

ARTICLE 12

ENTRY AND ACCESS

PART 12.1: GENERAL

- 12.1.1 Except as otherwise provided for in this Agreement, a person other than a Nunavik Inuk may not enter, cross or remain on Nunavik Inuit Lands without the consent of the MDO.
- 12.1.2 For greater certainty, a Nunavik Inuk and Nunavik Inuit may enter, cross or remain on Nunavik Inuit Lands at any time.

PART 12.2: PUBLIC ACCESS

- 12.2.1 The public has a right of access to a 100 foot (approximately 30.5 metre) strip of Nunavik Inuit Lands bounding the sea coast, navigable rivers and navigable lakes that can be entered from the said rivers. The said strip shall be measured from the ordinary high water mark of the sea coast and the said navigable rivers, lakes and water bodies. The right of access includes access to the foreshore adjacent to the said strip.
- 12.2.2 No person exercising the right of access referred to in section 12.2.1 shall establish camps or structures other than for merely casual or temporary purposes, engage in any development activity or harvest on the said strip.
- 12.2.3 Where the MDO requires exclusive possession, the right of access referred to in section 12.2.1 and the right to cross Nunavik Inuit Lands referred to in section 12.2.6 may be removed with the agreement of the MDO and Government.
- 12.2.4 A member of the public may enter and remain on Nunavik Inuit Lands for emergency purposes.
- 12.2.5 A member of Parliament, the Legislative Assembly, or any municipal council or regional government, or a candidate for election to any of such bodies, or a person accompanying and assisting any such member or candidate, may enter on Nunavik Inuit Lands for the purpose of campaigning for an official election.
- 12.2.6 Members of the public may cross Nunavik Inuit Lands for the purpose of personal or casual travel, such as to go to or from their place of work or to or from a place of recreation. Whenever possible, crossings shall take place on routes designated by the MDO. The right to cross shall include the right to make any necessary stops.

- 12.2.7 With the consent of the MDO, persons conducting research for any purposes other than those referred to in section 12.3.6 shall have a right of access to Nunavik Inuit Lands in accordance with terms and conditions imposed by the MDO, other than the payment of fees.
- 12.2.8 The rights of access to Nunavik Inuit Lands set out in Part 12.2 is subject to the conditions that there be:
- (a) no significant damage caused whether by way of physical alteration to the land or otherwise;
 - (b) no mischief committed; and
 - (c) no significant interference with Nunavik Inuit use and quiet enjoyment of such lands.
- 12.2.9 Persons exercising rights under Part 12.2 shall be:
- (a) liable for damages caused to the lands; and
 - (b) deemed to be trespassers and may be removed from the land, if they fail to comply with the conditions of Part 12.2.
- 12.2.10 The rights of access to Nunavik Inuit Lands under Part 12.2 are not subject to the payment of any fee, or any term or condition, except as provided in Part 12.2.

PART 12.3: GOVERNMENT ACCESS

- 12.3.1 Agents, employees and contractors of Government, members of the Canadian Forces and peace officers shall have the right, in accordance with these provisions, to enter, to cross and to remain on Nunavik Inuit Lands to carry out legitimate government purposes relating to the lawful delivery and management of their programs and to carry out duties in accordance with the law of Canada.
- 12.3.2 Except for where agents, employees and contractors of Government need access to Nunavik Inuit Lands for the purpose of wildlife management and research, or for the establishment of navigational aids pursuant to section 12.3.11, should Government, the Canadian Forces or the Royal Canadian Mounted Police require continuing use or occupancy of Nunavik Inuit Lands for more than eighteen (18) months, including use of unmanned facilities, the MDO may require Government to obtain an interest in the land.
- 12.3.3 Government shall be liable for damages caused to the lands by any person exercising rights pursuant to sections 12.3.1 and 12.3.11.

- 12.3.4 In a case where more than insignificant damage may be caused to the land, or where there may be more than insignificant interference with Nunavik Inuit use and quiet enjoyment of the land, Government shall consult the MDO and seek its agreement regarding the terms and conditions for exercising government access under section 12.3.1 or 12.3.11. Where agreement cannot be achieved, the matter shall be referred to arbitration as set out in Article 24. The activities of peace officers, federal investigators and law enforcement officers carrying out duties under the law of Canada shall not be subject to this section.
- 12.3.5 Without limiting the generality of section 12.3.4, terms and conditions required under that section for exercising government access shall ensure that:
- (a) environmental protection measures are consistent with the provisions of this Agreement;
 - (b) information is provided; and
 - (c) location, time and duration of access is addressed.
- 12.3.6 Government agents, employees and contractors exercising access pursuant to section 12.3.1 for the purposes of wildlife management and wildlife research shall be subject to the approval of the NMRWB subsequent to consultation with the RNUK.
- 12.3.7 In the event that any person exercising access under section 12.3.1 or 12.3.11 causes damage to Nunavik Inuit Lands, and Government and the MDO are unable to agree on compensation for damages, the matter shall be referred to arbitration as set out in Article 24 for the determination of liability and fixing of appropriate compensation.
- 12.3.8 The Department of National Defence (DND) shall have no greater rights to conduct military manoeuvres, including exercises and movements, on Nunavik Inuit Lands than it has with respect to other non-public lands under generally applicable legislation. For greater certainty, this section shall prevail over sections 12.3.9 and 12.3.10.
- 12.3.9 The Minister of National Defence may authorize access to Nunavik Inuit Lands for the execution of manoeuvres by the Canadian Forces pursuant to s. 257 of the *National Defence Act* and with the exception of section 12.3.8 nothing in these provisions applies to or affects such access authorized by the Minister of National Defence.
- 12.3.10 Other than access for those manoeuvrers referred to in section 12.3.9, access and across Nunavik Inuit Lands for each manoeuvrer shall only occur after the negotiation and conclusion of an agreement with the MDO respecting contact persons, consultation mechanisms and timing thereof and compensation for damages, which agreement may be amended from time to time. Land use fees shall not be charged.

- 12.3.11 Subject to sections 12.3.3, 12.3.4, 12.3.5, and 12.3.7, Government may maintain and establish navigational aids on Nunavik Inuit Lands. Navigation aids shall be the property of Government and may not be interfered with by any person while such aids are on Nunavik Inuit Lands and water on Nunavik Inuit Lands.
- 12.3.12 The rights of access to Nunavik Inuit Lands under Part 12.3, except under section 12.3.2 are not subject to the payment of any fee, or any term or condition except as provided in Part 12.3.

PART 12.4: EXPROPRIATION

- 12.4.1 Any person or authorized representative of any person, who has power of expropriation under federal or territorial legislation (expropriating authority), may exercise that power of expropriation in accordance with laws of general application as qualified by this Agreement.
- 12.4.2 Nothing in Part 12.4 shall be construed to give the Government of Nunavut more extensive powers of expropriation than are given to the legislatures of the Provinces.
- 12.4.3 An expropriation shall be approved by a specific order of the Governor-in-Council.
- 12.4.4 Any expropriation legislation coming into force after the effective date of this Agreement shall, insofar as it applies to Nunavik Inuit Lands, provide for the following minimum procedures:
- (a) notice of intention to expropriate served on the MDO;
 - (b) an opportunity for the MDO to object to the expropriation on the basis that the expropriating authority has not complied with the expropriation legislation, and an opportunity to be heard on that objection; and
 - (c) the determination of compensation by negotiation and mediation and, failing that, by reference to arbitration or the committee referred to in section 12.4.8.
- 12.4.5 Where an interest in Nunavik Inuit Lands is expropriated, the expropriating authority shall, if reasonably possible, offer compensation in the form of alternate lands, in accordance with the purposes and principles of Nunavik Inuit Lands set out in Articles 9 and 10, or in combination of lands and money.

- 12.4.6 Where the expropriating authority acquires an estate in fee simple, those lands shall no longer be Nunavik Inuit Lands. Lands provided as compensation for expropriation shall be Nunavik Inuit Lands. Where lands which have been expropriated are no longer required, the MDO shall have an option for six (6) months following such a determination to re-acquire those lands as Nunavik Inuit Lands. If the parties are unable to agree on a price, the matter shall be referred to the arbitrators or the committee referred to in section 12.4.8.
- 12.4.7 The MDO shall not be required to take compensation in the form of alternate lands.
- 12.4.8 Where the MDO and the expropriating authority disagree on compensation, and mediation, if provided for, fails, the final determination of any compensation payable shall be:
- (a) pursuant to arbitration as set out in Article 24, other than for expropriation under the *National Energy Board Act*; or
 - (b) for expropriation under the *National Energy Board Act*, by an arbitration committee appointed under the Act that shall include at least one (1) nominee of the MDO. The Minister in establishing the arbitration committee shall choose members who have special knowledge of, and experience related to, the criteria set out in section 12.4.9.
- 12.4.9 In determining the amount of compensation payable to the MDO, the arbitrators or the committee shall be guided by:
- (a) the market value of the land;
 - (b) loss of use to the MDO and Nunavik Inuit;
 - (c) the effect on wildlife harvesting by Nunavik Inuit;
 - (d) the adverse effect of the taking, upon lands retained by the MDO;
 - (e) damage which may be caused to the land taken;
 - (f) nuisance, inconvenience and noise to the MDO and Nunavik Inuit;
 - (g) the cultural attachment of Nunavik Inuit to the land;
 - (h) the peculiar and special value of the land to Nunavik Inuit;
 - (i) the effect on rights and benefits otherwise provided Nunavik Inuit by this Agreement;

- (j) an amount to cover reasonable costs associated with the MDO inspections as deemed appropriate by the arbitrators or the committee;
 - (k) an amount to cover reasonable costs to the MDO associated with the arbitration; and
 - (l) any other factors as may be provided for in legislation.
- 12.4.10 Where an expropriating authority would have a power of expropriation of Nunavik Inuit Lands, or an interest therein under 12.4.1, that power may not be executed if 12% of all Nunavik Inuit Lands vesting on the effective date of this Agreement or an interest therein has already been and remains expropriated.
- 12.4.11 In calculating the areas expropriated in section 12.4.10, no account shall be taken of those situations in which the MDO accepted alternative lands pursuant to section 12.4.6.
- 12.4.12 Where Government has a right under section 12.4.1, as qualified by this Article to expropriate Nunavik Inuit Lands which it requires for public transportation purposes, Government need not pay compensation, except for improvements, for the lands taken up to an amount not exceeding two percent (2%) of Nunavik Inuit Lands in the NMR. Where lands taken under this section are no longer required for the purpose for which they were taken, they shall revert to the MDO at no cost.
- 12.4.13 In calculating the areas expropriated under section 12.4.10, lands taken pursuant to section 12.4.12 shall be taken into account.

PART 12.5: SAND AND GRAVEL

- 12.5.1 Notwithstanding anything in this Agreement, if Government requires sand and gravel and other like construction materials from Nunavik Inuit Lands for public purposes but the MDO refuses to permit Government to take the said materials, Government may refer the matter to arbitration as set out in Article 24 of this Agreement for the purposes of obtaining an entry order enabling the removal of such material.
- 12.5.2 The arbitrators shall grant an entry order if, and only if, they determine that:
- (a) the materials are required for public purposes and no alternative supply is reasonably available; and
 - (b) no competing Nunavik Inuit need for those materials in that location then exists and no alternative supply for that need is reasonably available.

- 12.5.3 If an entry order is granted, Government shall pay the MDO for the materials removed, the greater of:
- (a) \$1.00 (1993\$) per cubic metre, valued on the effective date of this Agreement and indexed by the Final Domestic Demand Implicit Price Index; or
 - (b) the royalty rate imposed by the Crown, as amended from time to time, on the extraction of such materials from Crown lands.
- 12.5.4 The arbitrators shall determine the terms and conditions for access and compensation for access, and such compensation shall be determined in accordance with section 12.4.9. The calculation of compensation shall not take into account any amount mentioned in section 12.5.3, or the payment of any entry fee required by legislation.
- 12.5.5 An entry order shall include terms and conditions to minimize the damage and interference with Nunavik Inuit use, and shall also provide that Government rehabilitate the site.

PART 12.6: APPLICATION AND SAVING

- 12.6.1 For greater certainty, any person exercising access rights referred to under this Article, except rights referred to under Part 12.2 and sections 12.3.8 to 2.3.10, shall acquire appropriate authorizations where required, including under Article 7 of this Agreement and Article 13 of the NLCA prior to the exercise of those rights.
- 12.6.2 Persons exercising rights under this Article have no right of action against the MDO for alleged loss or damage arising from the exercise of those rights.
- 12.6.3 For greater certainty, a Nunavik Inuk may be the holder of a third party interest.

