

**BRIEF PRESENTED TO THE COMMITTEE ON AGRICULTURE,  
FISHERIES, ENERGY AND NATURAL RESOURCES**

**BY THE KATIVIK REGIONAL GOVERNMENT**

**Comments and Recommendations**

**concerning Bill 43, *Mining Act***

September 30, 2013

## **Kativik Regional Government**

The Kativik Regional Government (KRG) is a non-ethnic public organization created in 1978 following the signing of the *James Bay and Northern Québec Agreement* (JBNQA). Pursuant to the *Act respecting Northern Villages and the Kativik Regional Government* (R.S.Q., c. V-6.1), known as the Kativik Act, the KRG has jurisdiction over the Kativik Region. Covering roughly 500,200 km<sup>2</sup>, the Kativik Region is the territory of Québec north of the 55th parallel, with the exception of the Category IA and IB lands of the Cree community of Whapmagoostui. The Kativik Region includes 14 communities with a total population of approximately 12,000. The KRG acts as a municipality for any part of the territory that is unorganized (Kativik Act, sect. 244).

The mandates conferred to the KRG through the Kativik Act or through agreements with the governments relate in particular to: municipal and regional matters, transportation, communications, policing and civil security, employment and labour training, technical assistance for the northern villages, sports and recreation, childcare, land use planning, environmental protection, parks development and management, hunting, fishing and trapping support, and wildlife protection.

In 2003, under the *Act respecting the Ministère des Affaires municipales, des Régions et de l'Occupation du territoire* (R.S.Q., c. M-22.1), the KRG was designated as the Regional Conference of Elected Officers for the Kativik Region (sect. 21.5). Regional conferences of elected officers are the primary interlocutor of the Québec government regarding regional development for the territory or community they represent.

## **Introduction**

While recognizing and encouraging mining development as an engine for regional and provincial economic development, the KRG maintains that mining development must be balanced with the environmental protection and conservation. To this end, the KRG and the communities of the Kativik Region have worked with the Ministère du Développement durable, de l'Environnement, de la Faune et des Parcs (sustainable development, environment, wildlife and parks, MDDEFP) to identify priority areas for conservation, such as essential subsistence harvesting areas, archaeological and burial sites, as well as existing and proposed protected areas. Outside of these areas, mining and other types of development should be examined with sustainable development and the economy in mind.

Overall, the KRG has noted in Bill 43 improvements over the current *Mining Act* (R.S.Q., c. M-13.1), including the tightening of some requirements related to the environment, public consultation and rules applicable to the allocation of mining leases, as well as the creation of economic spinoff monitoring and maximization committees.

Notwithstanding, the KRG is of the opinion that Bill 43 does not adequately take into account the laws, regulations and agreements applicable in the Kativik Region. One of the KRG's major concerns is the ease and speed with which mineral claims can be obtained compared to the time required to put in place protection for these same areas. The KRG believes that the issuance of mineral claims must be managed with a view to sustainable development and taking into account KRG land use planning which identifies areas that are incompatible with mining activities. The KRG requests that an environmental and social monitoring committee be created at the start of each mining project. It also wishes to be involved in the monitoring and surveillance of mining activities and infrastructure, the review of rehabilitation and restoration plans, as well as site inspections.

### **General Comments and Recommendations**

Since the Kativik Region is not contemplated under the *Act respecting Land Use Planning and Development* (R.S.Q., c. A-19.1), several provisions of Bill 43 are not applicable. Although Bill 43 (sect. 284) is subject to the *Act respecting the Land Regime in the James Bay and New Québec Territories* (R.S.Q., c. R-13.1) and the *Act approving the Agreement concerning James Bay and Northern Québec* (R.S.Q., c. C-67), it should take into account the distinct legal characteristics of the Kativik Region, including:

- *Partnership Agreement on Economic and Community Development in Nunavik* (Sanarrutik).

Signed by the KRG, the Makivik Corporation and the Québec government, the Sanarrutik Agreement stipulates (section 2.3):

“If any mining projects were to take place, Québec undertakes to encourage and facilitate the signing of agreements between the Makivik Corporation and the mining companies concerning remedial measures and monitoring, financial arrangements, employment and contracts.

As 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.”

- *Act respecting Northern Villages and the Kativik Regional Government* (R.S.Q., c. V-6.1).

Section 244 defines the KRG as a municipality for any part of the territory that is unorganized in the Kativik Region.

- *Act respecting the Ministère des Affaires municipales, des Régions et de l'Occupation du territoire* (R.S.Q., c. M-22.1).

Section 21.5 designates the KRG as the Regional Conference of Elected Officers for the Kativik Region.

**Recommendation 1:** Although Bill 43 makes reference to the *Act respecting the Land Regime in the James Bay and New Québec Territories* and the *Act approving the Agreement concerning James Bay and Northern Québec*, it should take into account the other laws and regulations in effect in the Kativik Region and agreements between the KRG, the Makivik Corporation and the Québec government. Bill 43 should be amended to clarify the legal framework applicable in the Kativik Region.

Québec adopted a mineral strategy in 2009. During the consultations that were carried out in 2007, the KRG transmitted a position paper to the Minister of Natural Resources and Wildlife at that time, indicating its major concerns which are the same today, i.e. the environment, land use, job opportunities and economic development. Unfortunately, Bill 43 does not respond adequately to these concerns.

Bill 43 should take into account the fact that the land use planning mandate for the Kativik Region is held by the KRG. To this end, the KRG has produced independently as well as in cooperation with partners and provincial government departments, and based on consultations with the communities of the Kativik Region, publications regarding the planning and development of the region with a view to its sustainable development.

- *Master Plan for Land Use in the Kativik Region* (1998).
- *Protected Area Planning in Nunavik* (2013).
- *Plan for the Integrated Development of Lands and Natural Resources* (to be submitted to the Ministère des Ressources naturelles (natural resources, MRN) in January 2014).
- *Working Together to Protect Wildlife and Wildlife Habitat, and to Promote the Sustainable Use of Wildlife Resources in Nunavik. Five-Year Protection Plan 2010–2015* (2010).

The *Master Plan for Land Use in the Kativik Region* was adopted by the KRG in 1998. The Master Plan stipulates the general aims of land development and general land use policies in the Kativik Region. It was approved according to the law by the Minister of Municipal Affairs, Regions and Land Occupancy. The KRG is currently developing rules of application (zoning by-laws) for the Master Plan.

With a view to integrated and regionalized natural resource management, based on the development and conservation of natural resources and lands, the MRN created in most regions of Québec regional land and natural resource commissions. Under the direction of regional conferences of elected officers, these commissions were in particular given a mandate to develop with the MRN regional plans for the integrated development of lands and natural resources. Although no commission was created for the Kativik Region, the KRG in its capacity as the Regional Conference of Elected Officers for the Kativik Region will submit a plan to the MRN in January 2014.

Between 2010 and 2013, the KRG and the MDDEFP worked together to consult the communities of the Kativik Region and the Naskapi community of Kawawachikamach on the MRN's network of existing and proposed protected areas, as well as their suggestions for new protected areas. The report *Protected Area Planning in Nunavik*, transmitted to the MDDEFP in June 2013, contains a summary of Inuit and Naskapi priorities regarding protected areas with maps and recommendations as well as a justification for each proposed protected area (mainly biodiversity and aquatic reserves). The creation of protected areas is a priority of the KRG and the communities of the Kativik Region.

Bill 43 amends the *Act respecting Land Use Planning and Development* to allow regional county municipalities to identify mining incompatible territory and conditionally compatible territory in their land use and development plans. Because the Act is not applicable in the Kativik Region, Bill 43 should stipulate clearly if the KRG has the powers to identify such areas and, if applicable, according to what processes and criteria. Since the MRN has the power to modify these areas (sect. 280, Bill 43), how can a regional county municipality, and the KRG, be certain that their recommendations will be taken into account? The issues related to mining incompatible areas should be clarified in Bill 43.

**Recommendation 2:** Given that the *Act respecting Land Use Planning and Development* is not applicable in the Kativik Region, Bill 43 should contain provisions regarding land use planning in the region. In so doing, it should take into account the principles of sustainable development and KRG land use planning. At the very least, the KRG should possess the same planning powers as the regional county municipalities in southern Québec. Bill 43 should clearly indicate KRG powers regarding the identification of mining incompatible territories. The bill should also specify if the territories identified as incompatible may be exempted from mining activity in the case of existing mineral claims.

Since 2002, the KRG has been working with the MDDEFP and the communities of the region to create and develop Québec national parks in the Kativik Region. Three parks have so far been created: Parc national des Pingualuit (1,134 km<sup>2</sup>), Parc national Kuururjuaq (4,461 km<sup>2</sup>) and Parc national Tursujuq (26,107 km<sup>2</sup>). During public hearings on park creation, specific requests have been expressed by the communities of the Kativik Region, researchers and environmental groups regarding boundary extensions and the establishment of buffer zones around parks. Notwithstanding, these requests have come up against the fact that some of the areas contemplated for inclusion in a park or for protection as buffer zones are already subject to mineral claims, which take precedence over other land uses.

As well, because of the primacy of mineral rights over the other land uses, mineral claims are present within the boundaries of Parc national Tursujuq, i.e. the claims held prior to the official creation of the park were not revoked by the government and remain in the park, while not being

a part of it. From the perspective of responsible management, the KRG and the communities of the Kativik Region consider this situation absurd.

Similarly, the report *Protected Area Planning in Nunavik* contains clear references to community concern about the ease with which mineral claims can be obtained compared with the complex process involved in creating protected areas. The KRG would like the primacy of the *Mining Act* in the Kativik Region to be repealed, as was proposed for the rest of Québec in Bill 198, *Act to End the Precedence of Mining Rights over Other Land Uses and to amend the Act respecting Land Use Planning and Development*.

**Recommendation 3:** The primacy of mineral claims over every other land use is a major concern for the KRG and the communities of the Kativik Region. Since Bill 198, *Act to End the Precedence of Mining Rights over Other Land Uses and to amend the Act respecting Land Use Planning and Development* is not applicable in the Kativik Region, Bill 43 should clearly stipulate a stop to the primacy of mineral rights over other land uses in the Kativik Region. As well, the KRG recommends that Bill 43 confer power to the KRG to withdraw mining activities from areas where there is a conflict in uses, such as essential subsistence harvesting areas, archaeological and burial sites, as well as existing (Parc national Tursujuq) and proposed protected areas.

Regarding environmental protection, as well as the monitoring and surveillance of mining activities in the Kativik Region, the KRG would like for Bill 43 to require the creation of environmental and social monitoring committees, like the one created for the New Millennium mining project. Each committee would need to include representatives of the KRG and the communities of the Kativik Region concerned by the attendant mining project and have formal procedures, such as the obligation to meet at least twice annually. They need to be created at the start of each mining project and continue to meet until the completion of site rehabilitation. They would serve to ensure compliance with environmental and social standards according to the legislation in effect in the Kativik Region and the implementation of site rehabilitation and restoration measures.

For about a decade, mining companies have been cooperating with organizations in the region, including the KRG and the communities of the Kativik Region, to clean up abandoned mineral exploration sites. Through the creation of Fonds Restor-Action Nunavik, they have contributed funding with the MRN for some of the costs of the clean-up work. The report *Abandoned Mineral Exploration Sites in Nunavik Rehabilitation Project, 2008–2012 Summary Report and Update of the General Response Plan* prepared by the KRG describes the scope of the work completed. In this context, the KRG deems the creation of formal environmental and social monitoring committees to be a priority.

**Recommendation 4:** Regarding environmental protection, Bill 43 should take into account the Sanarrutik Agreement and provide for the signing of agreements between the Makivik Corporation and mining companies for remedial measures and related monitoring. The bill should also provide for the creation of an environmental and social monitoring committee with the start of each

mining project and formal procedures. The KRG and other concerned organizations should be involved.

Mineral exploration and mining activities must have the lowest possible impact on the environment and Inuit land use. The KRG and the communities of the Kativik Region are very concerned about the increasing number of mining-related infrastructure, at both mineral exploration and mining stages.

The proliferation of infrastructure is a real challenge in the Kativik Region, with each mining company intent on constructing and managing its own infrastructure, including roads, airports and marine access. For example, when it presented its project, Canadian Royalties Inc. proposed to build an entirely new wharf and landing strip, even though Xstrata Nickel was already operating the same infrastructure in the same area. In its May 2008 analysis report, the Kativik Environmental Quality Commission authorized the construction of a new wharf, but not a landing strip. As concerns access roads, the KRG has already made recommendations concerning the most appropriate routes and has suggested their maintenance be handled by organizations in the region.

The KRG would like the government to study the issue of infrastructure in relation to mining activities.

**Recommendation 5:** Regarding environmental protection, Bill 43 should contain provisions that prevent the multiplication of infrastructure for mineral exploration and mining activities, such as roads, landing strips and marine facilities. The KRG requests that analysis be conducted regarding the possibility of publicly owned infrastructure for mineral exploration and mining activities that could be managed by local and regional organizations.

**Recommendation 6:** Regarding employment and economic development opportunities, Bill 43 should take into account the Sanarrutik Agreement and provide for the signing of agreements between the Makivik Corporation and mining companies concerning financial arrangements, employment and contracts.

**Recommendation 7:** Bill 43 should express more explicitly the government's intention to carry out mining site inspections and clearly stipulate related monitoring and surveillance procedures in the Kativik Region. In this respect, the KRG would like to be involved with the government in inspections and the development of related monitoring and surveillance procedures.

## Specific Comments

The following paragraphs provide specific feedback on certain sections of Bill 43.

### Definitions

“Outstanding geological site” – Since the definition refers to “a parcel of land whose [...] biological characteristics are of educational value, or of interest for scientific research or conservation purposes”, the term should be adjusted to more aptly reflect the definition, for example “Outstanding natural site”.

“Aboriginal communities” – This term is not defined in Bill 43. Since the northern villages and the KRG are non-ethnic organizations considered to be municipalities under the Kativik Act, it is possible that they might not be considered Aboriginal communities. Clarification is required.

**Section 3** – The manner for consulting Aboriginal communities should be defined or make reference to existing agreements, laws and regulations applicable in the Kativik Region. Inuit rights are protected under the JBNQA and are more extensive than the simple right to be consulted.

**Section 33** – This section makes reference to parcels of land where prospecting or staking requires prior authorization by the Minister. Indian reserves are listed, and so too must be the Category I and II lands defined under the JBNQA and the other Inuit areas of importance according to KRG land use planning.

**Section 74** – This section stipulates that a claim holder must notify the surface-right owner and the local municipality of a claim obtained within 60 days after registration. He must also inform the local municipality of the work to be performed at least 90 days before it begins.

The application of this section in the Kativik Region must be clarified so as to take into account the Kativik Act and Category I lands defined under the JBNQA for which no mineral rights may be granted without the consent of the Inuit community corporation in its capacity as owner. The JBNQA contains specific provisions for mineral exploration and mining activities and Bill 43 must take these into account.

**Sections 103 and 104** – The proposed composition for economic spinoff monitoring and maximization committee is inappropriate for the Kativik Region. The KRG feels the composition of the committee should be more representative. As well, Bill 43 should take into account the Sanarrutik Agreement which stipulates that the government must encourage and facilitate the signing of agreements between the Makivik Corporation and the mining companies concerning financial arrangements, employment and contracts.

**Section 139** – This section lists the types of lands and sites that may not be leased for mining, in particular, an exceptional geological site, a site situated in an Indian reserve, etc. This list should take into account areas identified in KRG land use planning, such as essential subsistence harvesting areas, archaeological and burial sites, as well as existing and proposed protected areas.

**Section 180** – A rehabilitation and restoration plan must be approved by the Minister prior to the beginning of work by the person contemplated in section 179. The KRG would like to be able to provide feedback on the plan to the Minister before it is approved.

**Section 181** – This section concerns rehabilitation and restoration plans which must in particular provide for the restoration of an “affected parcel of land to a satisfactory condition”. The expression “to a satisfactory condition” is too vague and leaves room for interpretation. Clarifications should be made to the effect that parcels of land must be restored so that their physical and ecological conditions are conducive to wildlife and uses not related to mining, to the satisfaction of the KRG and the communities of the Kativik Region concerned by the attendant mining project. To this end, the environmental and social monitoring committee proposed by the KRG could ensure that site rehabilitation and restoration meet specific criteria.

The KRG would like to see a long-term monitoring plan required, including the tabling of a report at the end of rehabilitation and restoration work. Such an exercise would require site inspections (by the government and the KRG) a few years following restoration and, if applicable, the implementation of corrective measures by the person contemplated in section 179. Bill 43 should provide for the issuance of a rehabilitation and restoration acceptance certificate by the government, following its inspection. The mining company would retain responsibility for the site until the issuance of such a certificate.

**Section 182** – This section makes reference to the financial guarantees for and restoration of mining sites. These kinds of guarantees should apply to mineral exploration and mining activities. The list of work should include all infrastructure, facilities and equipment set up for mining activities.

**Section 189** – This section stipulates that rehabilitation and restoration work must begin within three years after mining activities cease and that the Minister may grant an extension. The KRG does not clearly understand why rehabilitation and restoration is not required to start as soon as there is a stop in mining activities and, even less, that an extension to the already long initial period could be authorized. Rehabilitation and restoration should also be required for mineral exploration activities. The fine provided for, in case of non-compliance with the maximum three-year period (section 271), i.e. 10% of the total guarantee, is too low and does not encourage mining companies to begin rehabilitation and restoration as soon as possible. Bill 43 could even be amended to encourage mining companies to rehabilitate and restore mineral exploration and mining sites as activities are completed.

**Sections 212 to 215** – These sections make reference to site inspections by a government representative. Notwithstanding, no provision stipulates that the government will effectively exercise this right, nor if this right will be exercised with a view to the delivery of a rehabilitation and restoration acceptance certificate. The KRG considers inspections at mining sites to be important, not to say essential. The KRG would like to take part in inspections performed in the Kativik Region with the government. Bill 43 should make reference to this.

**Section 250** – This section lists the situations in which the Minister may by order reserve to the State or withdraw from mining activities certain works or purposes. The works and purposes listed should take into account KRG land use planning in the Kativik Region.

**Sections 251 to 253** – These sections should take into account the Kativik Act and the *Master Plan for Land Use in the Kativik Region* since the *Act respecting Land Use Planning and Development* is not applicable in the region. In this manner, section 251 stipulating that “a mining incompatible territory delimited in a land use and development plan in accordance with the *Act respecting Land Use Planning and Development* is withdrawn from prospecting, mining exploration and mining operations from the time the territory is shown on the maps kept at the registrar’s office” would be made to apply in the Kativik Region. The same comment applies to section 252 concerning a conditionally mining compatible territory reserved by the State. In addition, Bill 43 should be amended so that the withdrawal from mining activities is valid for existing activities and not only “from the time the territory is shown on the maps kept at the registrar’s office”.

## **Conclusion**

Overall, the KRG considers that Bill 43 represents a considerable improvement to the current situation. The KRG’s comments are based on the assumption that all stakeholders are working towards the same objective, which is to say a world-class mining industry in Québec, including the Kativik Region, that is environmentally and economically sustainable, equitable and socially acceptable. It will require close collaboration, real partnerships with regional authorities, sensitivity to the Kativik Region’s economic, cultural and social realities, and full transparency in decision-making.