

PRESENTATION OF NASKAPI NATION OF KAWAWACHIKAMACH

SEPTEMBER 11, 2013

TO

**COMMITTEE ON AGRICULTURE, FISHERIES,
ENERGY AND NATURAL RESOURCES**

REGARDING

BILL NO. 43 (NEW MINING ACT)

PART 1

Naskapi Nation of Kawawachikamach

The Naskapi Nation of Kawawachikamach represents the Naskapi Indians who have traditionally occupied vast parts of what is today Northern Quebec and Labrador. Caribou has always been the primary resource harvested by the Naskapis and the George River Caribou herd has traditionally been the principal source of caribou for the Naskapis. The Naskapis traditionally moved with the herd throughout its annual range throughout Northern Quebec and Labrador. However in recent years, the dramatic decline of the George River herd has signaled an equally dramatic decline in the harvest from that herd by the Naskapis.

The Naskapis signed the Northeastern Quebec Agreement ("**NEQA**") in January 1978 with the Government of Québec, the Government of Canada, the James Bay Crees and the Inuit of Quebec. The **NEQA** mirrored the James Bay and Northern Quebec Agreement ("**JBNQA**") signed in 1975 with the James Bay Crees and Inuit of Quebec in 1975 and major amendments to the JBNQA were introduced by the NEQA to integrate the Naskapis into the Hunting, Fishing and Trapping regime for the Territory. The National Assembly of Quebec recognized the Naskapis as one of the First Nations of Quebec in its Resolution adopted March 20, 1985. In that resolution Quebec recognized the NEQA as having the same value as a treaty.

The Naskapis are presently located in the Province of Quebec in the Village of Kawawachikamach, 14 kilometers north-east of Schefferville. Kawawachikamach was built in the early 1980's and the relocation of the Naskapis from Schefferville to Kawawachikamach was an important element of the NEQA. The present Naskapi population of Kawawachikamach is 868. There are 223 Naskapis living elsewhere in the Territory, most of which reside in Schefferville or the adjoining Reserve of the Nation Innu de Matimekush-Lac John. There are 98 Naskapis living outside the Territory.

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Loi sur les mines
VERSION RÉVISÉE

In recognition of the ever changing migratory patterns of the caribou and the need of the Naskapis to adapt thereto, under the JBNQA and the NEQA the Naskapis have the treaty right to harvest wildlife over a vast area of Northern Quebec illustrated on the attached map and you will note that a major portion of the Labrador Trough as it passes through Quebec is situated within the area where the Naskapis have the treaty right to harvest under the JBNQA and NEQA.

In recent years due to the rising price of iron ore, Canadian and foreign companies have started developments to mine iron ore within the Labrador Trough, many of which are redevelopment of claims abandoned by the Iron Ore Company of Canada when it stopped its operations in Schefferville in the early 1980's.

It should be noted that the Naskapis are one-third owners of Tshiuetin Rail Transportation Inc. The railway line extends from Emeril Junction in Labrador to Schefferville. The Nation Innu of Matimekush Lac-John and the Nation Innu Uashat mak Mani-Utenam each hold another one-third interest in this railway company. The resurgence of mining activity in the Labrador Trough has had a direct socio-economic beneficial impact on Tshiuetin Rail's operations.

This new development of iron ore in Northern Quebec and Labrador has offered new challenges and new employment and business opportunities for the Naskapis. Hence the Naskapis are keenly interested in certain aspects of Bill 43 as will be explained by us today.

PART 2

NASKAPI COMMENTS ON BILL 43

(a) Consultation with Native communities -section 3

3. This Act must be construed in a manner consistent with the obligation to Consult Native communities. The Minister must consult Native communities separately, having regard to all the circumstances.

We note this provision is taken directly from Bill 14 tabled by the previous Government in 2011. That Bill died on the Order Paper.

Consultation, and where merited, accommodation by the Crown, both federal and provincial, is for the Naskapis one of the most significant aspects of any proposed mining development.

We note that the word "accommodation" is not present in section 3, whereas the courts have clearly indicated that consultation alone is not sufficient to discharge the Crown's obligation towards Aboriginal people when a development is being authorized by the Crown that might affect their Aboriginal or treaty rights.

In the case of mining or other developments, it might be thought that the rules for Crown consultation of the Naskapis would be found in the NEQA. However, that is not the case. This is partly because when the NEQA was signed in 1978, the governments of Canada and Quebec refused to amend the JBNQA so as to guarantee representation to the Naskapis on the Kativik Environmental Quality Commission or the Kativik Environmental Advisory Committee, these bodies playing important roles for the environmental regime applicable north of the 55th parallel of latitude. Under the JBNQA, these bodies are not obliged to consult the Naskapis before making decisions respecting projects with the exception of projects on Naskapi Category IB-N and II-N lands, these latter lands representing but a small fraction of the lands above the 55th parallel where the Naskapis have treaty harvesting rights. The other reason is that the jurisprudence regarding the duties of the Crown to consult and accommodate Native people has been largely developed by court rulings rendered after the signing of the NEQA.

There was a tendency originally for some to think that in the case of a modern land claims agreement like the NEQA, the rules for consultation should be found exclusively in that agreement and that if there was no consultation provided for in that agreement, no consultation was required by the Crown. However this line of thinking has been put to rest by the Supreme Court of Canada in its 2010 holding in *Beckman v. Little Salmon/Carmack First Nation*¹ where the court held in the case of a modern lands claim agreement, the Crown has a duty to consult a First Nation when its treaty rights could be affected, even though the lands claim agreement is silent with respect to the Crown's duty to consult in the particular instance, and this because the Crown's duty to consult is external from the treaty and arises from the honour of the Crown.

So it is ironic for the Naskapis that while Crown consultation and accommodation with respect to a proposed mining project is of paramount concern to them where the project has physical or social affects where they have treaty rights under the NEQA or JBNQA, Bill 43 is silent on any details concerning such consultation and accommodation with the exception of the passing reference in section 3. It is essential that after consultation with the Naskapis and other Aboriginal communities, the Québec government develop and publish a policy concerning such consultation.

(b) Section 163 - third paragraph, subsection 1 - The public nature of Impacts and Benefits Agreements with Native communities

163. The documents and information obtained by the Minister from holders of mining rights for the purposes of this Act are public. The Minister makes such documents and information public in the manner the Minister sees fit.

¹ [2010] 3 S.C.R. 103

The following are made public once a year for each mining lease, mining concession and lease to mine surface mineral substances:

- (1) the quantity and value of the ore extracted during the previous year; and*
- (2) the royalties paid during the previous year.*

The following are also made public:

(1) any agreement entered into between a holder of a mining lease or a mining concession and a community

- (2) the rehabilitation and restoration plan approved by the Minister; and*
- (3) the total amount of the financial guarantee required.*

This section applies subject to the restrictions on rights of access prescribed by section 28 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1). mining concession and a community;

The question arises whether section 163, third paragraph, subsection 1 (highlighted above), applies to agreements between a holder of a mining lease or a mining concession and a Native community. These are commonly called impacts and benefits agreements (**IBA's**).

In the last several years the Naskapis have concluded several IBA's with mining companies relative to projects both in Quebec where Naskapis have treaty harvesting rights under the NEQA and JBNQA and in Labrador where Naskapis exercise Aboriginal rights. All of these agreements contain a confidentiality clause insisted upon by the mining company concerned. Would the above cited provisions of section 163 trump the confidentiality provisions in these IBA's already signed? Also, in the case of an IBA the Naskapis have signed that treats a project taking place in both Labrador and Quebec, the forced public disclosure under the above cited provisions of section 163 would reveal the terms of the IBA relative to the Labrador-side of the project where there is no legislation forcing public disclosure.

The Naskapis are not in principle opposed to public disclosure of IBA's they sign with mining companies. Before these IBA's are signed, these IBA's have to be explained in detail to members of the Naskapi community and after such disclosure it is difficult to keep the details of the IBA strictly confidential.

In addition, we think in some instances there would be some benefit to Native communities to have IBA's made public. We are now in a situation where a mining company, with respect to its proposed mining development in Québec near Schefferville affecting Naskapis treaty rights, is refusing to grant to the Naskapis an IBA which the Naskapis believe is as beneficial as the mining company has already granted to a neighbouring Native community.

In the Partnership Agreement on Economic and Community Development between Naskapis and Quebec signed October 9, 2009, Quebec has made the following undertaking under section 2.3 with respect to any mining projects in the Naskapi Sector:

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

The Naskapis have not yet called upon the Québec government to assist them in negotiating a fair IBA with this particular mining company. However, if the IBA that mining company has already signed with a neighbouring Native community were made public, Quebec would be in a better position to assist the Naskapis with such negotiations.

We thank the Committee for offering us the opportunity to express our views on Bill 43. The Naskapis remain available for further consultations with the Committee or the Québec government as they may desire.

Le Québec, carte générale



Divisions territoriales

- Frontière internationale
- Frontière interprovinciale
- Frontière Québec - Terre-Neuve-et-Labrador (cette frontière n'est pas définitive)

**ARBA IN NORTHERN QUEBEC
WHERE NASKAPIS HAVE RIGHT
TO HARVEST**

Projection cartographique Conique de Lambert avec deux parallèles d'échelle conservée (46° et 50°)



Réalisation

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Québec

**XXX LABRADOR
TROUGH**