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Comité consultatif de l'environnement Kativik  
Kativik Environmental Advisory Committee

**Brief concerning Bill 63:**

**An Act to amend the Mining Act and other provisions**

**Submitted to the Parliamentary Commission on Agriculture,  
Fisheries, Energy and Natural Resources**

**September 28, 2024**

## **The KEAC's Mandate**

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.

Throughout recent years, the KEAC have reviewed the evolving provincial mining legislation, paying attention to their application in the Nunavik region and impact on the environmental and social protection regime as set out in Chapter 23 of the JBNQA. Regarding *Bill 63: An Act to amend the Mining Act and other provisions*, and as per our mandate the KEAC is providing the Ministry of Natural Resources and Forests (MRNF) with an overview of the impacts of Mining in Nunavik and the duty to consult in the JBNQA territory as well as provide comments and recommendations on the proposed legislation.

## **Impact of Mining in Nunavik**

Since the 1950s, various mining activities have taken place on the Nunavik territory. With the signing of the JBNQA in 1975 and the adoption of the Mining Act in 1995, new practices and regulations were put in place to frame the social impacts of these activities on Inuit, Naskapi and Cree communities, their traditional activities, vegetation, wildlife habitat and water quality, as well as the visual impact on the landscape of the region. As set out in the JBNQA the KEAC is responsible for studying major issues relating to the implementation of the environmental and social protection regime as well as the land use regime. To this end, the KEAC is providing the following examples of the environmental and social issues concerning mining activities brought to its attention by Nunavik individual and entities.

For example, the Nunavik Abandoned Mineral Exploration Site Rehabilitation project stems from community concerns regarding the environmental impact of these sites in the region. Following community cleanup initiatives in the 1990s, a joint project was undertaken in 1999 by the KRG, Makivik and the Université Laval to identify and locate abandoned mineral exploration sites in Nunavik. A review of existing oral and written information on all mining-related sites identified some 595 potential abandoned mineral exploration sites in the region. Since the first pilot rehabilitation project in 2005 until the final site was completed under the current funding agreement in 2022, the KRG, in collaboration with Inuit communities, the Naskapi Nation of Kawawachikamach, mining exploration companies as well as governmental and municipal entities, the project has cleaned 101 sites.

Another example of a specific mining development impacting the region is the Asbestos Hill mine. During its operation from 1972 to 1984, residents of Salluit and Kangiqsujuaq expressed concerns about the movement of asbestos fibers and dust between the mine site and the port facility at Deception Bay, located approximately 50 kilometers away. This area is important to these communities as many of its residents practice traditional and subsistence hunting and fishing rights here. Further to the mine's closure, a remediation program took place from 1994 to 2004. However, there remain questions regarding the level of contamination from tailings and their overall impacts, specifically on water and air quality as well as the flora and fauna.

Additionally, the KEAC highlights that in 2024 there are over 36,500 mining claims in the region, three active mines, three mining projects at advance planning stages and mineral exploration activities occurring in the region. In coherence with its mandate, the KEAC monitors the regulations applicable to mineral exploration and mining in Nunavik and their potential impacts on the natural and social environments in the region. The KEAC is attentive to consultation with regional stakeholders and community representatives within the context of the multiple impact assessment procedures and legal framework applicable to mining development activities.

Finally, and for information purposes, the KEAC highlights the current sensitive context surrounding the subject of mining activities. Various Nunavik authorities, community partners and collaborators are expressing their concerns about the environmental and social impacts of current or potential mining activities. The Committee recommends that the government contact these entities and listen to their concerns.

### **Consultation in Nunavik**

As a consultative body to responsible governments, the KEAC would like to point out the Quebec government's commitment as signatory of the JBNQA and the Northeastern Québec agreement, to protect the hunting, fishing and trapping rights of the Inuit and the Naskapi of Kawawachikamach throughout the territory covered by these agreements. Any activities that might interfere with these rights must therefore be subject to appropriate consultation with the Québec government, including mining exploration activities, which are now subject to authorization by the MRNF.

The KEAC reiterates the importance of sections 2.1 and 2.2 of the *Mining Act*, which emphasizes that "the *Mining Act* must be interpreted in a manner consistent with the duty to consult Aboriginal communities" and that "taking into account the rights and interests of Aboriginal communities is an integral part of reconciling mining activity with other land use opportunities". The duty to consult is integrated within the *Indigenous Consultation Policy specific to the Mining Sector*, published by the MRNF in 2019, which frames expectations in terms of consultation practices, while reiterating the obligations of the various stakeholders. As stated in this policy, the duty to consult applies to the entire territory of Quebec, whether it is covered by a treaty. Thus, when an agreement, such as the JBNQA, sets out the terms and conditions of consultation for specific projects, these terms and conditions apply first. However, the treaty does not extinguish the Quebec government's obligation to consult. In cases where the terms of consultation for certain types of projects are not provided for in a treaty, the Québec government must consult the Indigenous nations according to the measures set out in its consultation policy, or according to any other agreement between the government and the nation concerned. Along the same lines, Article 2.11 of the JBNQA mentions that "[n]othing contained in this Agreement shall prejudice the rights of the Native people as Canadian citizens of Québec, and they shall continue to be entitled to all of the rights and benefits of all other citizens as well as those resulting from the Indian Act (as applicable) and from any other legislation applicable to them from time to time", effectively highlighting that any consultation policies that apply to other Indigenous nations in Québec and Canada would still apply to the beneficiaries of the JBNQA.

Jurisprudence in recent years has emphasized that: governments must consult Aboriginal nations, including those who have signed modern treaties, on all projects that are likely to have an impact on their Aboriginal or treaty rights; are responsible for the potential impacts on those rights; and cannot delegate this responsibility to developers or other stakeholders without specific agreements with Indigenous communities. Thus, the 2010 Supreme Court decision *Beckman v. Little Salmon/Carmacks* confirms that "recent land claims agreements must be interpreted and applied in a manner consistent with the honour of the Crown", invalidating the Yukon government's argument that the absence of a framework for consultation on a specific subject in a modern treaty means that there is no obligation on the part of the government to consult. Furthermore, the 2017 *Clyde River (Hamlet) v. Petroleum Geo-Services* ruling emphasizes that the duty to consult lies with the Crown, and that "Aboriginal Peoples must be notified of the form the consultation process will take, so that they know how the consultations will proceed, can actively participate and, if necessary, are able to raise their concerns about the form of the proposed consultations in a timely manner."

Considering the obligations arising from the Constitution, the duty of the Crown, the provisions of sections 2.1 and 2.2 of the *Mining Act* and Canadian and Quebec case law on Indigenous consultation, the KEAC recommends that the government put in place measures to ensure the capacities of indigenous groups being consulted. Therefore, the KEAC recommends the MRNF provide adequate financial and technical support to delegated Nunavik representatives such as the KRG, Makivvik, Landholding Corporations, Northern Villages and the Naskapi Nation of Kawawachikamach. In this regard, the KEAC would like to inform the government that the Nunavik Mineral Exploration Fund (NMEF) is mandated to increase or maintain the number of Inuit jobs in the mining sector; increase the knowledge of mineral

exploration and development in Inuit communities; increase or maintain the entrepreneurial engagement in the mineral resources field within Inuit communities; and strengthen or maintain communications between the Inuit communities and mineral exploration companies. The KEAC considers that the NMEF can therefore play a key role in consultation by accompanying communities and promoters, provided it has the necessary resources to fulfill this mandate.

### General comments on Bill 63

One of the purposes of the Act, as mentioned in the proposed article 17, is to ensure “that Quebecers get a fair share of the wealth generated by mineral resources and taking into account other possible uses of the territory”. This statement fits poorly with the objective of sustainable development which requires not only reconciling the economic aspects of mineral resources development, but also its social and environmental dimensions. As such, the Sustainable Development Act retains the principle of “economic efficiency” to implement sustainable development in Québec, which it defines as follows “the economy of Quebec and its regions must be effective, geared toward innovation and economic prosperity that is conducive to social progress and respectful of the environment.” To maintain a common vision regarding sustainable development in Québec, the KEAC recommends reformulating the above-mentioned proposed sentence in article 17 with “an economic prosperity that is conducive to social progress and respectful of the environment.” This rewording appears more respectful of the intergenerational equity approach in the development of mineral resources and the Sustainable Development Act.

The KEAC would like to take advantage of this revision of the Mining Act to point out that as per the JBNQA there are special rules apply to exploration and mining activities on Nunavik territory. Furthermore, the current Mining Act (as per article 314) “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 James Bay and Northern Québec Agreement (chapter C-67) and the Act approving the Northeastern Québec Agreement (chapter C-67.1)”, and Bill 63 does not modify this provision. The proposed amendments to the Mining Act are intended to apply uniformly throughout Québec, including Nunavik. According to the KEAC, the bill does not adequately reflect the legal particularities applicable north of the 55th parallel. For example, the Environment Quality Act (EQA) clearly defines the differences between northern and southern procedures. Given the scale of mining developments planned for the region, it would be highly relevant to clarify the legal particularities that prevail in the Nunavik territory. The KEAC therefore recommends that the preamble to the Act include a paragraph referring to the characteristics of the territories under agreement.

Notwithstanding the above paragraphs, the KEAC believe most of the modifications proposed in Bill 63 aim to modernize mining legislation in line with current environmental concerns, the rights of Indigenous communities and land protection. The KEAC is particularly favorable to the following modifications:

- The addition of article 2.4 it is proposed that the Québec government may “enter into agreement determining the boundaries of a parcel of land where any mineral substance forming part of the domain of the State is reserved to the State, on the conditions fixed in the agreement, or is withdrawn from prospecting, mining exploration and mining operations” should enable a better reconciliation of uses on the JBNQA territory, better protect sacred sites and areas of cultural or environmental importance to Indigenous communities, and allow for more harmonious territorial planning.
- The KEAC consider the addition of article 52.1 that allows the Minister to impose conditions and requirements concerning the mining activities to be undertaken on an exclusive exploration right (EER) to prevent or limit impacts on local and Indigenous communities or “enable prioritization or reconciliation of uses and preservation of the territory” ensures a better protection of the rights of Inuit, Naskapi and Cree on the territory.
- The KEAC welcomes all additions to the *Mining Act* that improves the transparency and communications between proponents and both community and regional stakeholders in Nunavik. Specifically, article 65.1 in which a holder of an EER must hold an information session, in the region

of the land subject to the right and inform impacted communities of all planned activities on the EER, as per regulation 69 of the *Regulation respecting mineral substances other than petroleum, natural gas and brine*. This could lead to less confusion and anxiety regarding mining activities located close to northern communities or sensitive areas.

- The KEAC note the addition of Article 80.1 in which a holder of an EER will require an authorization to transfer all or part of their right during the first term of the right. The Committee understand this article is designed to prevent speculation as it will no longer be possible to transfer a EER if work has not been carried out and considers this as a positive change.
- The KEAC also welcomes the addition of Article 99 stating the Minister shall make public the rehabilitation and restoration plan as submitted for approval under section 232.1.
- The addition of articles 123.1 and 232.0.1 will strengthen reclamation and restoration obligations for mining sites. The KEAC understand that the requirement to implement post-restoration monitoring and maintenance measures to ensure the sustainability of developments, minimize long-term environmental risks and ensure that mining sites are rehabilitated adequately.
- The KEAC equally supports the addition of Article 215.1 in which the Minister may require the holder of a mining right to remove or move any property or extracted ore situated on the land subject to the mining right in order to enable prioritization or conciliation of uses and preservation of the territory or for a public interest reason, in particular, to prevent or limit impacts on local and Indigenous communities. The KEAC understands that the “property” also includes materials that may have been abandoned during historical mining activities and for which the owner cannot be determined and as such see this as a positive measure to ensure environmental protection and restoration of the traditional lands of the Inuit, Naskapi and Cree.

### **Specific Comments on Bill 63**

#### *Provision specific to Native Communities*

As previously mentioned, the KEAC welcomes the addition of article 2.4. However, the KEAC would like to highlight that the traditional activities of the Inuit, Cree and Naskapi can be pursued in Nunavik, as provided for by the JBNQA and the *Act respecting hunting and fishing rights in the James Bay and New Québec territories*, without the need for a special agreement under article 2.4 of the Mining Act. While these new agreements for the withdrawal of areas important for traditional activities from prospecting, mining exploration and mining operations are a valuable tool for ensuring the reconciliation of mining activities with the activities pursued by Indigenous people for food, ritual or social purposes, it must be emphasized that traditional activities not be restricted by mining activities in Nunavik, even in the absence of such an agreement.

#### *Object and Scope*

Article 17 notes the purpose of the *Mining Act* is to promote mineral exploration processing in Québec in keeping with sustainable development and circular economy principles and to ensure that non-renewable resources are used for the benefit of future generations.

As the KEAC has noted in several of our correspondence regarding mining development in Québec and Nunavik, evaluating the impact of these activities is not limited to documenting each individual project. As such, the KEAC would like to underline that the EQA, Article 95.10, states “the Administration’s programs determined by government regulation, including the strategies, plans and other forms of guidelines the Administration develops, must be the subject of a strategic environmental assessment...” and recommends that regulations be adopted to implement strategic environmental assessments, so as to enable such assessments to be carried out on mining activities in Québec, allowing environmental and social considerations to be incorporated in the decision-making process and to

evaluate alternatives in order to achieve the desired objectives in terms of sustainable development while minimizing any negative effects.

Although there have been some benefits to the presence of the mining industry, its impacts have resulted in changes to environmental, social and economic components caused by the combined effect of past, present and potential future human activities and natural processes. These are a source of cumulative impacts on, for example, the caribou in the area where Raglan and Nunavik Nickel mines operate. As such the KEAC recommends that cumulative impacts be considered as part of the MRNF reflection regarding mining activities and the issuance of authorizations and that authorized activities and exploration projects should not be fragmented to avoid cumulative effects of low-impact activities.

### Claims

In July 2024, the KEAC provided its feedback on the proposed modifications to the *Regulation respecting the sale, lease and granting of immovable rights on lands in the domain of the State*. In our letter we noted the amendment to Article 26 of that Regulation will allow the MRNF to modify the rights and obligations of the new tenant in relation to those of the original tenant, making it possible to enforce environmental conditions incorporated into leases such as a characterization study prior to the transfer of lease rights. Given the number of contaminated sites abandoned by the mining and outfitting industries in Nunavik, this amendment could enable the MRNF to require the lessee to carry out a characterization study, as well as rehabilitate the site as part of the lease, which is very positive. As such, the amendments to Article 52 of the *Mining Act* note the criteria for which the registrar shall refuse a notice of map designation. The KEAC recommend a final criterion be added: (9) where the land has abandoned materials or requires environmental characterization.

Under the same section, the KEAC understand the imposed conditions or obligations as per article 52.1 may be a result of the report received by the Minister under the requirements for an authorization stated in section 12 of the *Mining Regulation* or from the information session now required under article 65.1. Since those conditions are very important to ensure a sustainable coexistence of the land uses, and that the information from the communities and land users must therefore be adequately understood by the MRNF, the KEAC recommends the MRNF consult with Nunavik representatives directly, rather than relying solely on information provided by the proponents, to set appropriate conditions and requirements in authorizations issued to EER holders such as monitoring measures, avoiding or scheduling activities in sensitive areas or community outreach and awareness.

The KEAC welcomes the amendments to Article 65 in which the Minister must inform local communities within 60 days of an EER being registered as this declaration will improve community awareness of the exploration activities undertaken in the region. Here the KEAC would like to recommend that any notification or public notice pertaining to registered EER in Nunavik be provided in a format and language appropriate for the communities (ie. Inuktitut, Naskapi or English).

Similarly, the KEAC supports the addition of Article 65.1 in which a holder of an EER shall hold an information session, in the region of the land subject to the right, with the representatives of any local municipality and any Indigenous nation or community concerned at least 30 days before exploration work determined by regulation and for each subsequent year of activity. Article 39.2 of the *Regulation respecting mineral substances other than petroleum, natural gas and brine* states that the interventions made at the public meeting must be recorded. As such, the KEAC recommends the information session provided for in Article 65.1 be recorded as well to ensure the conformity of the report of these sessions.

Concerning the proposed additions of articles 13 and 14 in the *Act Respecting the Ministère de ressources naturelles et de la faune* that will give power to the Minister to determine the format and location in which the information session

noted in article 65.1 of the *Mining Act* will take place, we understand the option of holding these sessions via technological means would allow for some flexibility in terms of attendance and cost, however, it is important to underline the connectivity issues that still exist in Nunavik communities as well as access to proper equipment and venues. Finally, we once again recommend that any information session held in or for Nunavik communities be provided in a format and language appropriate for the community (i.e. Inuktitut, Naskapi or English).

The KEAC has noted that the *Ministerial Order respecting the types of construction that the holder of a claim, a mining exploration license or a license to explore for surface mineral substances may erect or maintain on lands of the domain of the State without ministerial authorization* has been revoked. As such, Article 66 will now oblige a holder of an EER to obtain an authorization under the *Act respecting the lands in the domain of the State* to construct a permanent infrastructure in the domain of the State. Considering the number of abandoned infrastructures in the region of Nunavik, the KEAC are pleased with this amendment as this authorization will also require a lease which will then allow the Québec Government to have an exact location of the infrastructure and improve monitoring of these constructions and their eventual dismantlement by the lessee. Furthermore, the KEAC recommend the authorizations contain conditions and requirements for mitigation measures concerning environmental impacts, maintenance and clean-up conditions obligations.

However, the KEAC have also noted that also under Article 66, the construction of a temporary infrastructure will require Minister's authorization, rather than a lease. The Committee questions the relevance of having two distinct authorization schemes for each type of infrastructure. The recent changes proposed to *Act respecting the lands in the domain of the State* will give the Minister greater flexibility in terms of the duration and conditions of authorizations and as such the KEAC recommends that the construction of temporary infrastructure be subject to an authorization under the Act respecting the lands in the domain of the State to encourage monitoring and follow-up of all infrastructures on the territory. The KEAC is of the opinion that having both permanent and temporary infrastructure managed by the same ministerial department would be beneficial for all the parties involved.

Finally, article 66 also notes that an authorization will not be required for portable shelters that can be dismantled and is made of pliable material stretched over rigid supports, unless criteria changes to require one. Again, due to the vastness of the territory and the historical abandonment of camps and shelters in the region, the KEAC recommend a process put in place to identify the location of these portable shelter and that information be made public.

In Article 98, a holder of EER "must provide the Minister, where applicable, with the scoping and market study provided for in section 101 within the time limit prescribed in the second paragraph of section 31.3 of the EQA for the transmission of the impact assessment statement". The KEAC would like to point out that Section 31.3 of the EQA does not apply in the territory covered by Section 23 of the JBNQA, as the northern procedure applies. The KEAC recommends the scoping and market study also be required for projects subject to the provincial procedure provided for in Section 23 of JBNQA.

#### *Mining Lease and Mining Concession*

Article 101 defines the conditions required by the Minister to grant a mining lease. Subparagraph 4 refers to the authorization required under section 31.5 of the EQA for mining operation. The KEAC recommend the addition of the certificate of authorization required under section 154 of the EQA.

Furthermore, Article 101.0.1 allows for the Minister to subject a mining lease to conditions or obligations, for example, due to a public interest reason, to prevent or limit impacts on local and Indigenous communities. The KEAC recommend that the MRNF holds consultations with stakeholders and land users to determine the conditions and obligations that should be integrated into the mining lease in the Nunavik region.

Article 101.0.3 sets out the lessee's obligation to establish a monitoring committee to foster the involvement of the local community. The KEAC agrees the committee should include one representative of each of the Indigenous nation of communities consulted but recommends it also include a representative from KRG for projects in Nunavik.

#### *Lease to Mine Surface Mineral Substances*

The KEAC supports the amendment to Article 142.0.2 that specifies and adds limitations of the Minister to enable prioritization or conciliation of land uses and of land preservation, or for a public interest reason, to prevent or limit impacts on local and Indigenous communities. However, the additional third paragraph limits the granting of a lease in respect to another parcel of land unless the ministerial authorization provided for in section 22 of the EQA has been obtained or the declaration of compliance provided for in section 31.0.6 of that Act has been filed. As such, the KEAC recommend that article 142.0.2 clearly refer to the need to obtain the proper authorization or attestation of exemption required as per Title II of the EQA, that stems from the JBNQA for projects to mine surface mineral substances.

#### *Protective Measures and Rehabilitation and Restoration Measures*

This division states the rehabilitation and restoration requirements to make reparation for any harm caused to the environment by way of mineral exploration and exploitation activities. It also includes the monitoring and maintenance required to ensure follow-up to the work carried out.

Article 232.3. refers to the contents of a rehabilitation and restoration plan. Here the KEAC recommends include information pertaining to exchanges with the native communities regarding the plan.

Article 251 notes the Minister may authorize any person to act as an inspector to see to the enforcement of this Act and the regulations. As per stated in many of its past correspondence, the KEAC believes it is important to once again highlight KRG's experience and presence on the territory and recommends the inclusion of regulatory measures that would attribute monitoring and enforcement powers to KRG for the Nunavik region and includes adequate financial support to do so.

#### **Conclusion**

The JBNQA Environmental and social protection regime sets out a special status and involvement for the Inuit, Naskapi and Cree people and the other inhabitants of the region over and above that provided for in procedures involving the general public through consultation or representative mechanisms wherever such is necessary to protect or give effect to the rights in favour of the Inuit, Naskapi and Cree people acknowledged by and in accordance with the JBNQA.

The KEAC reviewed Bill 63, modifying the *Mining Act*, taking into consideration Nunavik specific characteristics, the rights its Indigenous peoples and the objective of developing the mineral resources of that territory in keeping with the principles of sustainable development.

Finally, the development of mining infrastructure in a territory such as Nunavik must be carefully planned and must fully respected the regional land use planning mechanisms, taking into consideration the fact that the objective is to develop mineral resources in Nunavik in keeping with the objective of sustainable development and respecting the rights of the Inuit, Naskapi and Cree peoples.