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Comité consultatif de l'environnement Kativik
Kativik Environmental Advisory Committee

Position Paper concerning Bill 43, *Mining Act*

September 27, 2013

The Kativik Environmental Advisory Committee (KEAC) was created pursuant to Section 23 of the *James Bay and Northern Québec Agreement* (JBNQA). The KEAC is a consultative body to responsible governments in matters relating to environmental and social protection in Nunavik. For this purpose, it is the preferential and official forum for the governments of Canada and Québec, the Kativik Regional Government (KRG) and the northern villages.

Mining development is a major issue for Inuit living in the 14 communities of Nunavik. Nunavik covers 36% of Québec or approximately 500,000 km^2. Currently, there are more than 60,000 mining claims, one active mining project, six proposed projects at advance stages and a multitude of mineral exploration activities in this region. Concerned about the potential major impacts of this type of development on the natural and social environments, the KEAC reviewed Bill 43, *Mining Act*, and has shared its comments and concerns below.

Overall, several amendments proposed to the existing *Mining Act* represent improvements on the last attempt at legislative reform. The KEAC concurs with the amendments proposed to respond to local community concerns, stricter requirements regarding transparency as well as the consultation of Native communities and the public, and new land use planning mechanisms. These elements contribute to the improved planning of development activities in the region and promote sustainable development. Notwithstanding, the KEAC considers that changes should be made to Bill 43 so that Québec mining legislation more fully integrates the principles of sustainable development and those elements of the JBNQA applicable to mining activities in Nunavik.

General Comments on Mining Development

The KEAC would like to take advantage of this new revision of Québec mining legislation to recall that, pursuant to the JBNQA, specific rules apply to mining operation and mineral exploration activities in Nunavik, and that the provisions of the JBNQA are guaranteed and protected under section 35 of the *Constitution Act, 1982*. In this respect, the KEAC wants to recognize as important that Bill 43 does not modify section 341 of the existing *Mining Act*, which refers to the specific characteristics of the territory covered under the JBNQA as follows: "This Act applies subject to the *Act respecting the Land Regime in the James Bay and New Québec Territories* (chapter R-13.1), the *Act approving the Agreement concerning James Bay and Northern Québec* (chapter C-67) and the *Act approving the Northeastern Québec Agreement* (chapter C-67.1)."

Notwithstanding, the KEAC considers that adjustments to Bill 43 would be appropriate in order to introduce references to the specific provisions contained in the JBNQA so as to clarify the applicable rules, to improve the legal position of Inuit living in Nunavik, and to preclude legal disputes. By way of example, Ontario mining legislation stipulates specific rules for mining operations in Native areas[1]. Given the scale of current and expected future mining development north of the 55th parallel and its impact on the natural and social environments, the KEAC considers it extremely pertinent to stipulate clearly the specific rules applicable in the region.

The KEAC would also like to reiterate its previous recommendations regarding mining activities in Nunavik, which continue to be relevant for the purposes of the current legislative revision.

In its 2007 *Position Paper concerning Current and Future Transportation Infrastructure Development in Nunavik*[2], the KEAC noted that both section 188 of the *Environment Quality Act* and Schedule A provide for the application of the environmental and social impact assessment and review procedure for "all mining developments" and the roads necessary for these projects. These activities represent development or development projects under the JBNQA and are automatically subject to the procedure. With regard to mining activities, the JBNQA provides an exemption only for "air and ground reconnaissance, survey, mapping and core sampling by drilling" (JBNQA, Section 23, Schedule 1). No exemption exists for the construction of access roads for either mineral exploration or mining operations north of the 55th parallel.

In September 2009, the KEAC transmitted to the Ministère des Ressources naturelles et de la Faune (natural resources and wildlife, MRNF) its comments on the Québec Mineral

[1] *Mining Act*, R.S.O., c. M.14. Refer in particular to sections 51(4) (a) regarding the exemption of Aboriginal territories from mining activity as well as 78.2(1) and 140(1) regarding Aboriginal consultation.
[2] KEAC, *Position Paper concerning Current and Future Transportation Infrastructure Development in Nunavik*, October 2007, Online: http://www.keac-ccek.ca/documents/memoires-avis/Avis-Routes-2007-e.pdf.

Strategy[3]. In particular, the KEAC recommended strengthening the good practices among mining companies with activities in Nunavik, to prohibit mining activities near the boundaries of protected areas, to stop the multiplication of road, marine and air infrastructure by mining companies, and to involve local organizations in natural resource development in the region.

It should moreover be pointed out that the *Partnership Agreement on Economic and Community Development in Nunavik* (Sanarrutik), signed on April 9, 2002, by the Québec government, the KRG and the Makivik Corporation, reiterates under section 2.3 that "[a]s contemplated in Schedule 1 of Section 23 of the JBNQA, mining development on the Nunavik territory will be subject to the applicable environmental and social protection regimes." The KEAC wants to stress this provision, which is the reaffirmation of an existing right.

Finally, in its 2005 *Position Paper on the Québec Sustainable Development Plan*[4], the KEAC reiterated a recommendation regarding the adoption of regulatory standards to govern the use of heavy equipment on the tundra, in particular by mining companies.

Specific Comments on Bill 43

During its review of Bill 43, the KEAC focused on sustainable development and the rules applicable in Nunavik pursuant to the JBNQA. The specific comments refer to the title and the recitals of the bill, as well as many sections (3, 16, 49, 74, 81, 82, 86, 102, 104, 123, 163, 182, 189, 198, 208, 229, 250, 251 to 253 and 267 to 277). The goal of the comments is to enhance the bill by introducing more references to the rules applicable under the JBNQA and by integrating the objectives and principles of sustainable development.

Title

The KEAC questioned the absence of a reference to sustainable development in the title of Bill 43, as was the case under the earlier Bill 14, *Act respecting the Development of Mineral Resources in keeping with the Principles of Sustainable Development*.

The *Sustainable Development Act*[5] was adopted unanimously in 2006 and establishes "a new management framework within the Administration to ensure that powers and responsibilities are exercised in the pursuit of sustainable development" (section 1). To ensure consistency in the commitments of the State regarding sustainable development, Bill 43 should take into account the 16 principles set out therein and ensure "compliance

[3] KEAC, Recommendations on the Québec Mineral Strategy addressed to Nathalie Normandeau, Minister of Natural Resources and Wildlife, September 6, 2009.
[4] KEAC, *Position Paper on the Québec Sustainable Development Plan*, February 2005, p. 11. Online: http://www.keac-ccek.ca/documents/memoires-avis/avis-developpement-durable_en.pdf, consulted on August 9, 2013.
[5] R.S.Q., c. D-8.1.1.

with the [Sustainable Development Strategy] and the principles on which it is based" (section 15, second paragraph). This orientation in Québec mining legislation should be reflected in the title and contents of Bill 43.

Recitals

As was the case for Bill 14, Bill 43 proposes some new recitals for the introduction to the new *Mining Act*. The KEAC noted that the current bill has improved the recitals by removing the third recital of the earlier bill, which promoted a mining culture.

Notwithstanding, the KEAC is disappointed that none of the recitals makes reference to the *Sustainable Development Act* and its principles. As well, the wording of the third recital is unfortunate, i.e. "it is necessary to promote the optimal use of mineral resources so as to generate as much wealth as possible for the people of Québec". This statement does not fit well with the objective and principles of the *Sustainable Development Act* which focuses more on the principle of "economic efficiency", defined as "the economy of Québec and its regions must be effective, geared toward innovation and economic prosperity that is conducive to social progress and respectful of the environment" (section 6, subsection *(d)*). Given the need to be consistent regarding sustainable development, the KEAC recommends that the terms "optimal" and "as much wealth as possible" be replaced with "sustainable" and "economic prosperity that is conducive to social progress and respectful of the environment". With these changes, the third recital appears to comply more accurately with the principle of intergenerational equity with regards to mineral resource development.

Section 3 – Obligation to consult

The KEAC welcomes the codification of the obligation to consult Native communities, based on section 35 of the *Constitution Act, 1982*, in the new section 3 which stipulates that the Act "must be construed in a manner consistent with the obligation to consult Native communities. The Minister must consult Native communities separately, having regard to all the circumstances". Notwithstanding, the KEAC considers that it would be desirable and compliant with the caselaw of the Supreme Court of Canada[6] to explicitly make reference to the rights arising from treaties such as the JBNQA. For example, the wording used by Ontario in its 2009 *Mining Act* reform is simpler: "The purpose of this Act is to encourage prospecting, staking and exploration for the development of mineral resources, in a manner consistent with the recognition and affirmation of existing Aboriginal and treaty rights in section 35 of the *Constitution Act, 1982*, including the duty to consult, and to minimize the impact of these activities on public health and safety and the environment" (section 2).

[6] Refer to: *Québec (Attorney General) v. Moses*, 2010 SSC 17.

Section 16 – Purpose

The KEAC supports the amendments proposed to the objectives of the *Mining Act*. Notwithstanding, in addition to the general terms in the new section 16, it considers that references to the principles of sustainable development are too few in number in Bill 43 and not explicit enough. For example, the KEAC was unable to locate in Bill 43 the legal regime for ensuring the objective of intergenerational equity referred to in the second paragraph of section 16 for mineral resource development. Given that mineral resources are non-renewable, the KEAC is particularly concerned that royalties be shared justly and equitably with future generations who will be deprived of the resources. The creation of a fund financed with royalties from development would support this objective.

Section 49 – Claims by Auction

The KEAC agrees that the government should be able to grant claims by auction. It would nonetheless like to stress that this mechanism, as is the case for all mining activities in Nunavik, should with a view to sustainable development be planned jointly with the communities, specifically regarding the identification of the territories to be designated for auction.

Section 74 – Notice concerning the registration and exploration of a claim

Section 74 of Bill 43 introduces new obligations for claim holders. Pursuant to this section, they will be required within 60 days after registering a claim to notify the owner of the surface rights and the local municipality. Whenever a claim is in the territory of a local municipality, the claim holder "must also inform the municipality of the work to be conducted, at least 90 days before the work is to begin". The KEAC welcomes these amendments to current mining legislation that are in line with upstream joint management with local communities and respect for other rights and uses in the territory.

Notwithstanding, section 74 should be revised in order to specify how it applies in Nunavik since the JBNQA rules applicable to mineral exploration and mining operations involve major differences. In this respect, the KEAC would like to recall that the KRG is a municipality under the *Act respecting Northern Villages and the Kativik Regional Government*[7] "for any part of the territory that is an unorganized territory", i.e. "all the territory of Québec located north of the fifty-fifth parallel, excluding the Category IA and IB lands intended for the Cree community of Great Whale River"[8].

Moreover, pursuant to the JBNQA, the title of category I lands were transferred to Inuit community corporations by the State for purposes other than mining[9]. According to Section 7 of the JBNQA "[a]ny future exploration or exploitation of minerals within

[7] R.S.Q., c. V-6.1, section 244.
[8] *Ibid.*, section 2 *(v)*.
[9] JBNQA, Section 7, paragraphs 7.1.3 and 7.1.7.

category I lands […] shall only be permitted with the consent of the Inuit community corporation holding the rights to the lands affected"[10].

In accordance with these specific rules, the KEAC recommends that section 74 be changed so as to specify that, north of the 55th parallel, it is not sufficient to notify the local municipality prior to undertaking mining activities in a northern village but, rather, the prior consent of the Inuit community corporation must be obtained and, outside of the northern villages, the notifications in question must be addressed to the KRG.

As well, the KEAC questions the adequacy of these notifications in the territory covered under the JBNQA in light of the recent decision by the Yukon Court of Appeal[11]. The Court ruled that the legal regime permitting free access to mineral resources in the Yukon, which is similar to the regime applicable in Québec with regards to the granting of claims, was unconstitutional because it does not comply with the Crown's obligation to consult.

Section 81 – Plan of exploration work

Bill 43 proposes that the plans of exploration work to be performed be submitted to the Minister. The KEAC understands that these documents will be made public in accordance with the transparency measures stipulated under section 163 of Bill 43. The KEAC nonetheless recommends that section 81 be improved to ensure that annual notifications and the plans of work concerning exploration activities to be performed on claims, including if applicable the permit applications for this work, be automatically transmitted to local municipalities and regional county municipalities, in particular the KRG, prior to the start of work, so that the municipalities have an opportunity to transmit any related observations.

Section 82 – Obligation to perform work

Pursuant to this section, claimholders are required to perform work of the nature and for the minimum cost determined by regulation. In order to promote the creation of parks and protected areas, the KEAC considers that a government department should not be required to perform such work or to pay the minimum amount for claims it holds for this purpose.

Section 86 – Amounts spent within a 3.5-km radius

Claimholders may concentrate or spread out amounts incurred to keep claims active within a 3.5-km radius. The KEAC considers that it should not be possible to attribute amounts spent to neighbouring claims when the areas covered by the neighbouring claims have been targeted for park or protected area creation.

[10] *Ibid*., paragraph 7.1.15 a).
[11] *Ross River Dena Council v Government of Yukon*, 2012 YKCA 14.

Section 102 – Mining lease application, operations and public consultation

Bill 43 proposes that no lease may be granted until the mining project has been subject to impact assessment and approved with a certification of authorization issued pursuant to sections 31.5, 164 or 201 of the *Environment Quality Act*. At the same time, Bill 43 would amend the *Regulation respecting Environmental Impact Assessment and Review* so that all projects for the construction and operation of ore processing plants, as well as the development and operation of mines are subject to the environmental impact assessment and review procedure established under section 31.1 of the *Environment Quality Act*, which is applicable only in southern Québec.

The KEAC agrees with legislators' intention to improve environmental impact prevention in mining legislation. The KEAC welcomes as very positive this major amendment that will serve to now subject all mining operation projects in southern Québec to environmental impact assessment and review procedures, compared with the current production threshold (more than 7000 metric tonnes daily). In the north, mining operation projects are automatically subject to environmental impact assessment and review procedures. The section, therefore, ensures equity between northern and southern Québec for mining operation projects. The KEAC nonetheless considers that the third paragraph of this section must be improved to indicate that the mining developments in question are those projects subject to the impact assessment and review procedures for southern Québec (Division IV.1, *Environment Quality Act*) and for northern Québec (Chapter II, *Environment Quality Act*).

As well, Section 7 of the JBNQA subjects some mining activities to environmental impact assessment, as follows: "[a]ll mining exploration and operations undertaken on or over Category I lands or immediately adjacent lands […] shall be subject to the provisions of the environmental and social protection regime established by and in accordance with Section 23. The assessment shall include proposals for a land use and reclamation plan." This provision translates the importance of the social impacts of mining activities.

The KEAC also considers it important that all mining operation projects should be subject to public consultation in both southern and northern Québec. In Nunavik, most mining operation projects are subject to public consultation by the Kativik Environmental Quality Commission, the responsible organization. As these projects have major impacts on the natural and social environments in Nunavik, the KEAC considers it important to ensure the legal position of Inuit and modify section 102 of Bill 43 to clearly indicate that all mining operation projects must automatically be subject to a public information period and a consultation session for the general public concerned by the project for all the environmental assessment procedures applicable in Québec.

As well, the KEAC considers it appropriate to point out that public consultations organized by the responsible organizations are often held too late. By the public consultation stage, mining projects are often too far advanced to effect genuine changes.

Therefore, the KEAC recommends that changes be made to Bill 43 to clearly indicate the existence of specific rules north of the 55th parallel. These clarifications are necessary to

avoid ambiguity regarding the requirements applicable to public consultation as well as to environmental and social impact assessment and review for mining activities north of the 55th parallel.

Finally, the KEAC agrees that the *Mining Act* explicitly give the Minister the power to "attach conditions to [mining leases] to avoid conflicts with other uses of the territory", insofar as this discretionary power is more completely structured, in particular with reference to the objective of sustainable development and the consideration of feedback generated through public consultations.

Section 104 – Economic spinoff monitoring and maximization committee

Section 104 of Bill 43 provides for the creation of economic spinoff monitoring and maximization committees by mining lessees. The KEAC is disappointed that, unlike under Bill 14 (section 101), these committees do not have a sufficiently broad mandate to integrate all of the environmental and social impacts of each mining project. The KEAC therefore recommends that the mandate of monitoring committees be changed to integrate the impacts of a mining project, in particular compliance with the conditions established in the mining lease, including commitments made during public consultations, and to promote the development of training, expertise and job creation in the mining sector. These changes would serve to strengthen the principle of public participation, transparency and mineral resource development with a view to sustainable development.

Section 123 – Agreements entered into with communities

Bill 43 provides for the transmission to the Minister, every year, of agreements entered into with communities. Yet, the purpose, duties and obligations of the parties or the circumstances for the negotiation of such agreements are not specified, even though good relations between mine operators and local populations represent a major component of mineral resource development in Québec and in Nunavik.

In this respect, Bill 43 should be improved to promote and provide a better framework for creating agreements for mining projects situated close to a northern village in order to avoid legitimacy issues and conflicts between the parties. Negotiation procedures and the main elements of the agreements regime with the local communities could be set out by regulation. Finally, compliance with these agreements could be ensured by their inclusion in mining leases and their contents should be public.

Section 163 – Access to information and transparency

The KEAC noted with satisfaction the improvements made to Bill 43 regarding access to mining information that correspond to some of the comments in its position paper dated August 22, 2011, concerning Bill 14. It is nonetheless appropriate to point out the importance of establishing access to information mechanisms that permit quick and easy

consultation of "[t]he documents and information obtained by the Minister from holders of mining rights for the purposes of this Act", even for mineral exploration projects. As well, access to documents and information should not require the use of access to information applications but, rather, should permit direct access to the contents of documents.

Section 182 and 189 – Financial guarantees and restoration

The KEAC considers that the restoration of mining sites must include all aspects of activity, without distinction between mineral exploration and mining operation phases and without omitting camps, buildings, roads, landing strips, treatment facilities and landfills as well as other equipment. In this respect, the KEAC noted that section 182 of Bill 43 proposes a list of elements to be included in rehabilitation work. Notwithstanding, this list appears to be incomplete since it should include all infrastructure and buildings used by the industry.

The KEAC also welcomes the amendment introduced in Bill 43 to require a guarantee for restoration costs. Notwithstanding, it considers that the three-year timeframe, provided under section 189 for the start of rehabilitation and restoration work after mining activities have ceased, is too long and should be shortened, as should the possible extensions. Once again, the fragile nature and distinct characteristics of Nunavik argue for a "continuum" from the end of commercial operations to the commencement of rehabilitation and restoration work.

The KEAC is disappointed that the fine prescribed for mine operators who fail to comply with the three-year time frame to start rehabilitation and restoration work is only 10% of the total amount of the guarantee (section 271). This amount does not seem to provide enough incentive for companies to perform the work rapidly. The KEAC recommends that the amount of the fine be increased and that the time frame for the start of rehabilitation and restoration work be reduced to the year after mining activities have ceased.

Finally, regarding the payment of the financial guarantee required pursuant to the Act, monitoring must be carried out and the Act must be enforced against mine operators that contravene the Act, including penal prosecution and the suspension of mineral resource rights. In this respect, the KEAC noted with satisfaction that Bill 43 will now permit the Minister to "revoke […] a mining right when the holder of the right has, in the preceding five years, been found guilty of an offence under this Act […]" (section 229 (6)).

Section 198 – Expropriation

The KEAC noted with satisfaction that Bill 43 introduces amendments to expropriation powers as recommended by the KEAC in its position paper on Bill 14. These amendments curb the expropriation powers of the holders of mining rights. They can only be exercised at the operations stage. Moreover, Native cemeteries can no longer be expropriated. In this

respect, the KEAC considers that the term "Native burial sites" is more appropriate than "Native cemeteries".

Section 208 – Mining roads

Section 208 stipulates that the responsibility for the maintenance and repair of mining roads may also be transferred to a municipality. The KEAC agrees with the proposed amendment insofar as the mining roads, their maintenance and repair are vital for the development of Nunavik. At the same time, mining roads involve several organizations whose roles are not always clear.

In its 2007 *Position Paper concerning Current and Future Transportation Infrastructure Development in Nunavik*[12], the KEAC reiterated the importance of joint planning and development of road infrastructure in the north. One of its recommendations was to transfer to the KRG Transportation Department responsibility for the maintenance and repair of roads situated outside the 14 municipalities. This transfer of responsibility and attendant budget would allow the KRG to support the regional personnel of the Ministère des Transports (transportation) and the Ministère des Ressources naturelles (natural resources) with the required inspections. The KEAC stresses that an agreement would be necessary to enable the KRG to monitor the maintenance of mining roads, pursuant to this section.

Section 229 – Revocation of mining rights

The KEAC agrees with the amendments proposed for mining legislation that grant the Minister the power to revoke an existing mining right if the holder of the right has in the preceding five years been found guilty of an offence under the Act. This power permits the Minister to revoke a mining right as soon as there is failure to pay the guarantees required for site restoration.

As well, the KEAC considers that it would be appropriate to add a paragraph to this section that would permit the Minister to revoke a claim or a part of a claim in order to create a park or protected area.

Section 250 – State reserves and protection of certain territories

The Minister may by order withdraw from prospecting, research, mineral exploration and mining operations any mineral substance for the purpose of creating a park or protected area. The KEAC welcomes this major step forward that will facilitate the creation of parks and protected areas and should allow Québec to more easily reach its objectives for the protection of its territory.

Notwithstanding, to promote the expansion of the park and protected areas network as well as to set up buffer zones near existing protected areas and northern villages, Bill 43 should

[12] *Supra*, note 2.

establish a mechanism to permit the suspension and withdrawal of existing mining rights in areas where mining rights have already been granted. This mechanism could be achieved by expanding the power of the Minister to order the cessation of work for public utility purposes, as provided for under section 92 of Bill 43.

As well, in the first subsection of section 250, the KEAC considers it preferable to replace the term "plant-life and wildlife conservation" by "ecosystem and natural heritage conservation".

Sections 251 to 253 – Mining incompatible activities

With regard to land use planning, Bill 43 proposes a regime that would permit regional county municipalities to withdraw or restrict mining activities in areas covered under "a land use and development plan in accordance with the *Act respecting Land Use Planning and Development*". Notwithstanding, the Minister of Natural Resources is granted the power to "request amendments to an RCM plan in force to revise the delimitation of a mining compatible territory or a conditionally mining compatible territory within the meaning of sections 251 and 252 of the *Mining Act*" (section 280).

First, the KEAC considers that the mechanism proposed under sections 251 to 253 of Bill 43 complies with the principle of subsidiarity contained in the *Sustainable Development Act*, which stipulates that "[p]owers and responsibilities must be delegated to the appropriate level of authority. Decision-making centres should be adequately distributed and as close as possible to the citizens and communities concerned"[13].

The KEAC considers that the regional level is the appropriate decision-making level for land use planning because it is close to the communities concerned by development projects, giving them an opportunity to provide feedback and permitting their concerns to be taken into account in decisions that touch them directly. As well, it should be recalled that, in Nunavik, the consent of concerned Inuit community corporations is required for any mining operations on category I lands[14].

The KEAC would also like to point out that regional land use planning is a major issue for Inuit communities and that the applicable legal regime is different than the regime applicable in southern Québec. The KEAC is concerned by the significance of these new provisions in Nunavik, given that section 266 of the *Act respecting Land Use Planning and Development* explicitly states that it does not apply north of the 55th parallel. In this context, it would seem that all of Nunavik is excluded *ex officio* from one of the main improvements introduced in Bill 43. This situation illustrates a lack of awareness of the planning mechanisms applicable in northern Québec and it should be corrected.

As stated above, the KRG is not governed by the *Act respecting Land Use Planning and Development* but by the *Act respecting Northern Villages and the Kativik Regional*

[13] *Sustainable Development Act*, R.S.Q., c. D-8.1.1, section 6 *(g)*.
[14] JBNQA, Section 7, paragraph 7.1.7.

Government (Kativik Act), which contains specific provisions regarding land use planning[15].

Notwithstanding, as the enabling provisions of the Kativik Act were drafted in more general terms that those of the *Act respecting Land Use Planning and Development*[16], the land use planning tools in Nunavik are different than those in effect in southern Québec. Regarding mining operations, the KEAC would like to recall that the Kativik Act does not contain any provision similar to that contained in section 246 of the *Act respecting Land Use Planning and Development*, which gives mining activities precedence over municipal regulations. It must also be pointed out that the *Master Plan for Land Use in the Kativik Region* has been an official KRG regulation since 1998. The Master Plan states the general aims of land development and general land use policies north of the 55th parallel. It was approved, in accordance with the law, by the Minister of Municipal Affairs, Regions and Land Occupancy on February 15, 1999 The KRG is currently preparing implementing regulations (zoning by-laws) for the Master Plan.

Given the distinct characteristics of land use planning rules in Nunavik, the KEAC recommends that these provisions of Bill 43 be changed in order to introduce a reference to the powers of the KRG and the Kativik Act that will allow the KRG to have the same regional planning powers as regional county municipalities in southern Québec.

As well, the KEAC is concerned about the power reserved for the Minister of Natural Resources to require changes to an existing land use and development plan. The KEAC considers that the exercise of this power must be more completely structured, in particular with reference to the objective of sustainable development and its guiding principles.

Finally, the KEAC suggests that Bill 43 be adjusted so that the power to withdraw certain territories from mining activities or to establish restrictions on mining activities may also be exercised for ongoing mining activities, and not only "from the time the territory is shown on the maps kept at the registrar's office". Appropriate compensation should be granted if applicable.

Sections 267 to 277 – Penal provisions and recourse by individuals

The KEAC noted with satisfaction that, in accordance with its comments made during consultations on Bill 14, the penal sanction regime was revised upwards and is comparable to the regime contained in the *Environment Quality Act*.

Notwithstanding, as stated above, Bill 43 should be adjusted to increase the amount of the fine for non-compliance with the timeframe to start rehabilitation and restoration work (section 271).

[15] *Act respecting Northern Villages and the Kativik Regional Government*, R.S.Q., c V-6.1, section 176.
[16] While the *Act respecting Land Use Planning and Development* contains a complete legal regime for the adoption of implementing regulations for master and land use plans, the *Act respecting Northern Villages and the Kativik Regional Government* contains only a single, general section for this same power.

Regarding the monitoring of compliance with the new *Mining Act*, Bill 43 would be improved if citizens were given the means to participate in the sustainable development of mineral resources. For example, a mechanism giving individuals the right to request investigations into alleged offences under the *Mining Act* could be introduced into mining legislation. The mechanism might be based on sections 17 to 20 of the *Canadian Environmental Protection Act*[17]. Moreover, a right of judicial recourse could be granted to individuals to allow them to put an end to an offence under the *Mining Act* that adversely affects their right to a healthful environment (section 46.1 of the Québec *Charter of Human Rights and Freedoms*). This provision might be based on sections 19.2 to 19.7 of the *Environment Quality Act* that grants individuals the power to apply for injunctions to stop commercial activities that contravene project authorization conditions or legal obligations.

Conclusion

The KEAC is a consultative body to responsible governments in matters relating to environmental and social protection in Nunavik. The review of Québec mining legislation arising from the tabling of Bill 43 permitted the KEAC to reiterate the specific rules that apply to mineral exploration and mining operations in Nunavik, in compliance with the JBNQA.

The KEAC's review of the bill focused on the distinct characteristics of Nunavik and the objective of mineral resource development in this region in compliance with the principles of sustainable development. Although the current bill represents an improvement over the earlier Bill 14, Bill 43 requires further improvements to bring it in line with and to more fully integrate the principles established under the *Sustainable Development Act*.

Finally, several distinct characteristics of the legal regime under the JBNQA applicable in Nunavik are not taken into account in Québec mining legislation or in Bill 43, as demonstrated in the KEAC's comments and concerns regarding the sections 3, 6, 49, 74, 102, 182, 198, 208 and 251 to 253 of Bill 43. On the whole, in order to clarify the message communicated to citizens regarding the legislative rules applicable to mining activities north of the 55th parallel, the KEAC recommends that a specific section for the territory covered under the JBNQA be introduced into Bill 43, in which the provisions take into account the specific rules applicable in Nunavik, among others, as has been done in the *Environment Quality Act* for these territories.

[17] *Canadian Environmental Protection Act*, S.C. 1999, c 33.