

Approach Proposed in the Government Working Paper

Section 23 of the JBNQA establishes in the territory of Québec north of the 55th parallel an environmental and social protection regime. This regime comprises several characteristics that today fall under the heading of “sustainable development.”

It is interesting to note that the title given to Section 23 of the JBNQA by its signatories was “Environment and Future Development North of the 55th parallel.”

This concept of development that incorporates protection both of the natural and social environments dates back to 1975 prior to the publication of the sustainable development orientations contained in the World Conservation Strategy (1980) and the report by the Brundtland Commission (1987). In this context then, the JBNQA may be seen as a forerunner of these orientations and it marked a major advance.

The environmental and social protection regime under the JBNQA provides for, among others, a procedure whereby laws and regulations may be adopted from time to time to minimize the negative impact of development in the region on Native people and wildlife resources; an environmental and social impact assessment and review procedure; special status for Native people in the framework of public consultations; protection of the rights and guarantees of Native people in regards to hunting, fishing and trapping; protection of Native people, their economies and the wildlife resources on which they depend; and, in compliance with these conditions, the right to develop the region (paragraph 23.2.2, JBNQA).

The JBNQA also identifies eight guiding principles for government bodies involved in the preparation and implementation of policies, programs and decisions in the region. These guiding principles are:

- a) the protection of Native people, societies, communities and economies, with respect to developmental activity affecting the region;
- b) the environmental and social protection regime with respect to minimizing the impacts on Native people by developmental activity affecting the region;
- c) the protection of the hunting, fishing and trapping rights of Native people and their other rights with respect to developmental activity affecting the region;
- d) the protection of wildlife resources, the physical and biotec environment, and ecological systems with respect to developmental activity affecting the region;
- e) the involvement of Native people and other inhabitants of the region in the application of this regime;
- f) the rights and interests of non-Native people, whatever they may be;
- g) the right to develop, in accordance with the provisions of the JBNQA, by persons acting lawfully in the region;
- h) the minimizing of negative environmental and social impacts of development on Native and non-Native people and on Native and non-Native communities by reasonable means with special reference to those measures proposed, recommended or

determined by the impact assessment and review procedures (paragraph 23.2.4, JBNQA).

The *Environment Quality Act* (R.S.Q., c. Q-2, s. 186) restates these guiding principles and stipulates that, in the exercise of their functions and jurisdictions, the Gouvernement du Québec, the municipalities (the Kativik Regional Government and the Northern villages), the Kativik Environmental Advisory Committee and the Kativik Environmental Quality Commission must give due consideration to them.

In this manner, the JBNQA (and the *Environment Quality Act* which transcribes into law the provisions of the JBNQA) establishes an environmental and social protection regime that incorporates into development many social, economic and environmental objectives. It is significant to note that the JBNQA did this in a legally binding form well before the elaboration of major international agreements (specifically the *Rio Declaration on Environment and Development*, 1992) concerning what is today called “sustainable development.”

In the context of the Québec government’s current approach, involving the adoption of a bill concerning sustainable development and the preparation of a sustainable development strategy, the KEAC feels that it must be taken into account that the State (government department and agencies) and local public institutions (the Kativik Regional Government and the Northern villages) are already subject, through the JBNQA, to a sustainable development regime.

Consequently, the Québec government’s new plan should be viewed as a source of inspiration, which is to say that it should complement the implementation of the current regime through new methods and tools. These include sustainable development indicators and implementation assessments and reports. In fact, the role played by the environmental and social protection regime under the JBNQA must be recognized at every stage of the Québec government’s current approach.

Principles and Measures Identified under the Draft Bill

In the opinion of the KEAC, the draft bill is especially timely. It defines an approach, areas of intervention and a policy framework for the co-ordination of measures to be taken by government bodies with respect to sustainable development. Such measures will certainly prove beneficial for all of Québec and create positive impacts in Northern communities. Notwithstanding, certain provisions of the draft bill give rise to questions and comments.

1. Participation of Northern municipalities (s. 3)

The question arises as to how the obligations established in the draft bill will be applied to the Kativik Regional Government (KRG) and the Northern villages. Under section 3, the government may determine by order-in-council the dates on which different provisions of the draft bill will begin to apply to municipalities. In addition, section 13 states that the Minister of the Environment, even in the absence of an order-in-council, may demand the assistance of municipalities in the preparation of the sustainable development strategy and related implementation assessments in those areas under their jurisdiction. For their part, pursuant to section 14 the municipalities may voluntarily, in the absence of an order-in-council, establish objectives, activities and interventions that are likely to contribute to the implementation of the sustainable development strategy.

There can therefore be no doubt that the KRG and the Northern villages will be required to actively contribute in one manner or another to the preparation and implementation of the sustainable development strategy, to the preparation of related implementation assessments, and to the identification of activities that support the objectives of the strategy.

The KEAC welcomes the flexibility permitted under the draft bill since it is already clear that Northern communities wish to promote their development in a sustainable manner. As mentioned above, these objectives are contained in the JBNQA and several methods have already been adopted to promote this type of development. The draft bill should therefore take into account this reality and support the objectives contained in the JBNQA. With respect to Northern communities, a flexible policy framework should be established that precludes parallel or separate obligations under the JBNQA. The draft bill should instead incorporate the requirements of both.

Consequently, in the opinion of the KEAC, it is preferable that the KRG and the Northern villages not be required by order-in-council to contribute to the preparation and implementation of the sustainable development strategy. Rather, these bodies could be invited to contribute on a voluntary basis to interventions that they feel are likely to meet the principles contained in the draft bill and by providing useful information for implementation assessments.

2. Creation of a Green Fund (s. 22)

Section 22 of the draft bill provides for the creation of a Green Fund which the Minister of the Environment may use, at his discretion, to direct funding to municipalities for the implementation of sustainable development measures. It appears that the draft bill does not draw any distinction between those municipalities that are required to comply with provisions of the draft bill and those that only participate on a voluntary basis. In the case of voluntary participation, it therefore appears that Northern communities will be eligible for funding through the Green Fund.

On the other hand, the KEAC has recently learned that funding is, in fact, rather limited when Northern communities are acting on a voluntary basis, which is to say their participation is not mandatory. A case in point concerns waste management plans. Even though Northern communities desperately need such plans, the KRG has received no provincial funding for this purpose because the region's participation in this government program was not made mandatory. In this context, the KEAC would like to know whether the same restrictive conditions might not also apply to funding for sustainable development under the Green Fund.

3. A new Charter right (s. 18)

Section 18 of the draft bill provides for the insertion of a new right into the *Charter of Human Rights and Freedoms*, which is to say the right to live in a healthful environment in which biodiversity is preserved. Notwithstanding, this right can only exist to the extent that standards provided by law may be contravened. In the absence of such standards, this right may therefore not be exercised. The KEAC wonders if the adoption of this amendment to the Charter might limit the scope of the second paragraph of section 20 of the *Environment Quality Act*. This section prohibits, in the absence of any standards, the discharge into the environment of any contaminant that is likely to affect the life, health, safety, welfare or comfort of human beings, or to cause damage to or otherwise impair the quality of soil, vegetation, wildlife or property." If such is the case, the insertion of this new right into the Charter could be interpreted as a step backwards, in comparison with the *Environment Quality Act*.

4. Definition of sustainable development (s. 1)

Section 1 of the draft bill defines sustainable development as "an ongoing process to improve the living conditions of the present generation that does not compromise the ability of future generations to do so." For their part, Northern communities are especially sensitive to the effects of development. For example, although Northern communities may wish to see implemented certain development projects, the preservation of their culture and identity is in part based on the environmental integrity of their territory. Moreover, given current demographic trends, future generations will comprise even more

people who desire the continuation of this integrity. In this context, the application of section 5, principle 7 “protection of cultural heritage” is central to the achievement of sustainable development, not only on Category I lands but throughout Nunavik. As concerns Quebec’s Inuit communities, this principle appears to be the most important. In fact, to a certain extent it covers all the others, including preservation of bio-diversity, health, quality of life and environmental protection.

5. Principles to be taken into consideration (s. 5)

Although the principles described in section 5 of the draft bill are especially applicable to Native communities, not one principle contains an explicit reference to them. The KEAC questions whether such a reference might not be appropriate in principle 2 concerning “social equity” and in principle 7 concerning “protection of cultural heritage.”

As well, the terms “intra- and inter-generational equity” employed in principle 2 are difficult to understand. The KEAC recommends that the same wording used in the definition of sustainable development be employed instead, which is to say “present generation” and “future generations.”

With respect to principle 7, the phrase “especially in the case of Native populations” could be added.

Current and Future Actions that Contribute to Sustainable Development in Québec

The KEAC supports the Inuit communities of Québec in their efforts to implement and improve their environmental and social protection regime. In particular, the KEAC has initiated (and plans to continue in the same direction) various activities throughout Nunavik in several areas related to the natural and social environments. Several actions promoting sustainable development and certain current realities that are contrary to this approach are presented below. All of the situations described demonstrate the unfailing involvement of the KEAC.

1-Waste management

Waste management in Nunavik is a major issue which is of increasing concern to the Inuit communities. The region, which comprises 14 villages spread over an immense territory, faces a distinctive series of problems and challenges. In fact, no waste management plan exists for Nunavik. As a result, waste management techniques are lacking and each village does the best that it can based on the meagre funding and resources available. The activities of the different villages are marked by inconsistency, with some more advanced than others. While in the South, disposal sites are supervised and managed in compliance with provincial legislation, less restrictive regulations apply in Nunavik and permit, for example, open-air burning of household waste due to the absence of a better solution. In addition, only limited recovery and recycling programs exist in the region with the result that even hazardous waste may still be found far too often scattered throughout disposal sites that are accessible to the general public.

This situation, which is contrary to the principles of sustainable development, has existed for too long and, now, the Inuit communities have begun to express concern about the dangers posed by poor waste management in their region. Despite the earnest efforts of government and regional officials to resolve this problem, it is difficult for Nunavik communities to apply legislation that has been developed for the South. The realities that exist in Nunavik are, in fact, entirely different. As far back as the public hearings held in 1997 by the Bureau d'audiences publiques de l'environnement (environmental public hearings committee, BAPE) concerning the *Québec Residual Materials Management Policy 1998–2008*, the KEAC had identified the importance of a regional waste management plan. Although the region continues to be deprived of such a plan, the situation can be said to be slowly improving. In fact, these improvements continue despite a Québec government decision in 2002 to exclude Nunavik from its funding program for regional municipal counties for the preparation and implementation of waste management plans (Order-in-Council 2002-357) which the KEAC was unable to have reversed.

While awaiting the development of a waste management plan adapted to the North, the KEAC continues to foster small-scale efforts. For example, with the assistance of the KRG and the Northern Village of Kuujjuaq, the KEAC was able to implement a management project for non-refillable containers in Kuujjuaq. As well, the KEAC is currently involved in efforts to initiate the recovery of discarded tires in the region and it supports the KRG in its efforts in certain communities to promote the use of spent oil for other purposes. Finally, the KEAC intends to continue promoting local waste management efforts, when possible, by providing technical support and by fostering partnerships and research that will help increase the knowledge of the region's residents. Notwithstanding, waste management that is to be compliant with the principles of sustainable management requires comprehensive analysis of the situation and rigorous planning.

2-Soil decontamination

Much attention and many resources have been focussed in recent years on the treatment of contaminated soil. For example, in 2004 Hydro-Québec and the Federation of Cooperatives of Northern Québec carried out work in a few villages to decontaminate soil soaked with hydrocarbons. As well, most of the hazardous material that had been abandoned at Mid-Canada Line sites in the region was removed and the sites were partially decontaminated. Finally in the summer of 2004, the KEAC was called on to advocate community concerns with respect to the shipping, between Quaqtaq and Kuujjuaq, of contaminated soil recovered from a Transport Canada site. Encouraging activities such as these demonstrate a desire to restore contaminated soil to its original state for future use. Fostered by the KEAC, these types of activities are in line with the principles of sustainable development in Nunavik.

3-Characterization and clean-up of abandoned mining sites

The characterization and clean-up of abandoned mining sites in Nunavik is a large-scale project that is principally being implemented by the KRG now. Under the project, a partial list of abandoned mining sites has already been established and most of these sites have also been classified for the purpose of setting clean-up priorities. The next steps involve the completion of site inventories and characterizations and then clean-up work, beginning with those sites that represent the greatest priority. The KEAC believes that this project should be recognized as a concrete example of sustainable development.

4-Creation of protection zones, parks and protected areas

The vast territory of Nunavik comprises at least several zones that should be preserved. To this end, the *Québec Action Plan on Biological Diversity 2004–2007* proposed the creation of parks in Nunavik. Known as Pingualuit, the region's first park has already been officially created; two other park projects are still in the preparation

process (Torngat Mountains – Koroc River and Richmond Gulf – Clearwater Lake); and two more areas are under study (Cape Wolstenholme and Puvirnituk Mountains). Nunavik possesses roughly ten sites that have been reserved for park development.

In the coming years, further protected areas should be identified in order to preserve the biological diversity (plant and wildlife) of the region. To this end, the KEAC intends to propose the preparation of an inventory that will characterize those sectors that require protection. In addition, the KEAC will foster compliance with future objectives that incorporate the Native dimension mentioned in the *Québec Strategy on Biological Diversity 2004–2007* (p. 69).

- *Inform Natives of processes and projects regarding biological diversity;*
- *Encourage the participation of Natives in the maintenance of biological diversity;*
- *Ensure the continuity of traditional knowledge (inventory, transmission and appreciation).*

5-Climate change

A hot topic in international circles especially with respect to circumpolar regions, climate change has already had significant impacts on Northern ecosystems and is requiring Northern populations to adapt their practices. Studies concerning, among other things, physical and biological changes, changes in the routes travelled in order to practise traditional activities, the quality of drinking water during freezing and thawing periods, and the intrusion of salt water into the water table have served to update knowledge about the impacts of climate change in order to help orient adaptation strategies for Northern populations, including the residents of Nunavik. These projects support the population's desire to create adapted and safe living practices for the current and future generations.

6-Wind power

Currently, Hydro-Québec is examining the possibility of developing wind power as an auxiliary source of energy in certain communities in Nunavik. Studies are underway. It should be recalled that, at the moment, oil is the main source of energy (heating and electricity) for households in the region. Oil is however a source of pollution in addition to being expensive. In this context, it has become appropriate to take a closer look at the issue and encourage research that fosters the development of alternative, environmentally friendly energy sources, like wind power. It would also be advisable to see initiated an energy conservation program in Nunavik.

7-Use of heavy equipment on the tundra

In Nunavik, there are currently no regulations governing the use of heavy equipment on the tundra. Yet the tundra is a very fragile environment which, once

disturbed by the passage of heavy equipment, requires many years to return to its original state. Certain mineral exploration companies are already making use of heavy equipment to carry out work on the Ungava Peninsula. This work is conducted during the summer months and results in the destruction of the integrity of the environment. Such activities need to be regulated in the North given that, at the moment, they do not respect the principles of sustainable development.

8- Forests

Following the creation, in 2003, of a commission to study the management of public forests in Québec, the KEAC forwarded a position paper concerning the condition of forests in Nunavik. Although these forests have not yet been targeted by forestry companies, this situation could change in the not too distant future. In order to be prepared, the KEAC believes that further studies should be carried out in the region to determine the potential impacts of logging and the conditions required for reforestation. As well, it is essential that exceptional stands of trees be identified now in order to protect them from development.

9-Mobile and permanent camps

Spread throughout Nunavik are a multitude of mobile and permanent camps which the immensity of the territory makes difficult to manage. In order to support these activities in the context of sustainable development, it is important to eliminate the range of situations that endanger inhabitants and our natural resources. In this context, the identification of un-authorized sites and abandoned camps is essential. Two parts of a solution to this problem involve keeping the registers for such camps up to date and implementing an efficient inspection process.

Recommendations

In light of Nunavik's distinctive context and the need for co-ordination between the Québec Sustainable Development Strategy and the sustainable development regime under the JBNQA, the KEAC makes the following recommendations:

1. *Incorporate into the draft bill, for example into section 3, a paragraph stating that the KRG and the Northern villages are already subject to a sustainable development regime established under the JBNQA and that these bodies may espouse on a voluntary basis the objectives contained in the draft bill.*
2. *Support the activities of Northern communities through funding drawn from the Green Fund even though these communities are participating in the Québec Sustainable Development Strategy on a voluntary basis.*
3. *Ensure that the amendment to the Charter of Human Rights and Freedoms does not limit the scope of section 20 of the Environment Quality Act.*
4. *Specify for the second principle listed in section 5 of the draft bill the meaning of the terms "intra- and inter-generational equity" or replace these terms with the wording "equity between social groups, the current population and future populations."*
5. *Add to the seventh principle listed in section 5 "protection of cultural heritage" the wording "especially in the case of Native populations."*
6. *Support with appropriate funding for the KRG and the Northern villages the development of a waste management plan.*
7. *Adopt in co-operation with users a waste management and recovery plan for all the mobile and permanent camps in Nunavik that are used for hunting, fishing, trapping, vacation and mineral exploration purposes.*
8. *Foster the acquisition of knowledge about remarkable ecosystems in Nunavik with a view to their preservation through protected status, such as ecological reserves, biodiversity reserves and aquatic reserves.*
9. *Adopt a regulation concerning the use of heavy equipment on the tundra.*
10. *Foster the acquisition of knowledge about forests in Nunavik, the impacts of commercial and local logging, and reforestation techniques adapted to the North.*
11. *Promote research that fosters the development of alternative, environmentally friendly energy sources, such as wind power, and initiate an energy conservation program in the region's villages.*
12. *Make funding and resources available to the KRG and concerned government departments to optimize the keeping of registers of mobile and permanent camps through increased on-site inspections, when necessary.*