted by the Governor-General under the mining legislation.

**EXHIBIT III-1**
**Legislative framework of existing legislation that relates to the management of land in the Yukon**




**Boldface Type = Territorial Legislation,**
others are federal

* Acts currently being revised or drafted.

Additional federal acts are also critical. In the field of fish management, the Fisheries Act, that regulates and manages the Yukon's fish resources, is dominant. Also superior, but only within very limited geographic areas, is the National Parks Act under which both the Kluane National Park and North Yukon National Park have been reserved.

Next are a series of statutes that regulate land disposition (including a variety of tenures) and title to land. These acts, as a group, do nothing to regulate the actual use or management of land, but focus primarily on issues of disposition. Three of these acts are currently federal statutes, although the Lands Title Act is in the process of being replaced by a territorial act.

To improve understanding of the remaining land management acts, we have separated them into two categories. The first series focuses on human settlement land, activities and management. These acts are intended to regulate the ways in which people can develop and manage public and private lands allocated to human settlement, access between such areas and associated government activities. The aim is primarily to manage land to minimize the adverse impact of one use upon another. The attendant regulations for these human settlement land acts play a key role in customizing and implementing land use management.

The second set of acts mainly address natural resources and public land management. These acts are used to either ensure that a natural resource is sustained or protected or that public non-settled areas such as parks or forested areas are managed for the public good. In contrast to the human settlement series of acts, these acts tend to have a very wide geographic applicability. The Northern Inland Waters Act as applied to the Yukon is now being considered for transfer to Yukon jurisdiction.

### 2. The framework is in transition

The framework is in transition. Those acts denoted with an asterisk are currently in the process of being revised or, in the case of new legislation, being drafted. The responsibility for registration of titles under the Land Titles Act is being transferred from federal to territorial jurisdiction with some minor changes in wording. The new territorial **Land Titles Act** will be similar to the existing federal act. The **Highways Act**, now in final draft for discussion with key organizations, focuses on protection, acquisition of land for, and access to, highways, as well as public safety.

A new **Historic Resources Act** is being drafted which will likely subsume the **Historic Sites and Monuments Act**, archaeological aspects of the Yukon Act and address a much wider array of concerns. Included in the Act will be a special heritage resources review process. Similarly, the **Wildlife Act** is being revised with expansions in several areas. These include habitat areas and access. Changes to the **Parks Act** are also being considered to offer a larger

mandate including protection for ecological areas. In addition, a mandated environmental assessment process is being devised.

The Northern Land Use Planning Program, while not a legislated process, also adds to the complexity of the land management framework. This tripartite agreement of the Government of Yukon, the federal government and the Council for Yukon Indians, has as its focus regional land use planning. In developing a Yukon land management framework, this type of activity should be enabled within Yukon legislation.

This exhibit discloses an emphasis on three distinctly different issues: granting rights of tenure, land planning and land use allocation, and resource protection and management.

### 3. Key characteristics offer insight

To facilitate understanding the existing system, we have provided a "snapshot" of the key features of the land management legislation in the Yukon. Exhibit III-2 shows whether a statute:

- Offers a form of land tenure.
- Allocates land or water use including a provision for plans
- Manages habitat.
- Protects the environment.
- Controls harvesting of resources such as timber, wildlife, etc.
- Creates decision-making bodies.

Only about half of the acts provide for some form of planning or habitat management. However, many of the resource acts make some reference to environmental protection ranging from fire protection through to an outright prohibition of disturbance. Only a few regulate harvesting. Perhaps of greatest interest is that very few of the statutes create decision-making bodies. In most cases, the discretion rests solely with the Minister.

# EXHIBIT III-2
## Overview of key features of land management legislation in the Yukon

| Lands Legislation Relevant in the Yukon | Key Features: Jurisdiction? Federal | Territorial | Tenure | Resource Tenure | Allocates Land & Water Use? | Manages Habitat? | Protects Environment? | Controls Harvesting? | Provides for Special Decision-Making Bodies? |
|---|---|---|---|---|---|---|---|---|---|
| Yukon Quartz Mining Act | * | | "Claim or lease" | "Record of Mineral Claim"<br>"Grant of Location"<br>(iron & mica) | No | No | ○ | No | Mining Recorder |
| Yukon Placer Mining Act | * | | "Claim or lease" | "Grant for Placer Mining"<br>"Permit to record claim"<br>"Grant at located claim"<br>"Right to divert water, water, etc."<br>"Tunnel &drain licence" | ○ | No | ○ | No | Mining Recorder |
| Fisheries Act | * | | | "Lease," "Licence"<br>"Fish guard approval"<br>"Fish meal permit"<br>"Destruction permit" | No | ● | ● | ● | |
| National Parks Act | * | | Very limited sale or lease | "Use permits" -- 6 types<br>"Building & sign permits | Yes | ● | ● | ● | |
| Territorial Lands Act | * | | "Leases"<br>"Agreements for sale"<br>"Fee simple" | "Quarry Permit"<br>"Timber permit"<br>"Lease of Mining Rights"<br>(NWT only) | Yes | ○ | ○ | No | |
| Lands Act | | * | "Sale, lease, grant of right of way or easement"<br>± lease conditions | "Tmber permits"<br>"Quarry permits"<br>"Grazing leases" | Yes | ○ | ○ | No | |
| Canada Lands Surveys Act | * | | Create public highways by dedication on plans | | No | No | No | No | |
| Land Titles Act | * | | Confirms tenure by registration of document | Few are registerable | No | No | No | No | |
| Expropriation Act | | * | Indirectly, by leaving some rights unexpropriated | No | Yes | No | No | No | Board of Negotiation, Judge of Supreme Court, Court of Appeal |
| Municipal Act | | * | Sale or lease of municipally-owned lands & improvements | "Building permits"<br>"Business licence"<br>"Dog licence"<br>"Development permit"<br>"Use permit"<br>"Interim development permit"<br>"Subdivision approval" | Yes | ○ | ○ | No | Municipal Councils, Advisor for Hamlets, Boards of Variance, Yukon Municipal Board, Municipal Planning Board Inspector of Municipalities |

Code: ○ Minor
◎ Moderate
● Major

# EXHIBIT III-2
## Overview of key features of land management legislation in the Yukon (cont'd)

| Lands Legislation Relevant in the Yukon | Key Features: Jurisdiction? Federal | Jurisdiction? Territorial | Tenure | Resource Tenure | Allocates Land & Water Use? | Manages Habitat? | Protects Environment? | Controls Harvesting? | Provides for Special Decision-Making Bodies? |
|---|---|---|---|---|---|---|---|---|---|
| Area Development Act | | * | No | Permits by way of regulations(?) | Yes | ⊗ | ○ | No | |
| Condominium Act | | * | Allows condominium title | Allows self-regulation of common property | No | No | No | No | Condominium Corporation's Board of Directors |
| Highways Act | | * | No | | No | No | No | No | |
| Historic Sites & Monuments Act (Historic Resources Act) | | * | No | | No | No | ⊗ | No | Historic Sites & Monuments Board |
| Cemeteries & Burial Sites Act | | * | No | | No | No | ○ | No | |
| Northern Inland Waters Act | * | | No | "Water Licence" | Yes | ● | ● | No | Yukon Water Board |
| Arctic Waters Pollution Prevention Act | * | | | (Requires conformity with Canada Water Act) | No | ⊗ | ● | No | |
| Migratory Birds Convention Act | * | | | "Permit to kill"<br>"Permit to take:<br>- birds, nests, eggs" | No | ⊗ | ⊗ | ● | |
| Wildlife Act | | * | | "Licence"<br>"Permit"<br>"Certificate" | No | ● | ○ | ● | |
| Forest Protection Act | | * | | "Permits:<br>- entry<br>- burning" | No | ○ | ○ | No | |
| Parks Act | | * | "Lease" | "Park use permits"<br>"Other rights" | Yes | ⊗ | ⊗ | ● | Advisory Committee |
| Yukon Act | * | | No | "Export permit" -- reindeer as per Game Export Act (Canada) | No | No | No | ○ | |
| Agricultural Development Act (inactive) | | * | Sale, lease or granting of other interests | | Indirectly | No | ○ | No | |

Code: ○ Minor
⊗ Moderate
● Major

## C. TERRITORIAL AND FEDERAL RESOURCE LEGISLATION: EACH HAS DIFFERENT STRENGTHS AND WEAKNESSES

### 1. Yukon Territory legislation

The present legislation dealing with the management of land and natural resources provides only a minimum basis for regulation. (See Appendix B)

Some statutes are significant because they apply to large areas of the Yukon. This group includes the **Area Development Act**, the **Forest Protection Act**, the **Highways Act**, the **Lands Act** and the **Wildlife Act.** A number of other statutes deal only with management problems at specific sites, such as the **Cemeteries and Burial Sites Act** and the **Historic Sites and Monuments Act.** While the second group of statutes is an important part of overall land management in the Yukon, their impact is felt only in small areas.

#### a) First generation land use and associated resource legislation

The statutes of general application represent only the first stage of land use and associated resource legislation. Typically, they assert government control of a particular resource, but leave the means of control entirely to the discretion of the government body concerned. The **Area Development Act** allows the Commissioner to designate any area as a development area, but then leaves the designated area to be regulated almost entirely at the discretion of the Executive Council. Only the broadest description of the areas in which that regulatory power can be exercised are mentioned. The authority for the delegate of the Commissioner to redelegate power to a Development Officer is not clearly spelled out. The **Parks Act** similarly empowers the Government, through the Executive Council, to set aside park lands and then establishes only general criteria to control the operation of the park. The legislation does little more than provide governmental control over the land resource.

#### b) Directed to solving specific problems

The existing Yukon legislation tends to be designed to solve specific problems rather than to provide principles that would allow the comprehensive management of the resource. For example, the **Forest Protection Act** is basically designed to prevent fires, with further power to control insects and diseases. It does not deal with forest use and management in any broad sense, except to the extent that these issues are incidentally affected by the exercise of specific powers in the legislation. Instead, many of these management issues are addressed in the Territorial Lands Act and the **Lands Act.** Similarly, the **Highways Act** essentially provides for the construction and maintenance of highways. Except for some provisions relating to drainage, this Act provides little guidance on the location and impact of highways or on the control of activities on land in the vicinity of highways.

### c) Nature of rights granted are rarely specified

Although some statutes grant rights to exploit natural resources, they rarely specify the nature of the rights granted or the conditions under which they may be exercised. Thus, s.30 of the **Lands Act** contemplates the issuance by the government of timber or quarrying permits, but does not specify the nature of the permits, the rights granted to the holders or the terms that can be imposed upon the holders. An exception to this tendency is found in other provisions of the **Lands Act** relating to the disposition of Yukon lands by sale or lease. However, the terms of leases are left largely to ministerial discretion.

### d) Broad principles of environmental management are often absent

The Yukon legislation rarely specifies any broad principles of environmental management to guide administrators in exercising their discretion. This is so either with regard to those who receive rights to use land or exploit resources, or in connection with the management of resources in general. For instance, no provisions exist that might require the holder of a timber permit to ensure reforestation or to allow multiple use of the resource. Similarly, nothing requires the holder of a quarrying permit to meet any kind of restoration obligations when its operations cease. This second aspect of the problem is endemic to virtually all of the present Yukon acts, although there are some exceptions in the more comprehensive statutes. The **Wildlife Act** allows for the protection of wildlife habitat under a number of criteria detailed in s.179(1). However, even where these principles are stipulated, conflict is possible between the principles that are set out in the **Wildlife Act** and, for example, land use designations under the **Lands Act**. General provisions for resolving conflicts of this nature do not exist.

* * *

In summary, the existing Yukon legislation has the following characteristics:

- Land use and associated resource legislation is of the first generation.
- The focus is on solving specific problems.
- The nature of rights granted is rarely specified.
- Broad principles of environmental management are missing.

Generally, Yukon legislation represents only the first stage of land and natural resource use legislation. While some exceptions exist in the more comprehensive acts, the present legislation provides only a starting point for land and associated resource management.

## 2. Federal legislation

In the light of the long history of federal control of land and resources within the Yukon, federal legislation is generally far more detailed than the existing Yukon acts. The legislation usually contains a strong assertion of government control over resources and goes further than the Yukon legislation in implementing management schemes and in providing for the consequences of breach of those schemes. Most federal legislation goes far beyond the minimum level required of natural resource statutes. Although generalizations are difficult from a collection of statutes that are as old as the mining legislation and as recent as the anti-pollution provisions of the Fisheries Act, the federal legislation has a number of common characteristics, not all of which are necessarily desirable. Four features dominate. These are discussed separately below.

### a) Particular resources are paramount

The main failure of the federal legislation in the Yukon is its tendency to treat a particular resource as paramount and to fail to take account of competing resource uses. The most notable examples of this tendency are the Yukon Placer Mining and Yukon Quartz Mining Acts. These establish mining as a protected land use at the expense of all other competing uses. This principle appears to apply unless the protected status of mining is removed by another statute, such as the National Parks Act. Although slight inroads were made into the protected position of mining in the 1970 amendments to s.17 of the Yukon Placer Mining Act, placer mining is by far the most favoured use of land in the Yukon. Persons are still entitled under s.17 of the Act to enter for placer mining purposes much of the territory of the Yukon, with expanded but still minor exceptions. The operation of the Act can be limited neither by the Territorial Lands Act nor the **Lands Act.**

In situ (hard rock) mining enjoys a similar status under the Yukon Quartz Mining Act. The nature of the operations covered by this Act limit a miner's right of entry to vacant territorial lands or lands in which the Crown has reserved title to mines and minerals. The rights provided by the Yukon Quartz Mining Act are nevertheless extensive. In general, these rights take precedence over other resource uses.

Although historical and social reasons explain the primacy of mining in federal legislation, the Fisheries Act also has a similar focus upon a single resource. The strong provisions of the Fisheries Act relating to the protection of fish habitat and the prevention of pollution, safeguard fisheries at the expense of all other competing resource uses. Legally, no uses of water or of land near water, regardless of their social importance, can allow the pollution of water containing fish (unless the use is authorized by a Regulation) or the disturbance of fish habitat. Under the existing legislation, fisheries constitute the paramount resource use to which all other uses are subordinated.

This style of legislation is open to serious objection as it creates possibilities of conflict when one protected type of resource use conflicts with another. This conflict is sometimes specifically addressed, as in the Northern Inland Waters Act, where pollution standards set under the legislation may not vary restrictions imposed by the Fisheries Act. At other times the conflict is ignored, as in the relationship between the Fisheries Act and the Yukon Placer Mining Act. Technically, the Fisheries Act probably enjoys a superior legal status, but it is often ignored in practice, for otherwise resource uses such as placer mining would frequently be prohibited.

### b) Establishes comprehensive tenure system

The federal legislation also sets up comprehensive tenure systems for resources of economic importance. Both mining statutes establish detailed rules for the tenure of mining rights and the resolution of competing claims. The mining legislation provides a necessary basis for the exploitation of resources by establishing clear rules for the acquisition of property rights and their subsequent protection. Where resources have less economic importance, federal legislation, like that of the Yukon, tends to consist of nothing more than an assertion of government control with a discretionary right to allocate the resource to others. For example, the Territorial Lands Act provides that no timber shall be cut without a permit, but sets no standards for the type of permit that can be issued or the applicable conditions.

Even at the federal level most statutes deal mainly with tenure systems and establish virtually no basis for the management of the resource. One exception is the Fisheries Act which, in addition to providing for the right to fish by means of lease or licence, sets out a general code for fisheries management. Legislation of this type is in the second generation of resource statutes, because it both grants the right to exploit the resource and reserves specific powers for its management.

### c) Establishes comprehensive resource management regimes

A third feature of federal legislation has emerged in recent statutes. This feature establishes comprehensive resource management regimes. Examples are found in both the Arctic Waters Pollution Prevention Act and s.33 of the Fisheries Act, which establish detailed schemes for the control of pollution. These acts are models of conventional legislation in that they provide all the necessary powers for the control of pollution and leave virtually no gaps to be exploited by those who violate the statute.

Thus, s.33 of the Fisheries Act, in addition to establishing an offence of pollution, provides many powers to make the prohibition effective. Various sections empower courts to order polluters to refrain from violation of the act, deal with the elements of proving an offence against the act, establish categories of absolute liability and provide for civil remedies against the

polluter. In addition, the Act creates preventative measures by allowing the Federal Minister to approve plans for plants and operations that may be future sources of water pollution.

The Territorial Lands Act applies to territorial lands that are under the control, management and administration of the Minister of Indian Affairs and Northern Development. Some of the sections apply to territorial lands, the right to the beneficial use of which has been delegated to the Commissioner of the Yukon Territories by the Yukon Act.

The Federal Governor in Council may set apart land as land management zones to protect the ecological balance or physical characteristics of any area; authorize the issuance of permits; authorize the sale, lease or other disposition of territorial lands; and make appropriate regulations to limit or impose conditions upon such dispositions.

A major limitation in the application of this statute is the qualification in Section 3(3):

> "Nothing in this Act shall be construed as limiting the operation of the Yukon Quartz Mining Act, the Yukon Placer Mining Act, the Dominion Water Power Act or the National Parks Act."

Nonetheless, the designation of the Yukon as a land management zone under Section 4 of the Territorial Lands Act does provide a basis for the environmental management of Yukon lands.

The federal Environmental Assessment Review Process also exhibits similar concern with the preventative side of environmental management. However, this process is not a legislated review. At the moment it is federal Cabinet policy; however, consideration is being given to entrenching it in law.

Legislation such as the Fisheries Act and the Arctic Waters Pollution Prevention Act represent the state-of-the-art in conventional legislation in the common law world, for they go about as far as statutes can in comprehensively regulating a specific resource. Nevertheless, they are by no means the last word in resource management, for some parts of the acts are frequently seen as ineffective in practice. Integrating management and use across resource sectors is not guaranteed. The next generation of the natural resource statutes is likely to include all of the legal powers found in some of the existing federal legislation. However, they will also include provisions to make the acts more effective, by means of innovative enforcement devices such as economic incentives.

d) Retains extensive discretion

The fourth feature of federal legislation is its extensive granting of discretion. Discretion may be exercised in both setting the standards required of those to whom resource exploitation rights are granted and in choosing whether to employ the enforcement provisions set out in the legislation. The Fisheries Act envisages that the deposit of pollutants can be permitted under certain conditions, but leaves those conditions to be established by administrative discretion. Similarly, the approval of plans for plants that may be a source of water pollution is left entirely to the discretion of the Federal Minister.

Legal experts have long thought that the existence of such wide discretionary powers are inevitable in natural resource management statutes. However, acts such as the Northern Inland Waters Act have sought to control that discretion by subjecting it to public input. Under the Northern Inland Waters Act, the Yukon Water Board is empowered to grant licences, subject to conditions, for both the pollution and diversion of water. The Act requires the applicant to provide all of the information necessary for the proper assessment of the proposed water use and imposes a requirement of public hearings prior to the granting of a licence.

The Northern Inland Waters Act ensures the availability of sufficient information to guide the exercise of discretion. It also requires public input into and public scrutiny over the decision that is finally reached, a topic overlooked in most Canadian environmental legislation. However, imposing a public hearing requirement for every application for a water licence could be cumbersome. This concern has been particularly evident in the Yukon, with respect to applications to use water for placer mining purposes. Nevertheless, the overall provision for public input is valuable, as long as an exemption can be made for routine or minor licence applications.

* * *

In summarizing the federal legislation, the following features are common:

- Particular resources are paramount.
- Comprehensive tenure systems are established.
- Comprehensive resource management regimes are available.
- Extensive discretion is retained.

The federal legislation applicable to the Yukon provides examples of virtually every type of natural resource statute. However, the acts frequently

lack the ability to deal with the various competing land and natural resource uses. Further, they tend to rely on the conventional penalties of the legal system rather than include additional non-legal devices likely to make the legislation more effective in practice.

## D. LEGISLATION GOVERNING HUMAN SETTLEMENT IS WELL ADVANCED IN INCORPORATED AREAS BUT IS INCOMPLETE ELSEWHERE

### 1. Community planning is well established in the Municipal Act

The **Municipal Act** RSY, 1986, chapter 119, governs land use and settlement within cities, towns and villages established under that Act. Hamlets, which are not municipalities, may also be established and governed directly by the Commissioner in Executive Council. The statute contains a comprehensive code for incorporation, local elections, government, the provisions of works and services as well as health, fire, emergency and recreation facilities. Local councils may regulate building, licensing, and motor vehicle traffic. These delegated powers appear to be well integrated with a number of special purpose statutes of the Territory: the **Building Standards Act, Motor Vehicle Act, Motor Transport Act** and the **Highway Act.**

"Planning, Land Use and Development" is a self-contained part of the **Municipal Act.** It mandates community planning and affords the Executive Council Member an opportunity to direct local councils to prepare or amend an official community plan for all or part of a municipality. The legislation gives clear direction to municipal councils. This, coupled with the need to give prior notice to interested persons and to the Yukon Municipal Board or, alternatively, to the Executive Council Member, provides ample private and public input into such plans. The official community plan binds the local council, the general public, and the Governments of Canada and the Yukon. This is noteworthy, as senior levels of Government are often not bound by local government plans. However, this has not yet been fully tested. The plan also supercedes existing zoning bylaws or regulations under the **Area Development Act** to the extent they conflict with the plan.

Within one year of the adoption of an official community plan, the local council must adopt a zoning bylaw. Such a bylaw may regulate land use, buildings and structures, hazardous conditions and architectural appearance. Some flexibility is built into the land use system by an appeal to a board of variance, and from it to the Yukon Municipal Board. Additional flexibility may be available with the adoption of a system of development and use permits. Councils have authority to prescribe terms and conditions under which a permit may be issued. Finally, further flexibility is available to councils by requiring willing owners to enter into land development agreements.

Subdivision approval, from either the inspector of municipalities or the local council, if it has adopted a subdivision control bylaw approved by the Executive Council Member, is provided for. The Commissioner in Executive Council may make appropriate regulations where the inspector is the approving officer. An appeal of refusal to approve a subdivision plan goes to the Yukon Municipal Board. There is, however, no specific provision in **The Municipal Act** obliging the Registrar of Land Titles to refuse subdivision plans which have not been approved in the manner specified in the **Municipal Act.**

### 2. Rural, unincorporated areas have been given minimal consideration

Legislation governing human settlement in unincorporated areas is provided in the **Area Development Act** RSY, 1986, Chapter 9. This short statute gives the Commissioner in Executive Council wide power to designate appropriate settlement areas and to make regulations for their orderly development by zoning, building code, public health and safety measures. No mandated appeal body is available regarding building and zoning matters. All Area Development Ordinances, such as the one for Carcross General Development Area, C.O. 1976/231, provide a combination of enabling act and local regulations tailored to the community in question.

The hamlet provisions of the **Municipal Act** (Part 1, Division 4) give the Commissioner in Executive Council the authority to "establish as a hamlet" in any area of land outside a municipality. By this device, an elected advisory council may be available to assist the Commissioner in Executive Council in determining required works or services and in making such regulations as are deemed desirable for the local residents. Presumably, an advisory council is set up for each development area. However, this section of the **Municipal Act** is largely inactive.

The shortcomings of the **Area Development Act** lead to ad hoc area development regulations and raise doubt as to the nature of the authority delegated to development officers. Also, the statute does not appear to have been designed to deal with problems in unorganized territory outside of settlements. In addition, where planning is undertaken for designated areas, the Act does not identify key planning considerations to address.

## E. THE TENURE OPTIONS FOR DISPOSITION ARE FEW

The Yukon's existing land management legislative framework provides for several types of tenure but is narrow in its options. By tenure, we mean not only fee simple title, lease or rental agreements, but a wider array of "rights-to-use" land or resources.

Specifically, in this report the word "tenure" is used to denote the various interests in real property that a private person may register in a land title office. These include, among others, title in fee-simple, agreements for sale, mortgages, leaseholds, rights of way and other easements, as well as restrictive covenants.

The term "resource tenure" is reserved for rights created by the complex system of licenses by which government gives permission to private persons to harvest timber, use grazing lands, prospect for minerals, conduct placer, quartz and coal mining (including surface use of mining lands), extract petroleum and natural gas, take sand and rock from pits and quarries, use and divert water, raise, trap or hunt wildlife (game and birds), as well as catch fish.

In the previous Exhibit III-2, we briefly noted the types of tenure and resource tenures available by relevant acts. In general, the variety of options available to the Government of Yukon are much more limited than provided for in federal legislation. As federal powers devolve to the Yukon, the need will arise for Yukon statutes to be at least as generous in offering alternate tenures.

In assessing appropriate tenures and resource tenures, consideration should be given to the temporal characteristics of the tenures. For example:

| | |
|---|---|
| ► Long term or indefinite tenures (20 years or longer) | Leases under the **Lands Act**<br>Sales under the **Lands Act**<br>Claims under Yukon Placer and Quartz Mining Acts. |
| ► Medium term tenures (5 to 20 years) | Licences under Northern Inland Waters Act<br>Leases under Fisheries Act. |
| ► Tenures with short or undefined terms (less than 5 years, and often shorter than 2 years) | Quarrying permits under **Lands Act**<br>Timber permits under **Lands Act**<br>Licences under Fisheries Act. |

The mix of tenures and resource tenures offered should reflect the management needs of government and of the resources.

Currently, from a public land management perspective, several valuable options are not available. For example, licensing of short-term land use and longer term timber permits/quarry leases are excluded. This results in inappropriate tenures for use of public lands and resources and often limited controls on how the lands are managed.

IV

# SEVERAL COMPLEX ISSUES MUST BE ADDRESSED IN A NEW FRAMEWORK

## A. CURRENT ISSUES ARE FAR RANGING IN SCOPE

The Department of Community and Transportation Services wants to develop the ideal structure for land management legislation to best manage land resources under the Yukon's control. A new framework must not only explore how to relate public land disposition, human settlement planning and public land resource management, but it must consider an array of issues that focus on land management in the Yukon. The key issue areas include:

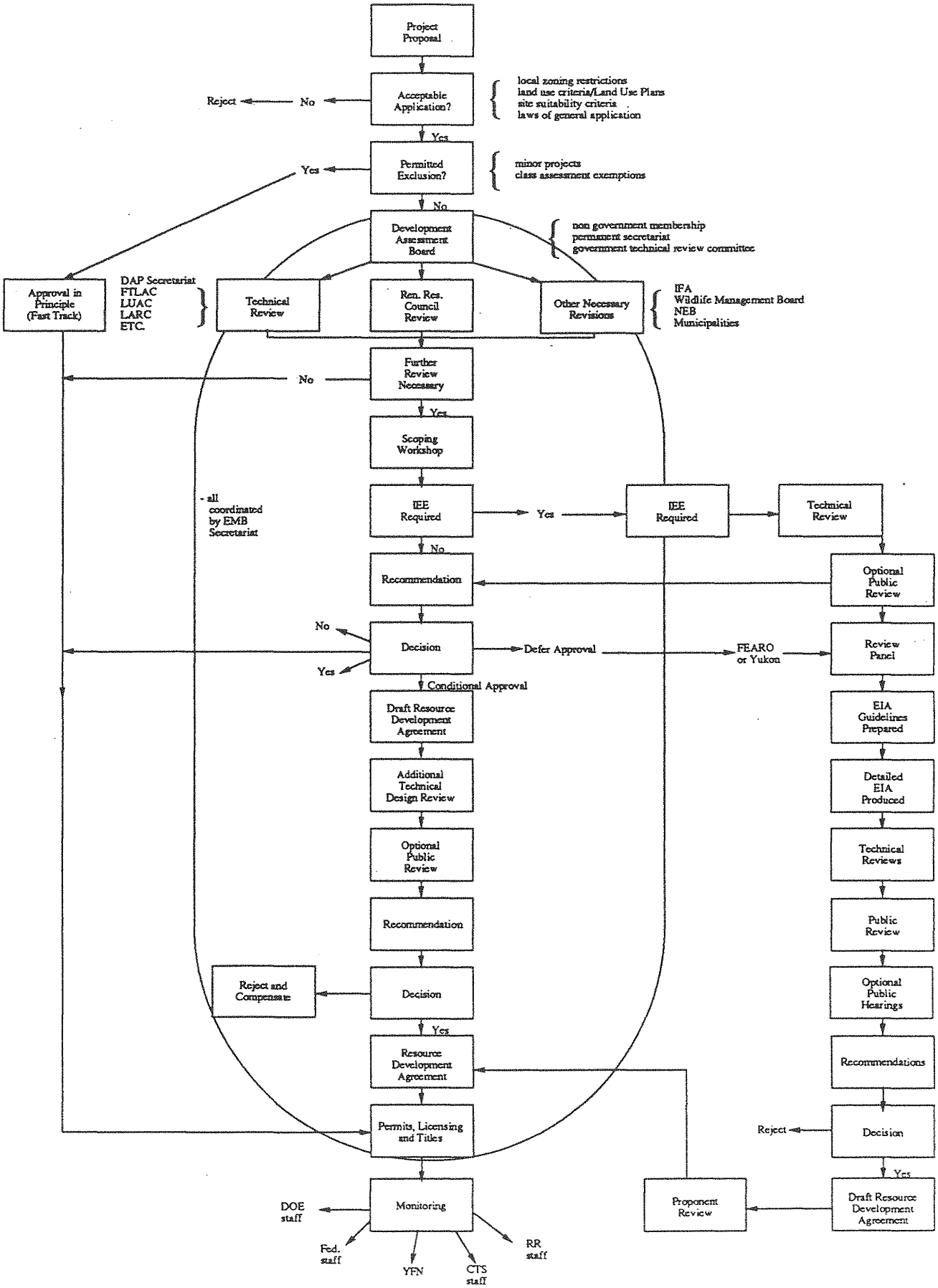
- Native land claims.
- Federal devolution of powers and land.
- Resource management and allocation.
- Planning outside of organized areas.
- Environmental impact assessment.
- Land disposition.

### 1. Enabling legislation for the Land Claim Settlement land management system is needed

The Council for Yukon Indians, the federal government and the Yukon Territory have jointly agreed to a series of subagreements that outline how native land claims could be settled in the Yukon. Considerable thought has gone into the creation of these subagreements with a number of these subagreements applying directly to land management.

One key area related to land management is the Development Assessment Process being created as a key consequence of the Native Land Claim Settlement (see Exhibit IV-1). This process is directed towards the protection and enhancement of Yukon and native lands and resources. The approach developed is more all-encompassing and integrative than now available in the Yukon. The new process will set a standard for all people wishing to use resources, not only on native lands but throughout the Yukon.

## EXHIBIT IV-1
## Proposed development assessment process



This proposed system is far ahead of what exists in the Yukon and could be seen as a model for serious consideration in improving integration. However, at this stage in the process, the Development Assessment Process is not necessarily binding in privately held or native settlement lands. Rather than have one approach apply on native lands and a totally different approach on non-native lands, a new Yukon land management framework could contain supportive enabling legislation. This would recognize the approach used in the native land settlement agreements.

### 2. Federal Devolution of powers and land

The federal government is in the process of devolving powers and lands to the Government of Yukon. Eventually, most of the federal Crown lands could devolve to the Territory. Several options are being examined regarding which transfers should occur first. Examples include site specific areas for parks and heritage, highway corridors, agricultural lands and forest areas.

Specific administrative activities have also been transferred (for example, the federal rural residential lot program). However, many of the actual decisions on the transfers of land will not be able to take place until the native land settlements have been finally negotiated.

In addition to land and administration, the control of specific resources is also being transferred. A letter of intent has been signed to transfer the fisheries resources in all lakes and rivers by early 1989. The transfer of forestry management was actively pursued but has been delayed making 1990 the earliest date possible. With regards to oil and gas, the Yukon has just signed an agreement with the federal government -- the Oil and Gas Northern Accord. It is an agreement to negotiate. An oil and gas accord is not likely to be settled for at least two years and some type of joint management is probable. Mines and minerals transfers are assumed to be at least several years away.

It must be recognized that to administer these about-to-be acquired lands, resources and power, a land management framework for Yukon legislation will have to be in place. The thrust of the new legislation may or may not follow the federal approach. In certain cases, as with mines and minerals, now is an opportune moment to consider what type of legislation should be in place. Further, the transfer of appropriate rights-to-use for these resources also raises a variety of questions related to land tenures and disposition methods.

### 3. Resource management and allocation

Few mechanisms exist to integrate land and natural resources in a balanced jointly planned and managed framework. The four standing committees -- Land Application Review Committee (LARC), Federal/Territorial Land Advisory Committee (FTLAC), Federal Land Use Advisory Committee (LUAC), chaired by Northern Land Use Planning Program, and Regional Environmental

Review Committee (RERC) -- provide interdisciplinary consultations. However, these bodies operate largely in a legislative and policy vacuum. They provide little substantive guidance on integration or allocation questions. Discussions are made ad hoc and lead to the development of precedents that may not be consistent or reflect a strong set of principles for land management and allocation. The imbalance and gaps in the legislative and policy framework means considerable difficulties in reality exist in integrating land uses. The situation is compounded because of the paramount status of the mining acts which make a balanced relationship of mining with other resource uses almost impossible.

### 4. Planning outside organized areas

The legislative mandates in the **Municipal Act**, the **Area Development Act** and the **Lands Act** appear to be unclear and in some even nonexistent. For planning in unorganized settled areas, enabling legislation for the fundamental planning procedures such as land subdivision does not exist. Control over land use on residential parcels is often accomplished only by indirect means. Even worse are the government's powers to regulate or even influence land use on private lands outside of areas designated under the **Area Development Act.** For example, in these areas a proposed change of use or an intended subdivision may only be commented on but not rejected.

In addition, the federal government has entered into the Northern Land Use Planning Agreement with the Council for Yukon Indians and the Government of Yukon. This agreement sets out a process whereby regional land use plans can be created. However, no mandate exists for these plans and they have no legal status other than being a mutual agreement on land allocation in specific areas. Further, the relationship to plans created under the **Area Development Act** is unclear.

Even if a regional plan identifies the need for resource plans, the resource plans also appear to have no legal foundation.

### 5. Environmental impact assessment

Several environmental impact processes are now available in the Yukon. These include:

- The environmental assessment and review process.
- Water use licensing application review process.
- The land use application review process.
- Land tenure agreement review process.

The environmental assessment and review process (EARP) is a major federal mechanism for environmental assessment. It applies predominantly to federal departments, agencies or federal parent corporations. While comprehensive, its application is limited and discretionary. It does not apply to all developments, only those for which the federal government chooses to call for assessment. Discretion for referral is in the hands of individual federal departments subject to the Cabinet directives on EARP.

The water use licensing application review process sets out terms and conditions governing water use and waste disposal for industrial, agricultural, exploration or municipal purposes to maintain water quality at acceptable levels. All applications for water licenses are subject to this process where more than 50,000 gallons per day may be used or a waste may be discharged.

The land use application review process for short-term activity on federal Crown land is restricted to the environmental considerations of the proposed land use activity. For longer term use of Crown land, a land tenure agreement review process applies. Again, this applies to federal Crown lands and is restricted to considerations associated with the proposed leases.

None of these review processes is integrated nor do the processes have a common approach. Only in the proposed Yukon Native Land Claim Settlement Agreement is a comprehensive development assessment process (DAP) raised. This process will be mandatory for all Yukon projects regulated by government or receiving government funding. It will set a precedent for integrative environmental impact procedures. This process could also become the basis for a one-window socio-economic and environmental assessment.

### 6. Land disposition

The existing federal legislation offers the option of a variety of tenures and resource tenures with correspondingly different degrees of control. However, the Yukon's territorial legislation is much more limited. Various types of permitting and licensing are extremely difficult to accomplish now. As resources and powers devolve from the federal government, the Yukon's own legislation must respond with at least equivalent options.

A further question is whether the general bundle of rights given to an owner of title to land in the Yukon should remain as broad as it now is or should it be curtailed slightly to give greater management control over land and resources. Given the small population, combined with land claims and federal devolution, the opportunity exists for the territorial government to redefine fundamental property rights more in keeping with the nature of the Yukon.

* * *

As can be seen from this brief discussion of the issues, the time is clearly opportune to consider seriously how land management legislation in the Yukon should be structured. The need is not only to develop a new legislative structure but to have elements of the structure in place as issues come to resolution.

## B. SPECIFIC LEGISLATIVE GAPS NOW EXIST IN THE LAND MANAGEMENT FRAMEWORK

Any future system must not only recognize the broad issues but must be able to respond to particular problems and gaps that now exist. Few jurisdictions' land or associated resource legislation leaves as many issues to be resolved by regulation or by the discretion of officials as the present Yukon statutes. The trend is at least to set broad guidelines for the exercise of discretion or of delegated legislative power in the governing act, rather than to leave administrators to define their own mandates.

In the Yukon, a wide array of legislative gaps now exists (see Exhibit IV-2). Most of the acts, particularly the territorial statutes, are too permissive and do not have their objectives stated in specific requirements. Land management objectives are rarely specified. A great deal of discretion regarding even the intention of the enactment is left to the administrators. Subsequently, discretionary decisions are often based on the policies of a particular government.

Problems also exist with tenure, including variety of tenures available, especially of resource tenure options. In addition, properly describing properties and hence registering titles in rural areas can be very difficult. A variety of needed environmental controls are also not considered. Furthermore, gaps currently exist between the Yukon and federal legislative frameworks.

In the area of human settlement outside a municipality, no effective provision is made for planning activity. Specific procedures, such as the approval of subdivisions, have no legislative authority, nor does a permit process exist for activities such as building tote roads on Commissioner's lands. Managing backcountry resources also requires information on use. For example, even the ability to record who uses the backcountry for commercial recreation is minimal. Furthermore, land allocation processes do not include provision for public scrutiny. The government is the major land planner and developer. By Cabinet policy, all Government of Yukon land developments are subject to public consultation. In general, legislation that applies to human settlements in unorganized areas provides little in the way of effective guidelines and mechanisms to plan land allocations.

**EXHIBIT IV-2**
**Legislative gaps**

# LEGISLATIVE GAPS

## Generally Relevant to Human Settlement & Natural Resources

- Trespass -- illegal occupation and use of Crown land
- Most acts too permissive; not enough guidance on legislative intent
- No environmental assessment legislation
- Management objectives rarely specified in acts
- No dispute mechanisms for resolving resource management and land allocation issues
- No legislation for provision of scenic easements
- No authority to require performance bonding under the Lands Act
- No territorial air pollution control
- Various types of tenure including temporary permits not authorized in Lands Act
- Some problems with registering property interest in rural unsurveyed parcels
- No authority for restrictive covenants as generally used
- No Yukon Surveys Act
- Some resource sectors not accounted for at all, i.e. wilderness

### Human Settlement

- Limited base for statutory provisions in unicorporated areas
- Fails to provide appeals and procedures of general application for land use controls
- Problem with delegation in area Development Act
- Government land allocation process does not include public scrutiny
- Lack of legislative sanction for regional and district plans

- Minimal requirements of what to consider in a district plan
- Consequences not required to be considered in development areas
- Legislation fails to provide guidance for development area regulations
- No exclusionary provisions for mining in development areas except through Placer Act
- No flood plain control legislation

- No regulations or guidelines for farm development and conservation, e.g., soil erosion, water run-off, etc.
- Limited control of noxious uses, non-conforming uses
- No mechanism to address subdivision in areas outside municipalities (only approve or change but not deny)
- No permitting or licensing for tote/resource roads on Yukon lands
- No provisions for rural local governments

- Various gaps in historic resources legislation
- No licensing/permitting for tourism ventures outside municipalities
- Surface rights versus subsurface rights conflict resolution

### Resource Management

- Mining legislation fails to account for other resource uses
- No land use controls in key stages of mining (exploration, development, abandonment)
- Limited exclusionary provisions for mining
- Limited provisions to manage wildlife habitat in undesignated areas

- Lack of management standards even at the regulatory level
- Lack of enforcement provisions for forestry
- Limited provisions for integrated resource management on forest lands
- Poor forest tenure system
- No legislative guidance for quarrying

- No legislative base for wilderness/wild lands management
- No provision for spectrum of management types
- Uncertain legal source of management and no legislative standards (e.g. forests = fire, not forest ecosystem)
- No Yukon animal quarantine/weed controls

- No sound basis for grazing land management
- How to incorporate development assessment process (DAP) if Land Claims settled
- No provision in Quartz Act to withdraw where potential resource conflict

The land and associated resource management legislation often lacks statutory guidance for specific types of resource management such as forests, quarrying, wilderness and wildlife habitats. Management of one resource, such as mining, frequently fails to accommodate other resource uses. In addition, little provision exists for the planning of a sector's resources, let alone integrated planning.

A number of the legislative gaps have already been recognized. Efforts are underway to develop legislation that will address pieces of the problem. For example, revisions are underway to the **Wildlife, Parks and Highways Acts.** An ad hoc Committee has been established to discuss surface rights conflict resolution. A new **Historic Resources Act** has been drafted. With the proposed changes, some of the legislative gaps will be eliminated. However, many of the integrative issues will remain.

V

# BASIC PRINCIPLES SHOULD GUIDE THE NEW FRAMEWORK

## A. PRINCIPLES SET DIRECTION AND FORM A BASIS OF EVALUATION

Many of the problems that arise out of the existing pattern of land management legislation have arisen because individual statutes were adopted in an ad hoc manner, over a fairly long period of time. In the rush to deal with day-to-day problems, little systematic consideration was given to the overall impact of individual pieces of legislation. In order to design a system that will hold together, both operationally and in intent, a discussion of basic principles and the associated goals of the legislation is useful.

The written goals help the users of the legislation to understand clearly what government wants to achieve and, in particular, the spirit of the law. All too frequently, the Yukon's legislation fails to provide this element.

We have also observed that the principles that should be addressed in writing and administering the legislation are often absent. This is evident in the numerous cases that appear to mandate actions not spelled out in an act itself.

In developing a balanced legislative framework, at least four categories of principles should be addressed. These are:

- Fairness and due process principles

  A series of principles related to the safeguards that would ensure all people will be treated equally and fairly and that appropriate processes are followed.

- Administrative principles

  A series of principles that recognize the administrative issues that must be addressed in creating an appropriate legislative framework. It must always be remembered that the Yukon is the size of several of Canada's provinces while, at the same time, the Territory has a very small population. An appropriate system must balance the relatively small scale of operation with the complexity of the problems to be encountered.

- Land use principles

  A series of principles, possibly better described as goals, that reflect what the Government of Yukon wants to achieve by managing land use. Typically, these address issues such as conflict minimization and suitability for purpose.

- Resource management principles

  A series of principles, also often presented as goals, that reflect why and how we should manage all types of natural resources including

land. Here the aim could be to protect or enhance a specific resource, to determine under what basis the resource could be developed, or to maximize sustainable development through an on-going yield of benefits from an integrated resource system.

In the present Yukon land management legislative system goals and principles are seldom clearly stated. This is perhaps understandable in a new system that has evolved and been added to under a variety of circumstances. However, applying stated principles is an excellent way of evaluating whether the overall framework and its individual components are actually performing as expected.

## B. WE PROPOSE A SERIES OF LAND AND ASSOCIATED RESOURCE MANAGEMENT LEGISLATION GOALS AND PRINCIPLES

The specific set of land and associated resource management goals and principles that we propose for the Yukon reflect much of the recent thinking about the strategic direction for the Territory. We have tried to recognize the Yukon Economic Strategy and the Yukon Conservation Strategy, as well as the aspirations of the Yukon's native people.

We have used overall land and resource management goals to bind the framework together. These are supported with a series of goals that reflect human settlement objectives as distinct from resource management needs. Exhibit V-1 sets out the proposed land and associated resource management goals.

Operational principles address what the legislation should do and how it should be administered. We see a critical need for all parties involved in creating, approving and administering Yukon land legislation to have a clear set of ground rules. Not only will this make the overall system hold together better but it will ensure that individual components or pieces of legislation are similarly administered where the issues are of a like type.

As illustrated in Exhibit V-2, we developed a common set of operational principles that stress the importance of new statutes being:

- Practical and efficient.
- Fair.
- Comprehensive.
- Adaptable to change.
- Integrative.
- Accountable.
- Enforceable.

Adherence to these principles will ensure that the new framework respects the needs of Yukoners.

**EXHIBIT V-1**
**Goals for Yukon land use and associated resource management legislation**

## Overall land and resource management goal:

To enhance the qualify of life for the individual, the community and the territory as a whole

## Human Settlement Goals

1. To enhance the attractiveness and convenience of community and rural living by minimizing the conflict of local land uses within settlement areas and between settlement areas and their surroundings.
2. To provide for the orderly transition from present to future local land uses.
3. To facilitate the delivery of local health and safety measures
4. To conserve and popularize heritage resources

## Resource Management Goals:

1. To promote sustainable economic development for the Yukon in accordance with:
   a) The Yukon Economic Strategy
   b) World Conservation Strategy to which Canada is a party
   c) The Yukon Conservation Strategy1
   d) Yukon's Land Claim Framework Agreement
2. To maintain and enhance essential ecological processes and life support systems
3. To distribute rights to lands and related resources in a just manner.

1 Yukon Conservation Strategy addresses: the Yukon's natural resources (renewable and non-renewable) and its cultural and heritage resources

**EXHIBIT V-2**
**Operational principles for Yukon land and associated resource management legislation**

## Operational Principles:

1. Practical and efficient
   a) Recognizes the three different functions of government: legislative, administrative and semi-judicial
   b) Achieves the goals with the least cost
   c) Ensures timely action and decisions
   d) Discloses a clear legislative mandate
   e) Provides specific guidelines for exercising discretionary powers
   f) Promotes understanding by employing, where appropriate, conventional terminology

2. Fair
   a) Provides structured opportunities for affected and interested parties to be heard before decisions are made
   b) Treats public inputs in unbiased manner
   c) Provides clear reasons for decisions
   d) Permits appeals where appropriate

3. Comprehensive
   a) Considers full spectrum of resource and land uses

4. Adaptable to change
   a) Provides stability, yet recognizes changing needs of new resources and land uses

5. Integrative
   a) Allocates resources on the best information on capability of lands and society's needs.

6. Accountable
   a) Follows clear ground rules regarding the roles and responsibilities of all parties
   b) Ensures conformity and consistency in practice
   c) Ensures delegated powers cite governing legislation
   d) Publishes, systematically, delegated legislation

7. Enforceable
   a) Provides adequate and workable monitoring and enforcement procedures.
   b) Employs feedback mechanisms for legislative and regulatory improvements

VI

# SEVERAL MODELS OF CONCEPTUAL LAND MANAGEMENT LEGISLATION FRAMEWORKS EXIST

## A. FRAMEWORKS CAN RANGE FROM SECTORAL TO OMNIBUS

At least four conceptual frameworks can be considered. They are:

- Sectoral.
- Semi-sectoral.
- Omnibus focusing on resources.
- Omnibus focusing on land planning.

### 1. The sectoral framework

In the sectoral framework, individual resource sectors and land management are addressed in separate statutes. The acts may have been created over a period of years or adopted at the same time. In this framework, separate acts would deal with wildlife, fish, forest, sand and gravel, and mineral resources, as well as agricultural activities, land planning, environmental protection, heritage and other matters that touch on land management. In a province, most of these acts would be provincial with only a few, such as a federal fisheries act, being considered part of the framework.

In this model, the objectives for each resource program can be spelled out in each act, along with the various mechanisms, to ensure effective management. Such interdepartmental coordination as occurs is not done through legislation, unless a specific statute mandates an integrative body. Otherwise, integration is accomplished through various departmental committee, review and approval procedures.

This sectoral model is closely related to the departmental structures, as many of the acts would spell out the mandates of specific departments and provide guidelines for administrative procedures. Where a new resource is developed, such as the game farming industry, decisions must be made whether it fits under a specific existing piece of legislation or deserves its own statute.

### 2. Semi-sectoral framework

In the semi-sectoral framework, certain pieces of land management legislation can either apply to all resources or to all public lands. This system

usually contains some acts that apply across the board as well as a series of sectoral acts. Such broad applicability could bind together the management of the various lands and resources.

In this system, public Crown dispositions could be handled by a single dispositions act. All tenures and resource tenures considered possibly necessary would be described in some detail. General processes for obtaining access to each class of tenure would be stated. Under the sectoral legislation, principles for managing the specific resources would be incorporated in each act. The sectoral acts would then specify which of the tenures or disposition methods would apply to that particular resource.

Similarly, a single land planning act could apply across all public and private lands. This act could then set out not only traditional municipal planning powers but also provide for planning of settlements in unorganized areas, regional planning for all types of land allocation, and even sectoral resource planning. Such an act could ensure that all types of planning, including integrated planning, are possible. However, a variety of individual acts would still support management of particular resources whether they be wildlife, trees or water.

In our opinion, the current Yukon framework is a weak version of a semi-sectoral framework.

### 3. Omnibus focusing on resource management framework

Most jurisdictions in Canada have legislation that falls into either the sectoral or semi-sectoral pattern. However, some work has been done on trying to use the legislative process as one of the methods to enhance integrated resource planning and management. As a consequence, the focus is on using one act to provide a single window for regulation. The items regulated could be resources or land planning.

One specific example is the Land Surface Conservation and Reclamation Act in Alberta, which provides the basis for regulating all disturbances of land in Alberta (except for agricultural purposes), unless the land is subdivided or is unsubdivided land that is used for residential purposes. Essentially, government powers in this Act are triggered by the disturbance of land, regardless of the type of resource use that causes the disturbance.

The Act provides a single-window approach to environmental regulation that is unique in Alberta. The application of the development and reclamation approval is circulated to government agencies whose interests might be affected by the proposed development, such as Fish & Wildlife, Agriculture, the River Engineering Branch (if the project involves the bed or banks of a river), the Water Resources Division (if the project is near a body of water), or water pollution authorities (if there is a risk of water entering a water course as a result of the project). Proposals can be referred to other agencies, such as the parks or culture departments if the development is close to a park or historic

site. The conditions upon which all required approvals will be granted are then made known to the proponent.

The Act is thus a significant attempt at integrated resource management, although it is not entirely comprehensive. At first it applied to any type of surface disturbance, but the Act was soon limited to disturbances caused by "regulated surface operations." However, the list of "regulated surface operations" is broad enough to encompass most significant uses of land and resources. In addition, the Act regulates only the disturbances of land; the proponent must obtain the right to conduct the particular operation, such as coal mining, under the appropriate statute dealing with tenure.

#### 4. Omnibus focusing on land planning framework

Beginning with the narrow concept of zoning to protect urban residential property values, the provinces have gone on to adopt more balanced land use statutes of ever-widening scope. The mandate to plan was first extended to the whole of each municipality, then to unincorporated settlements immediately outside the municipality, then to isolated unincorporated settlements, and finally to the whole of some provinces. Yet, throughout the years the legislation stressed the resolution of problems created by human settlements. Latterly, however, provision has been made to cope with such matters as the conservation of natural resources, the prevention of pollution of water bodies and the protection of places of scenic value.

To-date, no Canadian Legislature has adopted an umbrella statute providing for province-wide planning, that is, planning encompassing both land use and resource matters. Nor has one defined principles to guide the disposition of public lands with a view to establishing a rational spectrum of tenures including both conventional and resource tenures. Manitoba comes close to the ideal. Part II of its Planning Act, R.S.M. 1987, Cp 80, at least authorizes the responsible minister to recommend province-wide land use policies.

* * *

No jurisdiction in Canada, and none that we are aware of elsewhere, has attempted to create an omnibus legislative framework that combines land disposition, use planning and resource management. However, some of the existing models could be adapted to achieve this end. Because the Yukon Territory is in its infancy in legislative development and control of land and resources, it may offer a unique opportunity to create a simplified type of omnibus statute.

## B. FRAMEWORKS CAN ALSO BE DESCRIBED BY THE DEGREE OF CONTROL ASSERTED

Another way of viewing legislative frameworks for land or associated resource management is the amount of government control asserted. This approach is not mutually exclusive to the framework that discusses a sectoral

through to omnibus approach. Indeed, this model can be applied within an individual piece of legislation or to the overall framework. At least four variations are possible. These are:

- Government control of resource asserted. Declaration of ownership or other assertion of control.
  - Means of control not specified.
  - Grant of rights to exploit resources (tenure system) entirely discretionary.
  - Supervision of resource left to governmental discretion.
- Government control of resource asserted plus public participation in government's exercise of discretion.
  - For example, public hearings, other forms of public input or public examination of proposals made for government decision-making.
- Nature of the right that is granted by government to exploit a resource specified in legislation.
  - Specified resource tenure system.
  - Leaves the means of control and supervision to government discretion.
- Government control of resources asserted with detailed rules.
  - Right to exploit resource defined through a specified resource tenure system.
  - Management objectives specified.
  - Means of control specified (detailed rules set out to enable government to control holders of tenure in the exercise of their rights).
  - Detailed scheme of supervision set out (penalties for non-compliance made clear, all enforcement options considered).

* * *

Each of these models readily addresses resource uses, both active and passive. While not typically thought of as being applicable to planning law, they are, in fact, applied.

New legislative frameworks can draw from the different variations within a theme, resulting in a wide choice of options.

VII

# LESSONS CAN BE LEARNED FROM OTHER JURISDICTIONS

## A. WE EXAMINED THE LAND MANAGEMENT LEGISLATIVE FRAMEWORKS IN SIX JURISDICTIONS

The Yukon Territory situation is relatively unique because of the special relationship of the territorial government with the federal government. It is also unusual because of the small size of the territory's population and the complexity of issues that require addressing. Before devising new approaches, we examined land management legislative frameworks in several other jurisdictions. These were British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Alaska. We sought out the experience of places that generally have more complex land and resource management requirements. Where possible, we wanted to learn from their mistakes and draw out features of their system that would suit the Yukon. We did not look at the Northwest Territories as their legislation is not sufficiently advanced to provide new insights. See Appendix C for acts referenced.

### 1. Lessons from the Prairie provinces (Alberta, Saskatchewan and Manitoba)

The experience of the Prairie provinces emphasizes a desire to avoid imposing excessive costs on those who wish to obtain resource rights by requiring them to obtain preclearance from numerous federal and territorial agencies. These costs can be avoided by the creation of a two-step approach:

- The applicant is required to obtain a right to the particular resource under the appropriate tenure act (e.g. mining legislation).

- The applicant then makes his environmental application which is referred for evaluation to all of the relevant environmental control agencies (e.g. water pollution control, land surface reclamation, etc.).

  A further result, if the legislation requires approval of all major potential disturbances of land, is that conflicts in resource use can be minimized and multiple use of land can be encouraged.

Resource tenure systems should not be allowed to evolve so as to frustrate government management objectives. For example, problems are created by granting short-term forestry licenses while attempting to encourage long-term reforestation. Similarly, attempting to force reclamation of mine

sites after the closure of the mines, when tenure interest has ceased, does not work. In essence, private interest in management typically does not extend past the tenure horizon.

If tenure systems do counteract management objectives, long-term management objectives should be set out in the legislation and provisions made for realistic schemes of enforcement. Alternately, management could be assigned elsewhere.

The Prairie legislation suggests that all schemes must be examined for the costs of administration and enforcement. If administrative costs are high and the enforcement schemes require too much detailed and expensive supervision, then frequently they are not generally applied (e.g. air and water pollution legislation, including the Fisheries Act).

As an alternative, or as a supplement to traditional enforcement schemes, creation of incentives should be considered to accomplish government objectives (for example, the return of a bond upon reclamation of mine land or successful reforestation).

Special area protection legislation warrants special consideration. Stating why and for what purpose particular areas are protected is important. Rather than passing general "parks legislation" as a minimum, categories of special areas should be created with appropriate rules for each area. Typical categories might include:

- Recreational parks.
- Historical parks.
- Wilderness areas.
- Wildlife management areas.
- Wildlife protection conservation areas.

Based on the Prairie experience, scenic easements in connection with highway development should complement parks legislation. No Canadian model for this legislation exists, but scenic easements were used in the United States with the development of the Blue Ridge Parkway. This type of model applied in the Yukon could protect views from stretches of highways or rivers.

Planning can operate from the provincial level downwards in Manitoba. Part II of the Manitoba Planning Act, R.S.M. 1987, c.P 80, takes the bold step of authorizing the responsible minister to initiate and recommend to the Executive Council provincial land use policies. He may also take steps to coordinate many federal, provincial and local government land use policies and programs.

One explanation for the lack of umbrella statutes in Manitoba may be government's fear of upsetting the long established jurisdictions which most ministries have enjoyed for decades. Also, it may not have seemed prudent to place too many powers in the hands of a single cabinet minister. There must, after all, be a minister of responsibility for each statute. This problem has been dealt with in part by providing for interdepartmental planning boards (see S.7 of the Manitoba Act). In that case, a cabinet-appointed board must "advise and assist the minister and government departments and agencies in formulating policies affecting the use and development of land."

The legislature of Saskatchewan has addressed the special needs of the northern half of the province by adopting the Northern Affairs Secretariat Act and the Northern Municipalities Act. The former empowers a secretariat to "analyze the data base" (S.8(1) (a)) and "actively participate in comprehensive planning..." (S.8 (1) (b)). The body may also receive briefs "from the public," "work in concert with other public and private agencies" and "act as an advocate for communities." (S.8(2)). The latter, a lengthy statute of 164 pages, is an enabling act specifically designed to facilitate the incorporation of "town, northern village or northern hamlet." (S.14). Section 92 of the statute enables implementation of Saskatchewan's Planning and Development Act, 1983, where needed. Part III of the Planning and Development Act is entitled "Provincial Land Use Policy." The responsible minister is given authority to make recommendations to the cabinet regarding provincial land use policies and coordinate federal, provincial and local planning policies and programs as they relate to provincial land use policies.

In the Alberta Public Lands Act the minister may, by order, classify public land and "declare the use for which he considers different classes are adaptable." (S.10). It is by this device that natural areas may be set aside (usually forest land) that are commonly referred to as the "Green Area." Regulations under this statute may "restrict use -- prescribe duties and obligations of the persons to whom (tenure is granted) in regard to the use and occupation of their land." (S.8) Section 7(c) (i) describes in some detail (10 classes) the types of public lands which the Lieutenant Governor in Council may set aside for use as a public park.

### 2. British Columbia

The Land Act of British Columbia and the Alberta Public Lands Act are statutes which deal with the disposition of Crown land in a comprehensive way. The B.C. Land Act purports to deal with such conventional tenures as "purchase, grant, lease, licence of occupation, right of way or easement" (S.5), while the Alberta Act appears to be wider in scope in that it covers Crown grants and any "conveyance, sale, lease, licence, permit, contract or agreement made." (S.1).

British Columbia, in its Municipal Act, R.S.B.C. 1979, C.290, at one time approached the problem of province-wide planning by mandating that each

of British Columbia's 27 regional district boards (a county-like form of local government created by the Municipal Act) "prepare regional plans -- (that is) a general scheme without detail for the projected uses of land within the regional district..." (s.807). However, Section 806 of the same statute made it clear that such regional plans, upon becoming official by bylaw, did not apply to the vast provincial forests governed by British Columbia's Forest Act. Yet, the British Columbia Act made it mandatory that a technical planning committee be established by the regional district board to advise and "act as liaison between the administration of the regional board and the respective ministries of government and the member municipalities." (s.815 (2)).

Membership on the technical planning committee was drawn from the regional district (usually planning director), medical health office, municipalities, various provincial ministries, Crown agencies, school boards and federal departments.

Part 29 of the British Columbia Municipal Act constitutes a wide ranging group of provisions which enables municipalities and regional districts to carry out relatively sophisticated urban and rural land use management practices. Of interest to the Government of the Yukon Territory is Division (2) of Part 29 of the Act. It provides for the adoption of rural land use bylaws for the unorganized portions of each regional district. In the absence of regional districts in the Yukon, such bylaws could be in the form of Territorial regulations.

A rural land use bylaw is in two parts: Part 1 is a general statement of broad objectives and policies of the board; Part 2 implements Part 1: provides for zoning, the density of the use of land, the approximate locations of major roads, the area (including the minimum, maximum sizes) of parcels of land to be created by subdivision, and servicing standards required for each land use designation. Thus part 1 has the same effect as an official community plan, while Part 2 has the same effect as a zoning bylaw coupled with a subdivision servicing bylaw. The Legislature of British Columbia recognizes that settlement dwellers in rural areas sometimes resent too much regulation by a central planning authority. As a result, s. 951(1) was placed in the British Columbia Municipal Act. It is as follows:

> "The electors within an area covered by an official community plan in a regional district --- may petition the board to alter the area of application of the plan and
>
> (a) replace the plan and existing zoning and subdivision bylaws in that area with a rural land use bylaw, or
>
> (b) not replace the plan with a rural land use bylaw."...

The British Columbia Environment and Land Use Act, R.S.B.C. 1979, C.110, represents another approach to managing "all the external

conditions or influences under which man, animals and plants live or are developed." (s.1). A cabinet committee is established which can:

- Establish and recommend programs designed to foster increased public concern and awareness of the environment.

- Ensure that all aspects of preservation and maintenance of the natural environment are fully considered in the administration of land use and resource development commensurate with a maximum beneficial land use, and minimize and prevent waste of those resources, and despoliation of the environment occasioned by that use.

- Make recommendation respecting any matter relating to the environment and the development and use of land and other natural resources.

- Inquire into and study any matter pertaining to the environment or land use.

- Prepare reports and, if advisable, make recommendations for submission to the Lieutenant Governor in Council.

The Cabinet Committee, which is active in coordinating matters of multi-department interest, was at one time served by a staff secretariat. These staff members were subsequently distributed among line departments as each built up its own planning staff. The statute has proven useful in affording cabinet an effective vehicle through which to react to environmental emergencies.

An Order-in-Council pursuant to S.3(b) of the Environment and Land Use Act enabled the government to restrain widespread subdivision of farm land while the Land Commission Act was being drafted to deal with the problem. The latter statute, now entitled Agricultural Land Commission Act, R.S.B.C. 1987, C.9, is an example of a single purpose enactment designed to standardize the protection of agricultural land throughout the province.

Specifically the Act established the Provincial Agricultural Land Commission of not less than five members who serve at the pleasure of the Lieutenant Governor in Council. Section 7 of the Act sets out the object of the Commission:

"It is the object of the commission to:

(a) preserve agricultural land,

(b) encourage the establishment, maintenance and preservation of farms, and encourage uses of land in an agricultural land reserve compatible with agricultural purposes, and

(c) advise and assist municipalities and regional districts in the preparation and production of the land reserve plans required for the purpose of this Act."

The Commission pursued its objectives by designating land with agricultural potential (a combination of soil and climatic qualities) as Agricultural Land Reserves. The effect of the designation is to regulate activity within the reserves, much as if a province-wide zoning ordinance was in place. The regulations take priority over all other provincial statutes with the exception of the Interpretation Act, the Environment and Land Use Act, and the Waste Management Act. The Crown is bound to the provisions of the Act.

Designated land, whether public or private, whether in a municipality or in unorganized territory, is subject to land use and subdivision regulations. The Act also provides a mechanism for relaxing the regulations and for removing land from the reserves. The Act and the Regulations define in general terms the type of activity allowed in the reserves and gives the commission wide powers to control development within those areas.

While the statute follows a single-purpose approach to land use regulation, if widened in scope, some aspect of it would serve as a model for multi-resource management in the Yukon Territories.

The trend toward local government by Indian Bands in British Columbia has begun. Acting within the ambit of the Indian Act prior to its 1988 amendments, the Westbank Band has taken the initiative to create commercial and industrial opportunities on band lands strategically located on the west side of Okanagan Lake opposite the City of Kelowna. The Kamloops Band, with an equally attractive location opposite the City of Kamloops, recently availed itself of powers in S.83 of the Indian Act to adopt a property assessment bylaw, a property taxation bylaw and a taxation expenditure bylaw of the sort local governments use in this province. The 1988 amendments to the Indian Act make it clear that the band may levy real property taxation on "designated lands". This means that bands, with the approval of the Federal Minister and consistent with federal regulations, may tax band land occupied by non-band members.

### 3. Ontario

Ontario legislation is typical of that found in most Canadian jurisdictions. It is sectoral in nature, but the legislation deals with some of the broader aspects of the use of particular resources. Thus, for example, the Mining Act (R.S.O. 1980, c.268), in addition to providing a tenure system to mining rights, also deals (in s.161) with the rehabilitation of tailings disposal areas.

The Ontario legislation does not specifically provide for reconciling competing resource uses. The Environmental Protection Act (R.S.O 1980, c.141)

deals with all aspects of pollution that might result from any resource uses or other activities in the Province. The Ontario model does not allow a more broadly-based appraisal of the programs and activities of departments that deal with individual resources, as it is essentially restricted to pollution control. One aspect of environmental protection is of particular interest to other jurisdictions in Canada. Part IX of the Act, which came into force in 1985 and which is commonly known as the "Spills Bill," is probably the strongest legislation found in Canada for dealing with accidental pollution and its consequences.

Further provision for coordination between different resource uses exists as a result of the Environmental Assessment Act (R.S.O. 1980, c.140), which requires the proponent of undertakings to which the Act applies to submit an environmental assessment in advance of the project. However, the ambit of the Environmental Assessment Act is restricted by a provision which effectively limits the activities that are required to undergo assessment to those that are designated by Regulation. Even designated activities can be exempted from environmental assessment by ministerial Order.

The Ontario legislation is thus of interest because of the potentially unifying impact of the Environmental Assessment Act. However, in practice its main importance results from the experience which Ontario has gained in the field of pollution control. The Province's advanced pollution control legislation has been supplemented by an enforcement scheme that is probably the most rigorous in Canada. The lessons provided by this aspect of Ontario legislation may require further examination when the administration of environmental legislation is considered in the Yukon.

### 4. Alaska

The Alaska system for dealing with land and natural resources is organized on a pattern that is fundamentally different from that found in Canadian jurisdictions. Regulatory authority over public lands is established by a series of statutes under Title P-38 of the Alaska Statutes. This legislation regulates the disposition of public lands by setting criteria to enable administrators to decide which lands should be made available for private use and which should be retained by the State.

The Alaska Lands Act (Alaska Statutes s.38.05) provides for the methods by which public lands are actually conveyed to interest holders. It deals with disposal of timber and mineral interests, including oil and gas, as well as agricultural lands and homesites. The same Act also regulates the creations and classification of lands for parks, scenic overlooks, cultural sites and recreation areas. The legislation was formerly administered by the Division of Lands within the Department of Natural Resources. However, that division has been abolished and all public lands legislation is now within the general authority of the Department of Natural Resources.

In contrast to the Public Lands legislation, which deals with the disposition of surface and sub-surface interests, regulatory authority over many natural resources is provided by Public Resources legislation under Title 41 of

the Alaska Statutes. This Title governs the exploitation of geothermal resources, soil and water conservation and, in the Forests Act (s.41.15) and Forest Resources and Practices Act (s.41.17), provides a code for forestry management. The Public Resources legislation also provides for the management of state parks (s.31.21) and includes a strong Historic Preservation Act (s.41.35).

The legislation governing public lands and resources in Alaska is largely sectoral in nature, although some unifying effect may be achieved by the grouping of all the relevant legislation in two Titles of the Alaska Statutes. However, the most important method of coordinating land and resource management is provided by the Environmental Conservation Act (Title 46.03), which bestows potentially sweeping powers on the Department of Environmental Conservation. The Act (s.46.03.010) emphasizes two fundamental policies. The first declares that it is state policy to conserve, improve and protect its natural resources and environment and to control water, land and air pollution. The second declares that it is state policy to improve and coordinate the environmental plans, functions, powers and programs of the State... and to develop and manage the basic resources of water, land and air to the end that the State may fulfill its responsibility as trustee of the environment for the present and future generations.

The implementation of this mandate enables the Department of Environmental Conservation to cross other departmental boundaries, particularly through its power to review and appraise programs and activities of other departments of the State in the light of the fundamental policies. The Department is entitled to appear in any State or Federal Regulatory proceedings that affect its purposes. In addition to these wide umbrella powers, the Department is provided with specific authority to regulate water pollution and waste disposal, air pollution, hazardous wastes and pesticides. Individual statutes also vest in the Department substantial regulatory power over oil pollution, litter and the management of hazardous substances.

The Alaska approach is typical of many states that follow the American federal model of enacting a general environmental protection act that can have an impact on all natural resources and environmental legislation. The general legislation does not guarantee the coordination of the management of lands and resources under the individual sectoral statutes, but it does provide a mechanism that makes coordination possible. The effectiveness of this method depends in practice on the funding of the relevant environmental agency and its ability in practice to assert primacy over other departments of government.

## B. SUMMARY OF KEY FINDINGS FROM JURISDICTIONAL REVIEW

The various jurisdictions we examined do offer some insights for consideration in a Yukon framework. The following lists those items of possible greatest relevance:

- The resource tenure system should not frustrate government management objectives. Therefore, long-term management objectives should be set in legislation.

- Avoid frameworks with high administrative costs and too much detail requiring enforcement.

- Incentives, such as return of bonds upon performance, are often a better way of gaining performance.

- Special area protection needs unique consideration with each special area category having appropriate rules. Scenic easements could be one special category.

- Territorial land use policy provisions could be authorized to have a coordinative role.

- In the disposition of crown land allow a wide array of tenures such as conveyances, sale, lease, license, permit, contract or agreement.

- The use of technical planning committees with local and territorial departmental representation may facilitate integration.

- Rural land use bylaws may be appropriate for unorganized areas. These could be territorial regulations with a Part 1/Part 1 format considerably simpler than official plans supported by zoning bylaws, etc.

- A broad environmental act could have provisions to react to environmental emergencies.

- The B.C. Agricultural Land Commission Act may be a model for multi-resource management.

- Within an environmental protection act, consider provisions, as in Ontario, for dealing with accidental pollution. Specifically consider Ontario's advanced pollution control legislation as a model.

- The Alaskan concept addresses public land versus public resources. In the Alaskan model, one act provides for the method by which public lands are conveyed to interest holders, while a second act offers the regulatory authority over many natural resources.

- The Alaskan style of legislation is a forerunner for omnibus statutes by illustrating how various elements can be incorporated as chapters of an act.

- Principles that cross departmental boundaries can assist in integration and coordination.

VIII

# WE EVALUATED ALTERNATE LAND MANAGEMENT LEGISLATIVE STRUCTURES FOR THE YUKON

## A. WE IDENTIFIED FOUR DISTINCTLY DIFFERENT SYSTEMS

As a tool to understand the implications associated with different types of land management legislative frameworks, we proposed four specific alternatives. These are:

- Status quo.
  - Inward-looking ad hoc semi-sectoral legislation with referral system having no legislative base.
- Sectoral acts coordinated by development assessment process.
  - Ad hoc sectoral legislation with sophisticated integrative assessment process for significant use of resources.
- Omnibus legislation focusing on resources only.
  - Single-window land and resource management legislation with no significant disturbance of lands and minerals permitted except through sophisticated integrated assessment process.
- Omnibus legislation addressing resources and human settlement.
  - Single window land and resource management legislation with no significant resource disturbances or human settlement activities permitted except through sophisticated integrated assessment process.

Presented in Exhibits VIII-1 through VIII-4 are comparative descriptions of each of the four alternate frameworks. The comparisons reference various parts of the framework such as:

- Type of legislation.
- Right to use.
- Management system (planning mandated, planning binding).
- Type of tenure provided.

EXHIBIT VIII-1
Alternate Land Management Legislative Frameworks

#1 Status Quo: **In-ward looking ad hoc semi-sectoral legislation with referral system with no legislative base**

| Elements of Framework | Organized Municipalities | Unorganized Settlements | Unorganized Rural Areas | Resource Sectors |
|---|---|---|---|---|
| Type of legislation | - Sectoral<br>- Objectives stated | - Incomplete sectoral<br>- Objectives stated | - Incomplete sectoral<br>- Objectives stated | - Semi-sectoral but incomplete categories<br>- Objectives unstated, but occasionally implied |
| Right-to-use resources | - Constrained | - Constrained | - Limited constraints | - Depending on land tenure generally available by right or with permit except in specific management units |
| Management System<br>- Planning mandated?<br>- Planning binding? | - Planned & required<br>- Yes | - Provisions for plans<br>- No provisions | - No provisions for plans<br>- Not applicable | - Unplanned<br>- Not applicable |
| Type of tenure provided | - Property rights constrained<br>- Private lands subject to regulations | - Property rights constrained<br>- Private lands subject to regulations | - Few property rights constrained<br>- Few regulations for private land | - Variable by resource with wide sectoral range (i.e. minerals -- secure & extensive, forestry - insecure, recreation - none) |
| Consultation with the public and gov't agencies | - Yes, considerable | - Not required | - Not required | - Not required, except water licensing |
| Degree of Integration | - Permits but does not require integration | - Permits integration | - No provision for integration | - No provision for integration<br>- Fish and minerals paramount<br>- Inhibits integration<br>- Too singular in focus even within sectors |
| Environmental controls | - Considerable | - Moderate in development areas | - Minimal on titled land<br>- Discretionary on newly granted Crown tenures | - Widely variable depending on sector (minimal for minerals, no legislative provisions for forestry, sound for water & fish (very discretionary plans for environmental protection) |

EXHIBIT VIII-2
Alternate Land Management Legislative Frameworks (Continued)

**#2 Sectoral acts coordinated by development assessment process: Ad hoc sectoral legislation with sophisticated integrative assessment process for significant use of resources**

| Elements of Framework | Organized Municipalities | Unorganized Settlements | Unorganized Rural Areas | Resource Sectors |
|---|---|---|---|---|
| Type of Legislation | - Sectoral<br>- Objectives stated | - Sectoral addressing districts<br>- Objectives stated | - Sectoral addressing regions<br>- Objectives stated | - Sectoral covering all categories backed by safety net act (e.g. an Environment Protection Act)<br>- Objectives clearly stated in acts. |
| Right-to-use Resources | - Constrained | - Constrained in development areas | - Limited constraints | - Available by permit except constrained in specific management units.<br>- Reserves right to permit everything. |
| Management<br>- Planning mandated?<br>- Planning binding? | - Planned and required<br>- Yes | - Provisions for plans<br>- Yes, in any area where plan prepared | - Provisions for plans<br>Yes, in any area where a plan prepared | – Sectoral plans required<br>Not binding but requirement to consider selected sectors (i.e. forestry) |
| Type of tenure provided | - Private and governments subject to regulations | - Private and governments subject to regulations | - Private and governments subject to regulations | - Variable by resource with wide sectoral range. Some form of tenure required for any significant use of resource. |
| Consultation with the public and government agencies | - Yes, considerable | - Yes, considerable for district plans. Required in supporting implementation tools | - yes, considerable for regional plans<br>- Required in supporting implementation tools. | - Public notice required for sectoral plans or permits for development approval process (DAP)<br>- Department consultation required for permit process |
| Extent of discretion afforded delegated decision makers | - Extensive but contained | - Extensive but contained in development areas | - Infinite | - Extensive guided discretion |

EXHIBIT VIII-2
Alternate Land Management Legislative Frameworks (Continued)

#2 Sectoral acts coordinated by development assessment process: **Ad hoc sectoral legislation with sophisticated integrative assessment process for significant use of resources**

| Elements of Framework | Organized Municipalities | Unorganized Settlements | Unorganized Rural Areas | Resource Sectors |
|---|---|---|---|---|
| Degree of integration | - Permits but does not require integration | - Permits but does not require integration | - Permits but does not require integration | - Where regional plans additional integration possible<br>- Requires integration for significant resource use because of DAP<br>- Substantial integration within a resource sector<br>- Integration with human settlement where DAP applies |
| Environmental controls | - Considerable | - Considerable in development areas | - Moderate on titled land and newly granted Crown tenures | - Legislative provisions for each sector.<br>- Plus a strong environmental protection act for checks and balances. |

EXHIBIT VIII-3
Alternate Land Management Legislative Frameworks

#3 Omnibus legislation focussing on resources only: **Single window land and resource management legislation with no significant disturbance of land and minerals permitted except through sophisticated integrated assessment process**

| Elements of Framework | Organized Municipalities | Unorganized Settlements | Unorganized Rural Areas | Resource Sectors |
|---|---|---|---|---|
| Type of legislation | - Sectoral<br>- Objectives stated | - Sectoral addressing districts<br>- Objectives stated | - Sectoral addressing regions<br>- Objectives stated | - Omnibus single act with sectoral chapters<br>- Overall and sectoral objectives stated<br>- Responsibilities defined |
| Rights to use resources | - Constrained | - Constrained in development areas | - Limited constraints | - Available by permit except constrained in specific management units. |
| Management System<br>- Planning mandated?<br><br>Planning binding? | - Planned & required<br><br>- Yes | - Planned and required in development areas<br>- Yes, in a any area where plan prepared | - Provisions for plans<br><br>- Yes, in any area where plans prepared | - Provision for regional integrated plans backed by sectoral plans<br>- Not binding but required to consider binding regional or selected sector plans |
| Type of tenure provided | - Private and governments subject to regulations | - Private and governments subject to regulations | - Private and governments subject to regulations | - Variable by resource with wide sectoral range. At minimum a permit with various additional tenures required for any significant use of resources<br>- Hierarchy of tenures available in act for surface users<br>- Regulates every resource sector offering specific rights-to-use<br>- Specialized for sub-surface users |
| Consultation with the public and gov't agencies | - Yes, considerable | - Yes, considerable for district plans<br>- Required in supporting implementation tools | - Yes, considerable for regional plans<br>- Required in supporting implementation tools | - Public notice<br>- Required for integrated regional resource and sectoral plans and for permits under DAP<br>- Departments consulted for assessment |

EXHIBIT VIII-3
Alternate Land Management Legislative Frameworks (Continued)

#3 Omnibus legislation focussing on resources only:

**Single window land and resource management legislation with no significant disturbance of land and minerals permitted except through sophisticated integrated assessment process**

| Elements of Framework | Organized Municipalities | Unorganized Settlements | Unorganized Rural Areas | Resource Sectors |
|---|---|---|---|---|
| Extent of discretion afforded delegated decision makers | - Extensive but contained | - Extensive but contained in development areas | - Infinite | - Extensive but contained for resources subject to development assessment process.<br>- Minimal discretion elsewhere |
| Degree of Integration | - Permits but does not require integration | - Permits but does not require integration | - Permits but does not require integration | - Regional resource plans for integration<br>- Required integration for significant resource use<br>- Substantial integration within resource sector<br>- No integration with human settlements |
| Environmental controls | - Considerable | - Considerable in development areas | - Moderate on titled land and newly granted Crown tenures | - General legislative provisions with variations for sectors |

EXHIBIT VIII-4
Alternate Land Management Legislative Frameworks

**#4 Omnibus legislation addressing resources and human settlement:**

**Single window land and resource management legislation with no significant resource disturbance or human settlement activities permitted except through sophisticated integrated assessment process**

| Elements of Framework | Organized Municipalities | Unorganized Settlements | Unorganized Rural Areas | Resource Sectors |
|---|---|---|---|---|
| Type of leglislation | - Omnibus single act with sectoral/settlement chapters<br>- Overall and settlement objectives stated | - Omnibus single act with sectoral/settlement chapters<br>- Overall and settlement objectives stated | - Omnibus single act with sectoral/rural chapters<br>- Overall and rural area objectives stated | - Omnibus single act with sectoral/settlement chapters<br>- Overall and resource sectoral objectives stated |
| Right-to-use resources | - Constrained | - Constrained in development areas | - Limited constraints | - Available by permits which constrain<br>- Very limited or no access in specific management units |
| Management System:<br>- Planning mandated? | - Planned & required | - Planned and required in development areas | - Provisions for plans | - Sectoral plans required<br>- Integrated management plans required in designated areas |
| - Planning binding? | - Yes | - Yes, in any area where plan prepared | - Yes, in any area where plan provided | - Yes, for integrated management plans<br>- Yes, for selected sectors |
| Type of Tenure | - Private and governments subject to regulations | - Private and governments subject to regulations | - Private and governments subject to regulations | - Hierarchy of tenures for all sectoral uses varying by significance and resource type |
| Consultation with the public and gov't agencies | - Yes, considerable | - Yes, considerable for district plan.<br>- Yes, where impacts affect human settlement elsewhere. Required in supporting implementation tools. | - Yes, considerable for regional plan. Required in supporting implementation tools | - Required for integrated management plans and sectoral plans<br>- Required for DAP |

EXHIBIT VIII-4
Alternate Land Management Legislative Frameworks (Continued)

**#4 Omnibus legislation addressing resources and human settlement:**

**Single window land and resource management legislation with no significant resource disturbance or human settlement activities permitted except through sophisticated integrated assessment process**

| Elements of Framework | Organized Municipalities | Unorganized Settlements | Unorganized Rural Areas | Resource Sectors |
|---|---|---|---|---|
| Extent of discretion afforded delegated decision makers | - Extensive but contained | - Extensive but contained in designated development areas | - Moderate | - Extensive but contained for resources subject to development assessment processes and areas with integrated management plans<br>- Minimal discretion elsewhere |
| Degree of Integration | - Requires integration for plans and significant land use activities | - Required integration for plans and significant land use activities | - Required integration for plans and significant land use activities | - Require integration of significant resource uses with each other and with significant land use activities<br>- Substantial integration within resource sectors |
| Environmental controls | - Considerable and bound by general legislative provisions | - Considerable in development areas | - Moderate on titled land and newly grantedCrown tenures unless specificied otherwise in integrated resources sector management plans. | - General legislative provisions with variation for sectors. |

- Consultation with the public and government agencies.
- Extent of discretion afforded delegated decision-makers.
- Degree of integration.
- Environmental controls.

For each of these elements, we have noted how each framework affects the land base itself whether in municipalities, unorganized settlements or unorganized rural areas. We also note how each affects resource sectors such as mining or forestry.

**Alternative One, status quo,** is a variant of the existing land management system now in the Yukon. The approach described here builds on the increasing trend to sectoral legislation that appears to be developing but rectifies a few specific problems such as ensuring that all legislation related to land has objectives stated.

**Alternative Two, sectoral acts coordinated by a development assessment process,** pursues a direction that the Yukon could move towards, that is increased sectoral legislation. Were this to occur then the sectoral model would apply but would need some integrative mechanism such as a development assessment process.

In this alternative, objectives are clearly stated. Provisions are made for planning at all levels. Some plans are also required. In the resource sector, a wide array of tenures would be available. At all levels, consultation would be required or at least some form of public notification. Discretion would be more contained.

The parallel sectoral legislation would permit integration but this particular framework does not require it, except where a development assessment process is used. However, DAP is generally intended only for significant resource disturbance and, hence, integration would be possible but not automatic. Environmental considerations would be addressed within the individual acts supported by a strong environmental protection act as a source of external checks and balances.

**Alternative Three, omnibus legislation focusing on resources only,** is based on a series of sectoral acts to address planning activity from the region down to the municipal level. However, all of the resource sectors would be considered within a single act through sectoral chapters. A hierarchy of tenures would be available for various resource uses. Reasonable provision is made for consultation. Discretion is generally contained in all circumstances except resource projects not subject to a development assessment process in unorganized areas. These will be few as they are mainly on private lands.

The entire system permits integration and, in the case of natural resources, requires integration through the regional resource plans, as well as through any specific resource management plan. However, resource planning and management are generally not integrated with human settlement planning.

**Alternative Four, omnibus legislation addressing resources and human settlement,** is based on having an single omnibus act with sectoral and settlement chapters. Consistent with the philosophy of organized and unorganized areas, the unorganized areas invariably have fewer regulations than organized communities. Exceptions occur; regulations would apply to specific public land and resource management units.

Throughout this approach, the right-to-use resources would be constrained in most places and available primarily by some type of permit. Planning would be required in any organized area and for sectors while provisions would be made in unorganized areas. Wherever a plan is enacted, the plan would be binding. In specific designated areas integrated management plans would be required.

A hierarchy of tenures suitable to the various needs would be available. Consultation in most cases would be considerable and required. Discretion would generally be extensive but contained in all settlement areas, in integrated management plan areas and for specific resources. In this framework, integration would be considerable. The land plans would have to give consideration to the impact of land allocation for resources or any significant large scale land use activities. Similarly, significant resource uses would also be required to be considered for integration and impact. Further, substantial integration within resource sectors would be encouraged through sectoral plans and integrated management plan areas.

The framework would be complemented with a system of environmental controls appropriate to the level of complexity of settlement areas backed by appropriate provisions for each sector.

## B. WE EVALUATED EACH FRAMEWORK AGAINST THE PRINCIPLES AND ISSUES RELEVANT TO THE YUKON

We evaluated each of the four framework options against the operational principles and issues. Detailed evaluation of each of these options is provided in Appendix D. Below is summarized briefly, how each of these frameworks stood up in the evaluation process.

### 1. Option 1 status quo — inward looking ad hoc semi-sectoral legislation with referral system with no legislative base

Goals are infrequently stated with legislative mandate often unclear. The framework has no requirements for integration in planning and offers

poor accountability. Although easy to adapt, this framework is complex to enforce. Few provisions are made to deal with key relevant Yukon issues.

2. **Option 2 sectoral acts coordinated by development assessment process -- ad hoc sectoral legislation with sophisticated integrative assessment process for significant use of resources**

Objectives are all stated resulting in a clear legislative mandate. Each need is addressed in a separate act. Opportunities for affected parties to be heard are significantly increased. Although the framework requires municipal and resource planning, only provisions for planning are made in unorganized areas. Integration is permitted in many, but not all cases, while consistency in decision-making is increased through the assessment process.

This framework addresses many of the Yukon issues by providing for DAP, matching sectoral acts to federal powers devolved, increasing integration, permitting planning in unorganized areas, increasing environmental controls and offering more resource tenure options. Conversely, the system can be viewed as more complex because of the multitude of acts.

3. **Option 3 omnibus legislation focusing on resources only -- single window land and resource management legislation with no significant disturbance of lands and minerals permitted except through sophisticated integrated assessment process**

For natural resource management, the framework is cost effective. Objectives are all stated resulting in a clear legislative mandate. Guidelines are offered for discretionary powers, while provisions for mandatory consultation are increased. A more comprehensive regional planning framework is provided. Sectoral chapters offer a legislative format adaptable to change. The basis for delegated powers are cited while enforcement provisions are improved.

Relevant bylaw issues are seriously addressed. Provisions are made for DAP, while the format of an omnibus act allows for opportunities to incorporate devolution needs. Resource management integration is strong. Planning is required in unorganized development areas with provisions elsewhere in rural areas. Environmental controls are strengthened. All types of necessary tenures are considered. Clarity of understanding for resource management is improved although human settlement legislation remains sectoral.

4. **Option 4 — omnibus legislation addressing resources and human settlement — single window land and resource management legislation with no significant resource disturbances or human settlement activities permitted, except through sophisticated integrated assessment process**

This framework has the potential both to be cost effective and to promote a truly single window approach for applicants for land or resources. Objectives are stated resulting in clear legislative mandate. Consultation is enhanced with comprehensiveness required. The omnibus format with sectoral/settlement chapters is easy to amend. Integration and planning can occur at all levels (both settlement and resource). All plans where developed are binding and, hence, enforceable.

With regards to Yukon issues, this framework offers potential for a more extensive DAP process. The omnibus format readily lends itself to federal devolution in stages. Resource management is further enhanced, not only through sectoral plans, but various integrative opportunities with human settlement needs. All types of planning are provided for, with broad consideration given to environmental controls. A wide range of tenure options would be available.

This framework can readily respond to the majority of the principles and issues, but is the most advanced from a legislative perspective. Although a single window approval would aid users and applicants, the chapter format requires close departmental cooperation to enhance its effectiveness.

## C. THE PREFERRED SYSTEM SHOULD BE A VARIATION OF OPTIONS 3 AND 4

In evaluating the four framework options, only variations of Options 3 and 4 can readily meet most of the evaluation criteria. We recommend that the Government of Yukon be open to consideration of omnibus style legislation to encourage integrated management both by users and administering departments. Specifically, we suggest that elements of Option 4 be added to elements of Option 3 to create a new preferred system.

# IX

# OUR RECOMMENDED SYSTEM BUILDS ON THE STRENGTHS OF ALTERNATE APPROACHES AND WILL EVOLVE OVER TIME

## A. THE PROPOSED FRAMEWORK ACKNOWLEDGES HUMAN SETTLEMENT AND NATURAL RESOURCES NEEDS

Based on our understanding of the issues in the Yukon and the alternatives available, we have recommended a framework that builds on the strengths of the alternate approaches but clearly acknowledges the two special legislative streams for land use and natural resources management (see Exhibit IX-1).

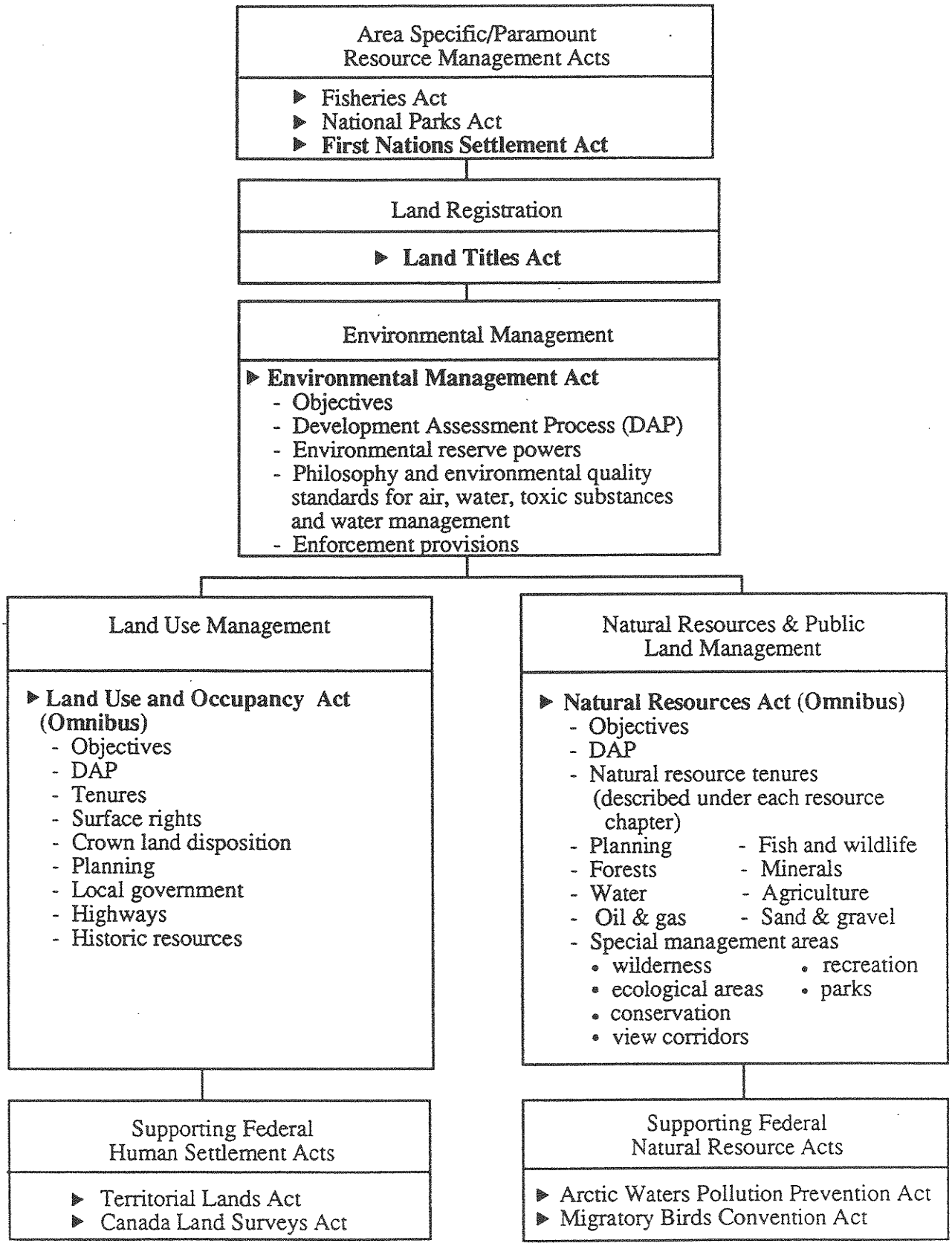
This framework is still a combination of federal legislation where applicable and new Yukon legislation that in many cases incorporates new or evolving legislation, or provides enabling provisions previously missing. In this framework, we expect that at least three federal acts, including a proposed new **First Nations Settlement Act**, will generally be paramount in specific areas within the Yukon. The next tier is the **Land Titles Act** for land registration so all parties can have the opportunity to properly register titles. This need will increase as new legal statuses are recorded in the Yukon.

To set the tone of the Yukon land and resource management legislative framework, we recommend that an overall **Environmental Management Act** be established to provide a single window gateway for a development assessment process as well as a philosophic base including objectives and all related management activities. This act could also have carry environmental reserve powers to provide a back-up safeguard as well as general enforcement provisions that should apply in all environmental management situations. The act need not be long but should be directed towards providing a clear statement on environmental management needs in which the term "environment" refers to all aspects of the human and natural environment.

In turn, we suggest that this act could be supported by two omnibus acts, each with its distinctive focus on either land use and related needs or on natural resources management. The **Land Use and Occupancy Act**, an omnibus act, would be designed to have a series of chapters in which elements common to all aspects of the act, such as objectives, tenures and Crown land disposition approach are defined. In separate chapters, specific topics that are currently addressed primarily by individual acts would then be presented.

To complement, we recommend a **Natural Resources Act** also designed as an omnibus act. This act would also contain objectives relevant to overall natural resource management, as well as a planning regime. In separate

**EXHIBIT IX-1**
**Preferred Yukon land and resource management legislative framework**



chapters, topics that are typically addressed by individual acts or are now under federal control would be given due consideration.

Because these two omnibus acts would have environmental management justified and a more extensive development assessment process proposed, the ability to enhance and improve integration of human settlement land and activities with natural resources and public land management should increase.

The above three would all be Yukon acts. However, a few federal acts would remain in supporting roles. These would include the federal Territorial Lands Act, Canada Land Surveys Act, Arctic Waters Pollution Prevention Act and Migratory Birds Convention Act.

## B. WE DESCRIBE THE FEATURES OF THE PREFERRED FRAMEWORK

We have used an approach similar to that earlier in this report in which we analyzed various elements of a preferred land management framework (see Exhibit IX-2).

Three major Yukon statutes would form the backbone of the proposed framework. These are:

- **An Environmental Management Act.**
- **A Land Use and Occupancy Act (Omnibus).**
- **A Natural Resources Act (Omnibus).**

The framework is held together by the review processes in the Development Assessment Process (DAP) enabled in the **Environmental Management Act.** Related Federal Acts support the framework, as does the **Land Titles Act.**

In this framework federal paramount legislation is recognized but key federal mining statutes are amended after transfer to the Territory. These then become part of the minerals chapter of an omnibus **Natural Resources Act.**

A new Yukon **Environmental Management Act** would provide the umbrella focus for overall land and resource management and general environmental protection. This act would identify the philosophy that good environmental management for public benefit is paramount in the Yukon. The Development Assessment Process would be enabled in this Act. DAP would apply across the Yukon and would be defined to apply to significant human settlement activities as well as natural resource issues.

The Act would also contain the minimum environmental standards generally applicable within the Yukon. More detailed or strengthened

EXHIBIT IX-2
**Preferred land management framework**

Separate but related omnibus legislation for resources and human settlement:

Related land and resource management legislation with no significant resource disturbance or human settlement activities permitted except through sophisticated integrated assessment process

| Elements of framework | Municipalities | Unorganized settlements | Unorganized rural areas | Resource sectors |
|---|---|---|---|---|
| Type of legislation | Environmental management act<br>• enables Development Assessment Process<br>• provides reserve environmental powers for managing human and natural environment | | | |
| | • Human settlement omnibus single act with chapters<br>• Settlement objectives stated | • Human settlement omnibus single act with chapters<br>• Settlement objectives stated | • Human settlement omnibus single act with chapters<br>• Settlement objectives stated | • Natural resource omnibus single act with sectoral chapters<br>• overall and resource sectoral objectives stated |
| Right-to-use resources | • Constrained | • Constrained in development areas | • Limited constraints | • Available by resource tenures which constrain<br>• Very limited or no access in specific management units |
| Management System<br>• Planning mandated? | • Municipal plan required | • District plan required in designated development areas | • Provisions for regional plans and rural area plans | • Sectoral plans required<br>• Integrated management plans required in designated areas |
| • Planning binding? | • Yes | • Yes, in any area where plan prepared | • Yes, in any areas where plan prepared | • Yes, for integrated management plans<br>• Yes, for sectoral plans |
| Type of Tenure | • Private and governments subject to regulations | • Private and governments subject to regulations | • Private and governments subject to regulations | • Hierarchy of tenures specifically applicable to each resource sector |

EXHIBIT IX-2
**Preferred land management framework (continued)**

Separate but related omnibus legislation for resources and human settlement:

Related land and resource management legislation with no significant resource disturbance or human settlement activities permitted except through sophisticated integrated assessment process

| Elements of framework | Municipalities | Unorganized settlements | Unorganized rural areas | Resource sectors |
|---|---|---|---|---|
| Consultation with the public and government agencies | • Yes, considerable<br>• Required in supporting implementation tools<br>• Yes, significant impact subject to DAP | • Yes, considerable for district plan<br>• Required in supporting implementation tools<br>• Yes, significant impacts subject to DAP | • Yes, considerable in regional or rural plans<br>• Required in supporting implementation tools<br>• Yes, significant in impacts subject to DAP | • Required for integrated management and resource sectoral plans<br>• Yes, significant impacts subject to DAP |
| Extent of discretion afforded delegated decision-makers | • Extensive but contained | • Extensive but contained in development areas | • Moderate | • Extensive but contained for resources subject to development approval processes and areas with integrated management plans<br>• Minimal discretion elsewhere |
| Degree of integration | • Permits but does not required integration except where subject to DAP | • Permits but does not require integration except where subject to DAP | • Permits but does not require integration except where subject to DAP | • Requires integration of resources in designated integrated management areas<br>• Permits substantial integration within resource sectors<br>• Requires integration where subject to DAP |
| Environmental controls | • Considerable and bound by general legislative provisions | • Considerable in designated development areas | • Moderate on titled land and newly granted Crown tenures unless specified otherwise in integrated resource management plans | • Considerable according to sectoral plans and integrated resource management plan provisions |
| | • Controls resulting from Development Assessment Process (DAP) applicant to any significant projects<br>• Reserve environmental power as safeguard to any unforeseen consequences while appropriate response developed | | | |

requirements could be established in the chapters of the omnibus acts. A series of environmental reserve powers would be held to the Territorial Crown to retain the ability to deal with unforeseen needs.

The Act would enable enforcement provisions including penalties for all types of environmental management needs whether in this act or the omnibus acts. Required territorial enforcement officers would be able to work across departmental lines and statutes as they could draw their powers from this act which is relevant to all environmental issues.

The **Land Use and Occupancy Act** (Omnibus) would provide a focus for all land and activity management that derives from all types of human settlement and interaction. The Act would replace:

- **Lands Act**
- **Expropriation Act**
- **Elements of the Financial Administration Act re. grazing leases**
- **Municipal Act**
- **Area Development Act**
- **Highways Act**
- **Historic Resources Act**
- **Cemeteries and Burial Sites Act**
- **Condominium Act.**

Many of the strengths of the above acts would be retained through incorporation as chapters of the **Land Use and Occupancy Act** (Omnibus). These would include the **Highways** and **Historic Resources Acts.** Others would be split and clustered with like sections of other acts. For example, the area ordinances of the **Area Development Act** and the local government sections of the **Municipal Act** would become part of the local government chapter. Likewise, planning would come out of the **Municipal Act** and be augmented as a new planning chapter. In this, provision would be made for regional, district and municipal plans. The joint Northern Land Use Planning Process would be given statutory authority as regional plans. Supported tools such as zoning or development permits would also be authorized.

Items that deal with tenure such as expropriation and condominium provisions would be addressed in a tenure chapter. Surface land tenures available from the Crown would also be described in the tenure chapter. A separate crown land dispositions chapter would deal with other issues in the **Lands Act** and also clarify the processes and situations that could apply in disposing of Crown land. Provision for regulations would rest in this chapter.

All chapters would have discretionary powers defined according to administrative need balanced with the intent of the acts. The DAP process would apply to all significant human settlement land and activity disturbances. Implications from a socio-economic and natural environment perspective would be addressed in related departmental and public processes.

**The Natural Resources Act** (Omnibus) would provide a focus for all natural resource and public land management where resource management (not human settlement needs) are paramount.

The Act would replace:

- Yukon Quartz Mining Act
- Yukon Placer Mining Act
- **Wildlife Act**
- **Forest Protection Act**
- **Parks Act.**

The need is critical to have mineral control subject to the Government of Yukon. When the federal powers transfer, they should become elements of a minerals chapter that could also address quarrying, oil and gas and other extraction and energy uses. The **Wildlife Act** could become a chapter. As the **Forest Protection Act** is not broad enough, it would become part of an augmented forests chapter. The **Parks Act**, as we understand, could become the basis of a special management areas chapter that contains a hierarchy of specially managed areas. Some of these may now be accounted for, while others could be added to this chapter so that a full complement of options is available.

Other provisions may be required such as a chapter on agriculture including grazing, fur farming, game farming and aquaculture. Depending on the issues -- e.g. agriculture impact on settled areas, soil conservation or impact on wildlife management, this is one chapter that might be seen as a chapter of the **Land Use and Occupancy Act** (Omnibus).

Also included in the act would be a chapter on objectives with more explicit objectives spelled out in the resource chapters. The DAP process could apply to all significant natural resource disturbances. Implications from a socio-economic and natural environment perspective could be addressed in related departmental and public processes. A separate chapter on planning would make provision for resource sector plans and integrated management plans. All chapters would have discretionary powers defined according to administrative needs balanced with the intent of the Act.

The proposed framework not only clarifies relationships but builds on all the recent work done on revising or developing related Yukon legislation. The framework also responds to and enables the Development Assessment Process being brought into effect through the Yukon Native Land Claim Settlement. In outline the suggested framework bears a resemblance to the Alaska model, in which Public Lands and Natural Resources legislature are united through a general environmental management statute.

By means of an example we have illustrated how the preferred framework might operate in practice. Suppose that an operator proposes to institute a

significant forestry project in the south-eastern portion of the Yukon. The first step would require the operator to submit the proposal for assessment under the **Environmental Management Act.** Assuming that the initial assessment was favourable, the operator would be required to obtain approvals under both the **Natural Resources Act** and the **Land Use and Occupancy Act.** The approval under the Forestry chapter of the **Natural Resources Act** would deal with forest tenure and the merits of the proposal from a forest management perspective; the second approval would relate to the human settlement implications of the proposal. The latter might relate to such matters as the location of roads, sawmill sites, or housing connected with the project. In order to avoid placing excessive costs on the proponent of the development, the DAP process should be used to co-ordinate the approvals required under both pieces of legislation; in effect the DAP process could act as a single window for all approvals required for the application.

## C. THIS FRAMEWORK STANDS UP AGAINST THE OPERATIONAL PRINCIPLES AND ISSUES

We reviewed this preferred framework against each of the operational principles. The system is generally practical and efficient offering a clear understanding of the relationships with minimization in the number of acts. Legislative mandates are understood as objectives are all stated. This system is reasonably fair, offering structured opportunities for parties to be heard in the various human settlement planning activities as well as through the development assessment process. This system is comprehensive when it comes to planning as provision is made for planning at all levels on territorial/regional and municipalities and for resource sectors.

The omnibus format is very easy for chapter amendments to allow the framework to be adaptable to change. In this approach, not only can chapters be revised but new chapters added, while the basic philosophy of the legislation does not change. Both the planning provisions and the development assessment process as well as the omnibus character of the acts encourage integration.

Responsibilities are defined for human settlement and resource sectoral powers in the two omnibus acts. As a consequence the basis of delegated power is cited and accountability is high. Where plans are introduced into the framework, they become a statutory provision. This status enhances their enforceability.

We also reviewed the framework against the key relevant issues. This preferred framework clearly recognizes the native land claims through not only the paramount character of the First Nations Settlement Act but also the extent of provision for the development assessment process. We address both human settlement issues and needs associated with the native land claims.

The omnibus format readily allows specific chapters to be adapted or created to address powers as they devolve from the Federal government. Resource management is especially encouraged through the provision for sectoral resource plans in the **Natural Resources Act.** Further, special management areas may also require integrated resource management which will enhance the likelihood of achieving this goal. In addition, the omnibus formats of the acts encourage the departments working under the acts to integrate significant resource activities which each other and with significant land use activities.

All forms of planning are provided for with special consideration given to planning outside of organized areas. Regional down to municipal planning is permitted along with resource planning. Environmental impact assessment is primarily addressed by the enabled development assessment process as well as continued reference to key federal legislation with environmental impact considerations. Finally, both traditional tenures and resource tenures are specifically stated with wider provision of alternatives proposed.

In summary, the preferred framwork responds well to the principles and issues.

## D. THE TRANSITION TO FULL FRAMEWORK WILL TAKE SEVERAL YEARS

We have considered the existing situation including the current work underway on statute revisions and recommend the following steps:

**Phase A**

1. Amend the **Lands Act** to cover critical gaps and to add sections on agriculture, sand and gravel and timber.

2. Draft an **Environmental Management Act** to enable DAP.

3. Draft a **Planning Act** to replace the **Area Development Act** and relevant planning sections in other acts. The new **Planning Act** would address all human settlement planning needs including a provision for a hierarchy of plans, processes and appeals. This act should especially address the need for subdivision approvals and the basic requirements of district (i.e. semi-rural) plans.

4. Modernize the **Land Titles Act.**

Pase B

1. Draft the **Land Use and Occupancy Act** as an omnibus act. Incorporate at this time **Historic Resources, Highways, Surface Rights Acts** and new **Planning Act** as chapters.

2 Draft a **Natural Resources Act** as an omnibus act. Incorporate new Special Management Areas (including former **Parks Act**), **Inland Waters Act** (as transferred) and **Wildlife Act** as chapters. Also include relevant portions of the **Lands Act.**

3. Develop a local government chapter of the new **Land Use and Occupancy Act** to incorporate the remaining components of the **Municipal Act** that deal with local government.

4. Upon transfer of mining legislation, draft a mining chapter of the new **Natural Resources Act.**

5. Draft an oil and gas chapter of the new **Natural Resources Act.**

By proceeding in this order, the principles associated with good land resource management will be established. The transitions inherent with both federal devolution and recently revised Yukon statutes would be recognized. Our approach is generally to set the framework and develop new acts to cover gaps. Once all gaps are covered, the transfer of all relevant acts to appropriate chapter status can occur in the context of the two omnibus acts.

This approach allows for continuity and accepts the extensive work already done on updating various acts. It also makes the transfer to an omnibus format easy as the acts themselves only have to focus on objectives and the broader issues like tenures. Many of the chapters would be simply minor modifications of existing or recently revised acts.

## E. PREFERRED FIRST STEPS IN DEALING WITH SHORT TERM PROBLEMS

You have requested some suggestions on how to deal with critical gaps in the legislative framework in the short term. We have focused on four needs:

- subdivision control in rural areas
- trespass on Crown land
- temporary tenures
- restrictive covenants.

Our suggestions can be implemented within the existing situation but this work will carry over into a new framework.

### 1. "No mechanism for subdivision outside municipalities"

Some legislation governing the subdivision of land is already in place in the **Land Titles Act.** These provisions stress the plan presentation standards which the land title system requires in order to assure a high degree of accuracy and consistency in the registration of subdivision plans. There does not seem to be, however, any statutory pre-conditions regarding the specific layout or servicing of subdivisions. If the document meets minimum presentation standards it is acceptable to the registrar. Yet, many land registry acts in Canada go further and insist that new plans disclose:

(a) road allowance access to new parcels.

(b) Road allowance access through the land subdivided to land lying beyond.

(c) access by road allowance to certain bodies of water, and

(d) the continuation of existing road allowances through the land being subdivided.

In some jurisdictions statutory pre-conditions, with planning and development overtones, are left to a Plans Approving Officer who is quite independent of the land title system. Only after his approval, evidenced in writing on the face of the proposed subdivision plan, is the document acceptable to the land registry. Matters such as the specific location and width of roads, the suitability of the roads in relating to the existing use of the land subdivided, the relation of the roads to be dedicated to existing main highways and the likely or possible role of the proposed roads in a future highway network are considered. While in most jurisdictions the Plans Approving Officer is a direct delegate, in the legal sense, of the legislature, he may be an employee of a municipality (when the land is within an incorporated community) or an employee of the appropriate ministry (for unincorporated lands). It is left to the local government (by way of bylaw), or to the ministry (by way of regulation) to set the standards which the Approving Authority or the Plans Approving officer applies.

It is customary in most jurisdictions to enable the Plans Approving Officer to demand, as a condition precedent to subdivision approval, that the highways (with or without additional services such as drainage and waterlines) be constructed by the owner so that the cost of the subdivision is largely borne by the person who seeks to profit from the development. Understandably, the prerequisite standards, which must form part of either a municipal bylaw or a provincial regulation, will vary according to the nature of the land being subdivided. The bylaws of a city or town may require paved roads, waterlines and sanitary sewers, while a remote settlement might only require a gravel road suitably drained by ditch, with some sort of assurance that each parcel has a well for potable water and a suitable location for a septic tank field.

As a result, we recommend that:

(a) subdivision approval requirements be widened in the **Land Titles Act;**

(b) that the **Land Titles Act** recognize the concept of an Approving Authority and Approving Officers. The latter would be appointed by the appropriate Territorial ministry;

(c) that the appropriate Territorial statute be amended to enable Approving Officers, appointed by the ministry, to administer regulations somewhat similar to those that a municipal council may adopt under Division 4 of the **Municipal Act;**

(d) since an element of discretion must be left to the Plans Approving Officer, a statutory appeal should be available to an applicant who has been refused approval;

(e) as an alternative to the developer installing the required works and services, as required by s.330 of the **Municipal Act,** a system of bonding should be provided so that subdivision approval, and indeed the registration of the subdivision plan, may take place prior to the actual construction of the works. A similar provision should be made for subdivision in unincorporated areas.

## 2. "Trespass on Crown Land"

We understand that most trespass on public land is both a political and a legal problem. Presumably the Crown always has available the Common Law remedy which every land owner has to request the court to order a trespasser to vacate. Should the trespasser ignore the court order, he or she would be in contempt of court, and theoretically, face a jail term for contempt.

In addition to the Common Law remedy, landlord and tenant legislation could be used by the Crown where the unlawful occupant of public property was an overholding tenant. The remedies here are largely statutory and are usually time-consuming.

The problem posed by the "little guy" type of trespasser could be dealt with by a blend of non-coercive and coercive measures. The former could include a publicity campaign that would highlight the problems that the Territorial government has with trespassers. It could stress that "squatting" is often to the detriment of tax-paying neighbours and, in some instances, results in damage to the environment.

Toward the more coercive end of the regulatory spectrum, a variety of "outlawry" provisions could be considered. Various entitlements to which the

Territorial government contributes might be withheld from the trespasser. The licenses of motor vehicles under the control of the trespasser could lapse automatically after appropriate notice. Possibly, insurance coverage on chattels owned by the trespasser could, by operation of a specific statutory provision, be inoperative while the chattels are unlawfully kept on public land. Legislation could also establish, after due service of notice on the trespasser, an automatic levy equivalent to rent and taxes, on the trespasser. This would be payable to the Crown as a personal debt. Other enactments could enable Territorial officers to remove the chattels of the trespasser, including any automobiles owned by him, for the purpose of sale to recompense the Crown for the trespass levy.

Finally, of course, is the possibility that the trespass could, by statute, be deemed an offence punishable by fine. The latter strikes us as politically undesirable. We believe the public is more sympathetic to the withdrawal of the government entitlements of the trespasser than fining him or her for the trespass. In any event, care would have to be taken that a social service worker would first report on the status of the trespasser before coercive measures were taken by the Territorial government. All of the statutory enactments mentioned above should be drawn to enable them to be applied in a discretionary fashion so that only appropriate cases would be dealt with rigorously.

### 3. "Temporary tenures"

In the short haul, it appears to us that the Common Law device of "licence" may well be a suitable solution to the problem of limited term tenures. A licence, in real property law, is not an interest in land and is not ordinarily registrable in a land title office. In all likelihood, a licence coupled with an "interest" would be the appropriate form of this device to use. It may be defined as "a permission given by the owner of land (the Crown) which, without creating any interest in land, allows the licensee to do some act which would otherwise be trespass". Thus, a rancher would have the right to enter public land to graze cattle say six months, other persons could be allowed to cut down trees and take them away or to remove sand and gravel during a specified period.

Two things are involved: the lawful right to enter the land, and the grant of interest in the forage, trees or the sand and gravel removed. At Common Law such an arrangement was both irrevocable and assignable. However, by statute, one could remove these aspects, prohibiting transfer of the licence without Territorial permission. Since the granting of such a licence by the Territorial government is essentially an administrative act, the regulations of the appropriate Act could be amended to encompass the device. Only the aspect of irrevocability and assignability would have to be dealt by statute.

### 4. "Restrictive covenants"

We have attached as Appendix E to this report Division (4) of the British Columbia **Land Title Act,** RSBC 1979, c.219. It sets out a complete scheme for establishing statutory rights-of-way and miscellaneous covenants and easements. In our opinion this would give the Territorial government a very wide choice of options. You will note that section 215 of the attachment deals with the registration of covenants as to use and alienation. What is of particular interest to government is the fact that, unlike a Common Law restrictive covenant, the statutory device permits a covenant "whether of a negative or positive nature" to be registered in respect of "the use of land or the use of a building on or to be erected on land". This Division of the B.C. **Land Title Act** is used very extensively by local governments in B.C. and fairly extensively by the provincial government.

# Appendix A

## Terms of Reference

# YUKON LAND MANAGEMENT LEGISLATION SCOPING STUDY

## TERMS OF REFERENCE

### INTRODUCTION

Yukon land management legislation is an agglomeration of practices and laws created, over the years, in response to a variety of political conditions conditions. The resulting legislative regime is, at times, inadequate for the land management scenarios that must be addressed by Yukon land managers.

The prime objective of this study is to develop the ideal structure for land management legislation required to best manage land resources under Yukon control.

There are a number of factors that will be considered in this study:

1. Devolution of various land programs, from the Federal Government, have or will have implications for the current management regime. The Study will seek to identify areas where the current legal structure is deficient.

2. The adequacy of the Lands Act and Area Development Act in treating a variety of land, land use, and land use planning matters is being questioned. Among the concerns are the provisions for management of Quarries, temporary land use permitting, land use zoning, timber land use.

3. The current Federal Land Titles Act and Land Titles Plans Regulation are being used as a subdivision approval mechanism. A subdivision approval system is required that will facilitate approval from a planning and land management perspective rather than from a legal survey and title perspective. It is desirable to have some site specific, private land development control incorporated into the legislative framework.

4. Linkages between lands legislation and minerals, forests, heritage, and wildlife legislation must be examined. This portion of the study will investigate potential problems between surface and subsurface estates, designation of protected areas for wildlife and parks designations, definition of property interests that may be associated with forest tenure, and the granting of interests in property under legislation other than the Lands Act. Some of the Legislation that will be carefully considered include:

| | | | |
|---|---|---|---|
| Territorial | - Lands Act | Federal | - Yukon Act |
| | - Area Development Act | | - Territorial Lands Act |
| | - Highways Act | | - Land Titles Act |
| | - Wildlife Act | | - Northern Inland Waters Act |
| | - Parks Act | | |
| | - Financial Administration Act | | |

## SCOPE OF STUDY

This study will undertake to accomplish the following tasks:

1. Review the current legislation and regulations pertaining to land planning, management and disposition.

2. Examine the current, and projected, Yukon needs for land management legislation and regulations.

3. Compare and contrast the land management legislation of other Canadian jurisdictions who may have addressed some of the concerns and issues arising in the Yukon milieu.

4. Conduct an evaluation of the existing legislation as a basis for land use control, and recommend a framework for legislation and regulations required to address the Yukon land management needs.

5. Detail the options available to the Government of Yukon to address the shortfall between the current legislation and regulations and the desired and recommended framework for a comprehensive land management mechanism.

6. Recommend interim measures that may be taken to alleviate critical areas of concern.

## PROJECT TEAM REQUIREMENTS

The project team will have considerable expertise and experience in the fields of Natural Resources Management, Land and Resources Law, Planning, and Environmental Science.

## LEVEL OF EFFORT

This study, the first step toward redrafting Lands legislation, has a projected budget of $35,000. It is of utmost importance that the quality of the reporting be of a high standard and be easily translated into a plan of legislative and regulatory actions. Strong consideration will be given to the project team and methodology of each proponent.

## TIME FRAME

As the most significant component of a review and restructuring of land related legislation and management tools for the Yukon, this study must be

thorough and complete in readiness for drafting and preparation of appropriate amendments to legislation and regulations. Proposed critical time deadlines for meetings and reports are:

| | |
|---|---|
| August 15, 1988 | Receipt of Proposals |
| September 7, 1988 | Initial meeting Consultants and Steering Committee |
| October 17, 1988 | Interim report, Steering Committee Meeting and Consultants Presentation of Directions |
| November 30, 1988 | Draft Final Report Presentation |
| December 14, 1988 | Final Report |

(Alternative times and timing may be considered)

## STUDY MANAGEMENT

The Study Manager will be Mr. Norman K. Marcy, Policy Analyst, Policy Planning and Evaluation Branch, Department of Community and Transportation Services. Mr. Chris Cuddy, Director, Lands Branch and Mr. Dy Robb, Senior Planner, Lands Branch, Department of Community and Transportation Services will be key contacts in all phases and progressions of the study. The Consultant will work under the direction of the Study Manager. The Study Manager will coordinate and facilitate the work of the consultant in the Department of Community and Transportation Services and the Government of Yukon. The Director, Lands Branch will provide leadership and direction on substantive issues.

## Appendix B

## An Analysis of relevant Federal and Territorial Legislation

## APPENDIX B

## AN ANALYSIS OF RELEVANT FEDERAL AND TERRITORIAL LEGISLATION

### A. FEDERAL MINING LEGISLATION

The Yukon Placer Mining Act, R.S.C. 1970, c.Y-3, as amended, confers paramount rights (land and natural resources use) in mining. Under Section 17 of the Act, any person may enter for mining purposes any Yukon lands, except for national parks, cemeteries or burial grounds, land already lawfully occupied for placer mining, land set apart by the Governor-General under paragraph 19(d) of the Territorial Lands Act, lands which the Governor-General has precluded from prospecting or staking under Section 93, lands under the jurisdiction of the Ministry of Defence, lands lands within the boundaries of a city, town or village, or lands occupied by a building or dwelling house. Section 93 enables the Governor-General by order to prohibit entry on land for prospecting or locating a claim if land is required for a variety of stipulated public purposes.

The Act consists of a comprehensive code relating to the size and form of mining claims, the recording of claims, the grant of claims and provision for forfeiture of claims if they are not worked.

Under Section 54, claim owners are entitled to any ground water arising on their claim and so much of the natural water flowing through or by their claim as is necessary for the working of their claim unless it has already been lawfully appropriated by another. Under Section 55, the mining recorder can grant water rights for up to five years, including the right to sell water. There are few provisions relating to the relationships between miners and other resource users. Section 77 prohibits miners from dumping earth or water onto other claims, but does not prohibit dumping unless another claim is involved.

In one sense, the Placer Mining Act goes much further than most territorial legislation, for it provides a detailed scheme for settling ownership rights to claims, their location and duration. It thus establishes a detailed tenure system.

However, the Act contains virtually no environmental safeguards and it subordinates the use of all other resources, especially water, to mining. The best evidence of the primacy accorded to mining is provided by the very wide rights to prospect for mining purposes and to locate claims, unless an area of land has been specifically exempted under Section 17 or Section 93.

The Yukon Quartz Mining Act R.S.C. 1970, c. Y-4, which refers to the working of rock in situ, provides similar rights to prospect or locate a claim, although the rights are restricted to vacant territorial lands and lands upon which the mines and minerals are reserved for the Crown, subject to specified exceptions. As in the Placer Mining Act, the Quartz Mining Act sets out a comprehensive tenure system relating to the staking of claims, the recording of

claims and their validity. Under Section 9, the Recorder is empowered to mark out a space for the deposit of tailings, and under s.73 all timber on a mineral claim is reserved essentially for the use of the miner. However, where the surface is covered by a timber license, a mineral lease does not authorize entry upon the land without the permission of the Minister, which can be granted subject to conditions. As in the Placer Mining Act, the holder of a mineral claim can obtain a right to use any unappropriated water for mining purposes and is prohibited from dumping waste on claims held by others or from allowing water to flow onto claims held by others.

The Quartz Mining Act again generally establishes mining as the most important resource use in the territory. It makes no mention of the restoration obligations or of any significant environmental controls. Because of the supremacy of both mining acts, they can conflict with other land management goals set out in federal or territorial legislation, unless the land in question has been specifically exempted from mining.

## B. OTHER FEDERAL LEGISLATION

The Territorial Lands Act, R.S.C. 1970, c.T-6, applies to all territorial lands vested in the Crown or of which the Crown has the right of disposition. Nothing in the Act limits the operation of either mining act or the Water Power Act or the National Parks Act. It empowers the Governor-in-Council to authorize the disposition of territorial lands, subject to a number of limitations and conditions. In s. 13, there is a prohibition against cutting timber on territorial lands without a permit and the Act has an indirect influence on water management. Under s.9, a strip of riparian land is reserved from all grants of territorial lands and under s. 10 beds of bodies of water are reserved for the Crown. similarly, fishery rights are reserved for the Crown (together with all mines and minerals) when grants are made under the Act and any grant of land does not convey to the holder exclusive water rights. Under s.3.1, the Governor-General, after consultation with the Yukon Council, can set apart territorial lands as a land management zone in order to protect the ecological balance of physical characteristics of any area. After consultation, the Governor-General may also make regulations for the protection, or control of the use of the surface of the land in a land management zone.

The Act contemplates possible conflicts with licenses, permits and claims under Canada Oil and Gas Land Regulations, for all of those instruments are subjected to any regulations made by the Governor-General-in-Council respecting the protection, control and use of the surface of territorial lands.

This legislation enables the disposition of Crown lands and contains some fundamentally important provisions to ensure continued Crown control of water rights and mines and minerals. However, most of the conditions to be inserted in the leases and grants are entirely discretionary. Just as in the Yukon legislation, the Act asserts only a power over forestry, while leaving all dispositions, their terms and conditions, to the discretion of the grantor.

The Yukon Act, R.S.C. 1985, c.Y-2, essentially provides for the constitution of the Yukon and establishes the Yukon Council. In two respects, the Act is relevant to the administration of land and natural resources. Under s.17 (m) and other provisions of the Act, the Commissioner-in-Council is specifically provided with the power to make ordinances for the preservation of game within the Yukon. Under s.47, the right to the beneficial use of certain public lands within the Yukon is appropriated to the Commissioner and subjected to the control of the Commissioner-in-Council. This section provides a basis for legislative control of many public lands and resources and would allow the Yukon government as owner both to control its lands and to grant interests in the land to others. However, although s.47 provides an explanation for many powers of the Yukon government, it would ordinarily be expected that the powers would be exercised through provisions in specific legislation dealing with public lands and resources.

As a parallel piece of legislation, the Indian Affairs Act, R.S.C. 1970, c.I-7, provides the basis for federal administration and management of land in the North that has not been expressly transferred to the government of the Yukon.

The Northern Inland Waters Act, R.S.C. 1970, 1st Supp., C.28, is, in contrast with most other federal legislation, a modern statute which provides both the rights to use water and comprehensive controls on the use of water and water pollution. It requires the provision of proper information for applicants for licenses and for public hearings on applications for licenses.

Similarly, the Fisheries Act, R.S.C. 1970, c.F-14, in addition to providing for fish management, contains a detailed and comprehensive scheme for the control of pollution insofar as it affects fisheries. More specific pollution control legislation that applies to waters adjacent to the mainland and islands of the Canadian Arctic is found in the Arctic Waters Pollution Prevention Act, R.S.C. 1970, 1st Supp., C.(2). This legislation also is representative of modern anti-pollution legislation and provides all of the necessary powers to control pollution.

Finally, specific federal powers to protect migratory birds are set out in the Migratory Birds Convention Act, R.S.C. 1970, C.M-12, and the federal authority to control national parks is set out in the National Parks Act, R.S.C. 1970, c.N-13, as amended.

## C. YUKON LEGISLATION

### Area Development Act, R.S.Y.T. 1986, c.9

Under s.2 of this Act, the Commissioner may designate any area as a "development area" where orderly development is required. The Commissioner is

empowered to regulate ordinary development in such an area by means of typical planning act type powers such as zoning. However, the Act is very much "first stage" legislation, in that it provides a means of control to the government, but leaves the regulation of development areas essentially to unguided administrative discretion.

The **Forest Protection Act**, R.S.Y.T. 1986, c.71, is essentially a fire protection act rather than a forest management act. However, it also contains limited power to control disease and insects within a forest. It is, however, legislation which essentially deals with one aspect of forest management.

The **Highways Act**, R.S.Y.T., c.82, as it stands, is basically a highway construction and maintenance act. It does contain some powers to control activities in the vicinity of highways in s.10 and under s.12 the Minister may make adequate provision for the drainage of Yukon highways, so as "not to affect adversely" drainage systems on adjacent land. Despite these powers, the existing Act essentially focuses on highways, contains only outline powers for controlling activities within the vicinity of highways and makes no provision for competing land uses.

The **Historic Sites and Monuments Act**, R.S.Y.T. 1986, c.83, allows the Commissioner to acquire historic sites, provide for their administration, preservation and maintenance and establishes the Historic Sites and Monuments Board with advisory functions. The Act can have an impact on a small, but important aspect of land management in the Yukon.

The **Lands Act**, R.S.Y.T., c.99, deals with those lands, the right to the beneficial use or the proceeds of which have been appropriated to the Yukon government under the Yukon Act. However, under s.2 (2), the Act does not limit the operation of either the Quartz or the Placer Mining Acts, or the Dominion Water Power Act. Further, all dispositions are subject to certain provisions of the Territorial Lands Act.

The Act empowers the Minister to dispose of Yukon land. It allows the control of the use of those lands and some assurance that the lands will be used only for the most desirable purpose. Most of the controls set out in the legislation are entirely discretionary. Under s.30, the Minister may issue quarry or timber permits, but there is no discussion of the nature or effect of those permits or the conditions that may be relevant to their issue.

The **Parks Act**, R.S.Y.T., c.126, is wide legislation which enables the Commissioner to establish and regulate park systems. The Act is unusually discretionary compared with other parks legislation; for example s.7 does not establish any legislative controls on what can be done or prohibited in parks, but permits the Commissioner to prescribe development restrictions and a management philosophy.

The **Wildlife Act** is the most comprehensive legislation in the Yukon dealing with land and natural resources. In addition to controlling hunting, it

contains prohibitions against the destruction of or damage to habitat in a protected habitat area. It sets out some wildlife protection rules, backed up by detailed provisions for the enforcement of the legislation and seizure provisions. Further to the specific provisions, wide regulatory powers are granted to the Commissioner, including (in s.179) the power to designate protected habitat areas and (in s. 184 and s.185) to protect "specially protected" wildlife or endangered species.

This Act is more elaborate than other Yukon legislation, because it sets out in the statute a number of detailed rules and regulations, while retaining flexibility in the form of wide regulatory powers which are granted to the Commissioner.

## Appendix C

## List of Comparative Legislation References

## ALBERTA STATUTES

Public Lands Act
Planning Act
Municipal Government Act
Historic Resources Act
Land Title Act
Condominium Property Act
County Act
Improvement District Act
Clean Air Act
Clean Water Act
Land Surface Conservation and Reclamation Act
Surface Rights Act
* Airport Vicinity Protection Area Regulations
* Subdivision Regulations
Local Authorities Board
* Revised Guidelines for Regional Plan Preparation and Preview

* Regulations not Statutes.

## BRITISH COLUMBIA STATUTES

Agricultural Land Commission Act, R.S.B.C., 1979, c.9
Forest Act, R.S.R.C., 1979, c. 140
Environment and Land Use Act, R.S.B.C., 1979, c. 110
Interpretation Act, R.S.B.C. 1979, c. 106
Land Act, R.S.B.C., 1979, c. 214
Municipal Act, R.S.B.C., 1979, c. 290
Waste Management Act, S.B.C., 1982, c. 41

## SASKATCHEWAN STATUTES

Northern Affairs Secretariat Act
Northern Municipalities Act
Planning and Development Act

## MANITOBA STATUTES

Planning Act, R.S.M., 1970, c. P80
Municipal Act, R.S.M., 1970, c. 100

## ONTARIO STATUTES

Planning Act, 1983, c. 1
Municipal Act
Condominium Act
Registry Act
Land Titles Act
Mining Act, R.S.O. 1980
Environmental Protection Act, R.S.O. 1980
Environmental Assessment Act, R.S.O. 1980

## ALASKA STATUTES

Lands Act (s.38.05, Title P-38)
Forests Act (s.41.15, Title 41)
Forest Resources and Practices Act (S.41.17, Title 41)
"Management of State parks", (s.31.21, Title 41)
Historic Preservation Act (s.41.35, Title 41)
Environmental Conservation Act (Title 46.03)

# Appendix D

## Evaluation of the four Framework Options

## APPENDIX D

Evaluation of each of the four framework options against the operational principles and key issues.

### A. EVALUATION OF OPTION 1 — STATUS QUO: INWARD LOOKING AD HOC SEMI-SECTORAL LEGISLATION WITH REFERRAL SYSTEM WITH NO LEGISLATIVE BASE

#### 1. Operational principles

a) **Practical and efficient**

- ► Relatively impractical. Goals and objectives not always stated, especially in the case of resource sectors. Therefore, no clear legislative mandate.

b) **Fair**

- ► Excepting urban areas few structured opportunities for effective parties to be heard.

c) **Comprehensive**

- ► Can permit consideration of resource and land uses but not required.

d) **Adaptable to change**

- ► Easy to add additional individual sectoral legislation.

e) **Integrative**

- ► No requirement to integrate and in the case of resource sectors almost inhibits integration.
- ► No requirement for planning of resource sectors, therefore no allocation process.

f) **Accountable**

- ► Ground rules not all clearly laid out.
- ► Legislation may or may not permit delegated powers.

- ► Does not ensure conformity and consistency as legislative approach varies across organized and unorganized areas, as well as within resource sectors.

g) **Enforceable**

- ► Few provisions to make planning binding.
- ► Unorganized areas have variable regulations, therefore complex in enforcement.

2. **Relevant issues**

h) **Native land claims**

- ► No particular provision for Development Assessment Process comparable to that in Native Land Claims Sub-Agreement.

i) **Federal devolution of powers and land**

- ► Individual acts do not co-relate to federally-devolved powers.
- ► No provisions clearly made to safeguard federal tenure options.

j) **Resource management**

- ► No requirement for resource sector plans. No provision for integrated resource management.

k) **Planning outside of organized areas**

- ► Permits non-statutory plans in unorganized settlements with clearly-stated objectives.
- ► No provisions for planning in unorganized rural areas.

l) **Environmental impact**

- ► Urban areas have considerable environmental controls.
- ► Unorganized and rural areas can really have discretionary environmental controls variable by title and sector.

m) **Land disposition**

- ► Limitations for property rights and signed tenures for municipalities and unorganized settlements.

- Limited mix of tenures available for each resource sector and few options in unorganized rural areas.

## B. EVALUATION OF OPTION 2 — SECTORAL ACTS COORDINATED BY DEVELOPMENT APPROVAL PROCESS: AD HOC SECTORAL LEGISLATION WITH SOPHISTICATED INTEGRATIVE ASSESSMENT PROCESS FOR SIGNIFICANT USE OF RESOURCES

### 1. Operational principles

#### a) Practical and efficient

- Offers a clear legislative mandate as objectives all stated.
- Extensive, but guided discretion resource sectors and for municipalities and unorganized settlements; infinite discretion in rural areas.

#### b) Fair

- Structured opportunities for parties to be heard, whether in municipalities, rural, unorganized areas or resource sectors.
- No obvious provision for appeals.

#### c) Comprehensive

- Planning required for municipality and resource sectors and provided for in unorganized areas. Both resources and land uses can be considered.

#### d) Adaptable to change

- Individual acts may be legislated for new resource and land needs.

#### e) Integrative

- Planning provisions allow for resource and land allocation.
- Integration permitted, but not required in all human settlement circumstances.
- Substantial integration within a resource sector.
- Integration wherever Development Assessment Process (DAP) required.

f) Accountable

- Integrative assessment process introduces element of consistency.

g) Enforceable

- Little obvious provision for monitoring enforcement procedures, but possible.

2. Relevant issues

h) Native land claims

- Makes provision for Development Assessment Process acting similar to that in the Native Land Claims Sub-Agreement.

- Requires considerable consultation procedures.

i) Federal devolution of powers and land

- Provision for individual sectoral acts to respond to powers devolved by federal government.

- Generally controls right to use resources. DAP may replace or supplement federal environmental procedures.

j) Resource management

- Requires sectoral plans for resource sectors. DAP forces integration for significant resource uses.

- Sectoral plans required to consider other sectors, but not to integrate sectors.

k) Planning outside of organized areas

- Provisions for plans that are binding on the unorganized settlement in rural areas.

- Also requirement for sectoral plans for resource sectors.

l) Environmental impact

- Considerable environmental controls in human settlement areas, including municipalities.

- Moderate environmental controls in unorganized rural areas.

- ► Legislative provisions for environmental controls for each sector.

- ► Supported by an Environmental Protection Act with checks and balances.

m) **Land disposition**

- ► In all human settlement areas, private owners and governments are subject to regulations, with many tenures provided.

- ► Variable resource tenders are available. Requirement for a tenure for any significant use of resource.

## C. OPTION 3 — OMNIBUS LEGISLATION FOCUSING ON RESOURCES ONLY: SINGLE WINDOW LAND AND RESOURCE MANAGEMENT LEGISLATION WITH NO SIGNIFICANT DISTURBANCE OF LANDS AND MINERALS PERMITTED, EXCEPT THROUGH SOPHISTICATED INTEGRATED ASSESSMENT PROCESS

### 1. Operational principles

a) **Practical and efficient**

- ► Cost-effective, as focused on one act.

- ► Clear legislative mandates as objectives stated.

- ► Extensive, but contained discretionary power guidelines for municipalities and unorganized settlements and for resources subject to DAP.

- ► Easy to use by general public as single act manages resource application processes.

b) **Fair**

- ► Considerable consultation for municipal, district and regional plans; consultation required for integrated regional resources sectoral plans and for permits under DAP.

- ► No obvious provision for appeals.

c) **Comprehensive**

- ► Provision for regional integrated plans backed by sectoral plans.

- ► Plans not binding, but requirements to consider plans.

d) **Adaptable to change**

- Through use of sectoral chapters, single act can consider new resource and land needs.

e) **Integrative**

- Considerable planning provision to allow for resource allocation.

f) **Accountable**

- Responsibilities defined for resource sectoral powers in omnibus act.

- Basis of delegated powers cited.

g) **Enforceable**

- Legislative provisions for environmental controls.

- Departmental consultation required.

2. **Relevant issues**

h) **Native land claims**

- Integrated assessment process may be similar to or more extensive than that required by Native Land Claims Sub-agreement.

- Requirements for consideration of lands by other organizations and agencies.

i) **Federal devolution of powers and lands**

- Not as easy to re-title a federal act as a territorial act.

- Opportunity with omnibus act to address any devolution requirement.

j) **Resource management**

- Provides for both regional integrated plans, as well as sectoral resource plans.

- Departments required to be consulted for approval.

k) **Planning outside of organized areas**

- Planning is a required activity in development areas and becomes binding when prepared.
- Provisions for planning elsewhere in rural areas and for resource sectors.

l) **Environmental impact**

- Considerable environmental controls in municipalities and unorganized settlements.
- Some controls in organized rural areas and general provisions for resource sectors.
- Integrated assessment process required for any significant disturbance of land and minerals.

m) **Land disposition**

- A variety of tenures available in human settlement and rural areas.
- Regulates every resource sector offering specific rights to use.
- Tenures variable by resource, as well as hierarchy of tenures.

## D. OPTION 4 — OMNIBUS LEGISLATION ADDRESSING RESOURCES IN HUMAN SETTLEMENT: SINGLE WINDOW LAND AND RESOURCE MANAGEMENT LEGISLATION WITH NO SIGNIFICANT RESOURCE DISTURBANCE OR HUMAN SETTLEMENT ACTIVITIES PERMITTED, EXCEPT THROUGH SOPHISTICATED INTEGRATED ASSESSMENT PROCESS

### 1. Operational principles

a) **Practical and efficient**

- Cost-effective as a single act for all land and resource sector management.
- Overall, settlement, rural and resource sectoral objectives stated. Results in clear legislative mandate.

- Extensive, but contained guidelines for discretionary powers for municipalities, unorganized settlements and resource sectors; moderate elsewhere.
- Single act provides single route for applicants for land or resources.

b) Fair

- Considerable consultation required for municipal, district and regional plans.
- Consultation required for integrated management and sectoral plans.
- In addition, consultation required for Development Assessment Process for human settlement or resources.
- No obvious provision for appeals.

c) Comprehensive

- Sectoral plans required and integrated management plans required in designated areas. All of these plans binding.

d) Adaptable to change

- Ability to adapt sectoral/settlement chapters in response to new resource and land needs.

e) Integrative

- Considerable planning, either required or provided for at all levels. Ample opportunity for resource allocation.
- Specifically requires integration of significant resource uses with each other and within a sector.
- Single act encourages of conformity and consistency.

f) Accountable

- Responsibilities defined for both human settlement and resource sectoral powers in omnibus act.
- Basis of delegated power cited.

g) Enforceable

- Plans where provided are binding and hence, a statutory provision.

- Considerable requirements for integration.

- No obvious feedback mechanisms, except through Development Assessment Process.

2. **Relevant issues**

h) **Native land claims**

- More extensive Development Assessment Process which includes human settlement issues and provides framework for a system in the Native Land Claim Agreement.

i) **Federal devolution of powers and land**

- Specific chapters can be used to address particular powers as they devolve.

- Act can be readily amended to accommodate new chapters or sub-chapter headings.

- Rights to use resources and hence, lands, constrained in ways compatible with improvements upon existing federal legislation.

j) **Resource management**

- Requirement for sectoral resource plans.

- Also requirement for integrative resource management plans in designated areas.

- Further requirement for integration of significant resource uses with each other and with significant land use activities.

k) **Planning outside of organized areas**

- Requirement for plans in unorganized settlement areas, for sectoral plans and for integrated management plans in designated areas.

- Provision for plans in unorganized rural areas.

- Potential for a full hierarchy of plans: regional, district, development/unorganized areas, municipalities, as well as sectoral resources.

- Where plans are developed, they become binding.

l) **Environmental impact**

- Development Assessment Process required for both resources and human settlements with significant impacts.
- Considerable environmental controls in municipalities and unorganized settlements.
- General legislative provisions for environmental controls, varying by sector with some provision in unorganized rural areas.

m) **Land disposition**

- Hierarchy of tenures for all sectoral uses, varying by significance and resource type.
- Variety of private and public land tenure options in all types of settlement areas.

# Appendix E

## Excerpts from the British Columbia Land Title Act

## R.S.B.C. 1979, c. 219

## APPENDIX E

## EXCERPTS FROM THE BRITISH COLUMBIA LAND TITLE ACT, R.S.B.C. 1979, C.219

**DIVISION (4)** - Statutory Rights of Way, Miscellaneous Covenants and Easements

**Statutory right of way**

**214.** (I) A person may and shall be deemed always to have been able to create, by grant or otherwise in favour of

(a) the Crown or a Crown corporation or agency:

(b) a municipality, regional district, improvement district, water users' community, public utility, a pulp or timber, mining, railway or smelting corporation, or a corporation authorized to transport oil or gas, or both oil and gas, or solids, as defined in the Pipleline Act; or

(c) any other person designated by the Minister of Lands, Parks and Housing on terms and conditions he thinks proper,

an easement, without a dominant tenement, to be known as a statutory right of way for any purpose necessary for the operation and maintenance of the grantee's undertaking, including a right to flood.

(2) To the extent necessary to give effect to subsection (1), the rule requiring an easement to have a dominant and servient tenement is abrogated.

(3) Registration of an instrument granting or otherwise creating a statutory right of way

(a) constitutes a charge on the land in favour of the grantee; and

(b) confers on the grantee the right to use the land charged in accordance with the terms of the instrument, and the terms, conditions and covenants expressed in the instrument are binding on and inure to the benefit of the grantor and grantee and their successors in title, unless a contrary intention appears.

(4) No person who executes an instrument in which a statutory right of way is created is liable for a breach of a covenant in the instrument occurring after he has ceased to be the owner of the land.

(5) This section is retroactive in its application and applies to all statutory rights of way, whenever created.

(6) A recital in a grant or reservation of a statutory right of way that it "is necessary for the operation and maintenance of the grantee's undertaking", or a statement to that effect in the application to register the statutory right of way, is sufficient proof to the registrar of that fact.

(1978-25-214; 1979-20-14.)

**Registration of covenant as to use and alienation**

**215.** (1) A covenant, whether of a negative or positive nature,

(a) in respect of
(i) the use of the land; or
(ii) the use of a building on or to be erected on land;

(b) that land is or is not to be built on;

(c) that land is not to be subdivided, or if subdivision is permitted by the covenant, is not to be subdivided except in accordance with the covenant; or

(d) that several parcels of land designated in the covenant and registered under one or more indefeasible titles are not to be sold or transferred separately,

in favour of the Crown or a Crown corporation or agency or of a municipality or a regional district, in this section referred to as the "covenantee", may be registered as a charge against the title to that land and is enforceable against the covenantor and his successors in title, even if the covenant is not annexed to land owned by the covenantee.

(2) A covenant registrable under subsection (1) may include, as an integral part,

(a) an indemnity of the covenantee against any matter agreed to by the covenantor and covenantee and provision for the just and equitable apportionment of the obligations under the covenant as between the owners of the land affected; and

(b) a rent charge charging the land affected and payable by the covenantor and his successors in title.

(3) Where an instrument contains a covenant registrable under this section, the covenant is binding on the covenantee and his successors in title, notwithstanding that the instrument or other disposition has not been signed by the covenantee.

(4) No person who enters into a covenant under this section is liable for a breach of the covenant occurring after he has ceased to be the owner of the land.

(5) A charge registered under subsection (1) may be

(a) modified by the holder of the charge and the owner of the land charged; or

(b) discharged by the holder of the charge

by agreement or instrument in writing the execution of which is proved in accordance with this Act.

(6) The registration of a covenant under subsection (1) is not a determination by the registrar of its enforceability.

(1978-25-215; 1982-60-58, proclaimed effective August 1, 1983.)

**Requirements of registrable restricitve covenant**

**217.** (1) The registrar shall not register a restrictive covenant unless

(a) the obligation that the covenant purports to create is, in his opinion, negative or restrictive;

(b) the land to which the benefit of the covenant is annexed and the land subject to the burden of the covenant are both satisfactorily described in the instrument creating the covenant; and

(c) the title to the land affected is registered under this Act.

(2) The registration of a restrictive covenant is not a determination by the registrar of its essential nature or enforceability.

(1978-25-217)

**Discriminating covenants void**

**218.** (1) A covenant that, directly or indirectly, restricts the sale, ownership, occupation or use of land on account of the sex, race, creed, colour, nationality, ancestry or place of origin of a person, however created, whether before or after the coming into force of this section, is void and of no effect.

(2) The registrar, on application, may cancel a covenant referred to in subsection (1) that was registered before the coming into force of this section.

(3) Where the registrar has notice that a registered restrictive covenant is void under this section, he may, on his own initiative, cancel the covenant.

(1978-25-218; 1985-68-61, effective December 13, 1985 (B.C. Reg. 392/85))

**Subdivision of dominant tenement**

**219.** (1) Where a dominant tenement is subdivided in whole or in part, on the deposit of a plan of subdivision

(a) the benefit of a registered appurtenant easement is annexed to each of the new parcels shown on the plan;

(b) the burden of the easement is increased accordingly, notwithstanding that the owner of the servient tenement has not consented to the increase; and

(c) the easement continues to be annexed to the remainder, if any, of the dominant tenement,

unless the instrument creating the easement expressly provides otherwise, or the subdivider designates on the plan the parcel or a part of the land to which the benefit does not attach.

(2) A designation under subsection (1) witnessed in accordance with this Act is sufficient authority for the registrar to give effect to it and to make the necessary endorsements in the records.

(3) Subsection (1) (b) applies only to easements registered after this Act comes into force.

(1978-25-219)

# Appendix F

## Bibliography and Contacts

## APPENDIX F

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