



POSITION PAPER

PRESENTED BY MAKIVIK CORPORATION

IN THE CONTEXT OF THE

**Special consultations and public hearings on
Bill 64 “*Firearms Registration Act*”**

TO THE

**Committee on Institutions
National Assembly of Québec**

APRIL 6, 2016

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1. **ABOUT MAKIVIK CORPORATION**

Makivik Corporation (Makivik) was created in 1978 by the *Act respecting the Makivik Corporation* (R.S.Q., c.18.1). It is the successor entity to the Northern Quebec Inuit Association, signatory for the Inuit Party to the *James Bay and Northern Quebec Agreement* (JBNQA). Representing approximately 11,000 Inuit of Nunavik, Makivik is also the recognized Nunavik Inuit Party to another treaty, the *2008 Nunavik Inuit Land Claims Agreement* (NILCA) entered into with the Government of Canada and the Government of Nunavut. As a non-profit legal person, Makivik acts as a development corporation as well as the protector and promoter of the rights and interests of the Inuit beneficiaries under the JBNQA and the NILCA. Makivik focuses on the political, social and economic development of the Nunavik region. Its board of directors is composed of 21 elected members who are Inuit beneficiaries of the JBNQA. These include 5 officers elected by universal suffrage by all eligible Inuit beneficiaries of the JBNQA and 16 members elected by eligible voters of each of the Inuit communities. The members of the corporation are composed of the Nunavik Inuit beneficiaries of the JBNQA. Makivik also owns several subsidiary companies in various fields including, among others, air and marine transportation, construction, and fisheries, and acts as a main job generator in Nunavik. The Nunavik region covers more than 500,000 km² of the Province of Quebec, from the 55th parallel to its extreme northern border.

2. **PRESENTATION “WITHOUT PREJUDICE” TO THE COMMITTEE ON INSTITUTIONS OF THE NATIONAL ASSEMBLY OF QUEBEC**

The position of Makivik as herein presented to the Committee on Institutions is **without prejudice**. Makivik reserves its right to present an amended position paper on Bill 64 in the future.

3. PRIVILEGED ROLE OF THE HUNTING, FISHING AND TRAPPING COORDINATING COMMITTEE (HFTCC)

The HFTCC was created by virtue of the JBNQA to administer the hunting, fishing and trapping regime created by Section 24 of the JBNQA and Section 15 of the *Northeastern Quebec Agreement* (NEQA) within the JBNQA/NEQA territory (the “Territory”). It is an expert body composed of Cree, Inuit, Naskapi, federal and provincial representatives. Makivik as the designated Inuit Native party appoints three (3) representatives to this committee. As a consultative body to the responsible governments, the HFTCC is the exclusive and preferential forum in which Native and government parties jointly formulate regulations and supervise the administration and management of the hunting, fishing and trapping regime. In particular, the HFTCC shall act as the preferential and exclusive forum regarding matters such as this proposed legislation:

Section 24.4.23 JBNQA:

The Coordinating Committee shall be a consultative body to responsible governments, save where expressly stipulated in paragraph 24.4.30 and as such shall be the preferential and exclusive forum for Native people and governments jointly to formulate regulations and supervise the administration and management of the Hunting, Fishing and Trapping Regime.

Section 24.4.26 JBNQA:

All regulations relating to the Hunting, Fishing and Trapping Regime proposed by responsible governments shall be submitted to the Coordinating Committee for advice before enactment. (...)

On March 14, 2016, the HFTCC sent a letter (in both English and French) to Mr. Martin Coiteux, Minister of Public Security. Although the HFTCC has not yet received a reply or confirmation of delivery, said committee still expects that its preferential and exclusive role be duly taken into consideration within the current process, and proper submission of Bill 64 to the HFTCC takes place prior to its enactment. Makivik shares all observations and conclusions contained within said HFTCC letter, including the role the HFTCC shall play with respect to providing recommendations on Bill 64.

4. ISSUES AND CONCERNS OF MAKIVIK TOWARD BILL 64

In addition to the foregoing, Makivik notes concrete issues and concerns regarding the content, development and implementation processes for Bill 64 in the Nunavik context. Although Makivik acknowledges the objective and purpose of the Bill, as also pointed out in the HFTCC letter, the following elements need to be duly accommodated first before any registration obligations be enforced in Nunavik:

I. RIGHT TO HARVEST OF NUNAVIK INUIT BENEFICIARIES

The Nunavik Inuit beneficiaries enjoy a treaty right to harvest, which includes ancillary means as part of its treaty definition, such as the right to possess and use equipment as reasonably needed for exercising the right to harvest:

Section 24.3.12 JBNQA¹

The right to harvest shall include the right to possess and use all equipment reasonably needed to exercise that right (...).

¹ Corresponding NEQA Section 15.3.11

This right to harvest, recognized and protected by Section 35 of the Constitutional Act (1982), enjoys a priority status² supplemented by the fact that a minimum of control or regulations shall apply to beneficiaries in the Territory:

Section 24.3.30 c) JBNQA³

A minimum of control or regulations shall be applied to the Native people, which shall mean inter alia that:

(...)

c) In general, the control of activities contemplated by this Section shall be less restrictive for Native people than for non-Natives.

The proposed Bill pursues the objective of “establishing rules to govern firearms registration, with further purpose to build public knowledge capacity on firearms presence, for supporting peace officers’ investigations and interventions⁴”. As a law of general application concerning weapon control directed to public security, it in turn **does not** apply **primarily** to reasons for limitations defined in the JBNQA:

Section 24.3.9 JBNQA:

Restrictions on the right to harvest for reasons of public safety shall apply primarily to the discharge of firearms, to the setting of large traps or nets in certain areas, and to other dangerous activities having due regard for other lawfully in the vicinity. Any such restrictions shall not in themselves preclude other harvesting activities.

In the context of Section 24.3.12 JBNQA:

(...) the whole subject to applicable laws and regulations of general application concerning weapon control, where such control is directed to public security and not to harvesting activity. (...)

² Consistent with rulings from the Supreme Court of Canada, and notably R. v. Sparrow [1990] 1 S.C.R. 1075; and with *An Act Approving the Agreement Concerning James Bay and Northern Quebec*, CQLR c. C-67, Section 6.

³ Corresponding NEQA Sections 15.3.22 and 15.3.22.3, respectively.

⁴ See Bill Paragraph 1 and 2.

Moreover, for Nunavik Inuit, the right to harvest serves unique purposes. Amongst others, since time immemorial, harvesting practices by Inuit provide traditional food (country food) to families and community members, which is core to Inuit culture and identity. Also, considering the high cost of living in Nunavik, the harvest of country food can help alleviate the financial burdens of Inuit families. Makivik thus considers that the Bill as proposed infringes on the right to harvest of the Nunavik Inuit beneficiaries.

II. LANGUAGE OF THE REGISTRATION APPLICATION

Nunavik Inuit speak and read Inuttitut. It is their mother tongue and is prevalent in the schools, homes and work places throughout Nunavik. For a certain component, primarily the elders of the population, Inuttitut is the only language utilized. In this context, we are of the opinion that the Bill should accommodate the language consideration. We note with interest that Section 5 of the *Aboriginal Peoples of Canada Adaptations Regulations*, or former federal firearms register (the “Federal Register”), included provisions with respect to Aboriginal languages:

Section 5 of the Federal Register:

“ Sections 3, 8 and 9 of the *Firearms Licences Regulations* are adapted such that a statement made by an Aboriginal applicant or by another Aboriginal person in accordance with any of those sections may be made (a) orally, if the applicant or person is unable to make a written statement, in which case the oral statement shall be transcribed by a person acting on behalf of the applicant or person; and (b) by means of an interpreter, if the applicant or person is unable to communicate in English or French.”

We also note that the current Bill provides for fines between \$500 to \$5000 for false statements made in forms, although the forms would not be made available in Inuttitut. If an Inuk does not understand the forms, it might result in a false statement and hence a fine by way of linguistic issues. Considering that the Bill touches upon a treaty right, it further implies the development by Quebec of communication tools, outreach procedures and notices which are to be culturally adapted to the Nunavik Inuit population. In particular, we consider that the implementation of any obligation respecting registration of firearms should imply the hiring of Inuit to help applicants, especially elders, to notably filling out the forms or informing them about the requirements. We thus request that accommodations respecting Aboriginal languages, and Inuttitut in specific, be duly developed by Quebec before any registration obligation be contemplated in Nunavik.

III. COMMUNAL POSSESSION (SHARING)

Sharing is a core concept to Inuit identity. This widely spread concept notably includes communal possession of equipments for the conduct of the right to harvest, firearms included. We are concerned that this important concept may pose an issue in regards to the obligations in Bill 64 if not amended. For instance, in case of a situation where a family unit, including children and siblings, share the use of firearms for harvesting purposes, whom out of the individuals will have the responsibilities foreseen in Bill 64? As the Bill does not contemplate such an occurrence, we assert that proper accommodations need to be proposed to the satisfaction of Makivik before any registration obligation be applied in Nunavik.

IV. REQUIREMENTS AND COSTS

No permit, license or other authorization shall be required by beneficiaries for exercising their right to harvest. And, if ever fees were to be required notably for

registering, chiselling, or inscribing in indelible ink a firearm, they shall be nominal, and such process conducted through the local governments:

Section 24.3.18 JBNQA:

The exercise of the right to harvest shall not be subject to the obtaining of permits, licenses, or other authorization, save where expressly stipulated otherwise in this Section. Where, by exception, for the purposes of management, leases, permits, licenses or other authorizations are required by the responsible Minister or required on the recommendation of the Coordinating Committee, the Native people shall have the right to receive such leases, permits, licenses or other authorizations at a nominal fee through their respective local governments.

We consider these conditions to be fully applicable to the proposed Bill on Firearms registration.

V. LACK OF AMENITIES AND SERVICES IN NUNAVIK

Nunavik counts approximately 11,000 Inuit inhabitants scattered across fourteen (14) communities with no amenities or services on par with southern Quebec, with respect to a wide variety of fields. This inequity shall be highly problematic when it comes to implementation of Bill 64 and notably regarding the inscribing in indelible ink or chiselling of every firearm. Will the Nunavik region be supported so it be able to develop the necessary amenities or services to carry out these obligations within its territory? Or will beneficiaries have to send their firearms to southern Quebec to have them marked, this latter scenario implying important costs for the Inuit harvesters considering the air cargo rates, not mentioning the delays before the right to harvest could resume. This is not acceptable. The logistics in implementing the legislation as proposed will be extremely difficult in Nunavik, detrimental to Nunavik beneficiaries who rely on hunting for their

livelihood. These considerations need to be accommodated regarding any legal obligation respecting firearms registration in Nunavik.

VI. DELAYS IN THE NUNAVIK CONTEXT

We are raising questions on the delays for transmitting the required information, as provided for in sections 7, 8 and 9 of the proposed Bill⁵. Communications between Nunavik and southern Quebec are more demanding in terms of time and costs. This must be taken into considerations before proposing workable delays to any obligation for registration of firearms in Nunavik. Also, in regards with section 23 of Bill 64 and given the delays in implementing the federal register, we question the one year delay for implementing the provincial register. This delay may be suitable for southern Quebec but, based on our concerns and requests for accommodation herein expressed, we consider that more time will be required in the Nunavik context.

VII. SANCTION (SEIZURE)

Bill 64 foresees seizure of firearms in case of persons not complying with the law. In Nunavik, seizure of a firearm will mean the impossibility for an Inuk beneficiary to exercise the right to harvest. This consequence does not respect the minimum control requirements imposed by the JBNQA. Consequently, we are of the opinion that this sanction creates an unbalance between the objectives of this law of general application and potential effects on Nunavik Inuit treaty rights, which is unjustified.

⁵ "7. The owner of a registered firearm must, within the time and in the manner prescribed by government regulation, notify the Minister of any change in the information provided for registration purposes or of the loss of the unique firearm number or the registration number. As soon as the owner of a registered firearm transfers ownership of the firearm, he or she must notify the Minister in the manner prescribed by government regulation.

8. A person who has a firearm in his or her possession must be able to provide the firearm's registration number on request.

9. A peace officer may require a person who has a firearm in his or her possession to provide the firearm's registration number. The peace officer may require the person to make the firearm available so the peace officer can verify its compliance. The peace officer may also require the person to provide any other information conducive to identifying the firearm and its owner."

VIII. CONSULTATION PROCESS

We consider that the Quebec government has not fulfilled its fiduciary obligation of consultation towards the Nunavik Inuit. The Supreme Court of Canada has repeated several times that when implementing a law or regulation which may have impacts on averted or potential rights or title of Aboriginals, its fiduciary obligation towards them, added to the principle of the honour of the Crown, creates an obligation for meaningful and dutiful consultation of the concerned Aboriginals⁶. The proposed Bill will have effects on Nunavik Inuit treaty rights although no official consultation by the Quebec government ever took place. This conclusion prevails for Makivik as representative of the Nunavik Inuit, but also at the HFTCC level as the privileged and exclusive forum for legislation of that sort. We request that this important breach be rectified.

5. CONCLUSION: FULL EXEMPTION REQUESTED

Makivik acknowledges the objectives sought by the Bill 64. However, considering the issues and concerns detailed within the present Position Paper regarding the Bill's content, development and implementation processes, **Makivik duly requests a full exemption by regulation⁷ from the application of the Bill 64 in favor of the Nunavik Inuit beneficiaries** until such time proper accommodations be proposed following meaningful and dutiful consultation conducted with Makivik, and with the HFTCC for recommendation purposes.

⁶ *Nation haïda c. Colombie-Britannique (Ministre des Forêts)*, [2004] 3 R.C.S. 511 ; *R. c. Nikal*, [1996] 1 R.C.S. 1013; *R. c. Sparrow*, [1990] 1 RCS 1075.

⁷ A full exemption could be done by regulation in virtue of s. 1 (3) of the Bill.