Comité consultatif pour l’environnement de la Baie James
James Bay Advisory Committee on the Environment
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Bill 102 – Modernization of the *Environment Quality Act* (CQLR c. Q-2)

JBACE commentary presented to the
Committee on Transportation and the Environment of the *Assemblée nationale*

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Introduction

The James Bay Advisory Committee on the Environment (JBACE), established under Section 22 of the James Bay and Northern Québec Agreement (JBNQA), oversees the administration and management of the Section 22 environmental and social protection regime. As the preferential and official advisory forum for governments, the JBACE provides advice regarding the formulation of laws and regulations that may affect the said environmental and social protection regime.[1]

While Bill 102[2] (hereafter the 'Bill') does not propose changes to the JBNQA environmental and social assessment and review procedure, the projected introduction of a strategic environmental assessment framework and the suggested changes to the authorization regime, will clearly influence the future planning and handling of development projects throughout Québec – including the James Bay Territory subject to the Section 22 regime.

Therefore, in accordance with its mandate, the JBACE wishes to express a number of comments and to provide its recommendations on the following issues related to the Bill: 1) strategic environmental assessments; 2) changes to the environmental authorization scheme; 3) social impacts; 4) access to information, transparency and participation; and finally, 5) climate change.

Readers should note that these JBACE comments pertain solely to our major areas of concern in relation to the provisions in the Bill that may affect the Section 22 environmental and social protection regime. This brief does not provide an article-by-article commentary, references to specific articles in the Bill are provided herein when necessary.

Important contextual notes on the JBNQA Section 22 environmental and social protection regime

The Section 22 environmental and social protection regime is designed to mitigate the environmental and social impacts of development on the Cree people, and the region's wildlife resources upon which they rely.[3]

The regime operates on the basis of nine guiding principles. Among other things, these principles reference the protection of Cree society, as well as the full exercise of their traditional harvesting rights and guarantees provided for in the hunting, fishing and trapping regime as outlined in Section 24. The protection regime also sets out a special status of involvement of the Cree in its application through representation and consultation, while also outlining a unique environmental assessment and review procedure.

The present brief is thus grounded on these precepts and references them throughout. Readers may consult paragraph 22.2.4 of Section 22 of the JBNQA for the nine guiding principles of the regime.

[1] See paragraphs 22.3.24 to 22.3.28 of the JBNQA.

[2] The Bill is formally entitled "*Bill 102 - An Act to amend the Environment Quality Act to modernize the environmental authorization scheme and to amend other legislative provisions, in particular to reform the governance of the Green Fund*."

[3] See paragraphs 22.2.2 to 22.2.3 of the JBNQA.

A. Strategic Environmental Assessment (SEA)

(1) Types of SEAs and the triggering of SEAs

We welcome the objective of establishing a framework for the conduction of SEAs to enhance strategic planning initiatives. We note the relative simplicity and flexibility of the proposed framework, the inter-ministerial character of the proposed SEA Advisory Committee, and the importance given to public consultation and transparency. Having said this, we table the following comments and recommendations in order to address what we feel is the major weakness with the proposed framework; namely, the overly discretionary nature for triggering SEAs.

We are concerned that the proposed Bill does not clearly define which planning or programming instruments will or will not be subjected to SEA, nor does it set out which sectors of activities will be encompassed or excluded. Also, only plans, programs and strategies are cited, with policies not being explicitly mentioned in the Bill.[4]

We are even more concerned that the Bill does not obligate SEAs for a prescribed set of planning initiatives. The Bill stipulates that SEAs may be undertaken by and at the discretion of the 'Administration'[5] responsible for a given plan, program and strategy "*if they are likely to have environmental effects.*" The Bill also does not elaborate on how, or on what basis, an Administration must determine what constitutes the '*likely effects*' that may warrant SEAs.

We thus understand that no third party will assist the said Administration in determining whether a given plan, program or strategy should be the object of an SEA. It is only once an Administration has decided, solely on its own accord, that a given plan should be subject to SEA that a third party – the SEA Advisory Committee – will be solicited for comments regarding the scope, nature and extent of the SEA and associated public consultations. Per the current Bill, the inter-ministerial SEA Advisory Committee will not have the responsibility or the authority to obligate or recommend the conduction of SEAs. SEAs will thus occur on a possibly random and uneven basis as their triggering will be unclear. This situation will compromise their coherent and systematic conduction; the overall credibility of these exercises, and of their outcomes, will thus be affected.

We would have appreciated a clearer legal obligation to automatically undertake SEAs for a clearly-fixed set of plans, programs, policies and strategies, coupled with the attendant and systematic guidelines for their conduction – including a screening phase to determine the need, scope, and format of a given SEA and of its associated targeted or broad public consultation activities. Ideally, this screening phase would also afford a degree of leeway to seek inputs from existing institutions such as our own.

When these two concerns are coupled together, we are further concerned that the Bill overly limits the benefits of SEA as a planning enhancement tool. In this sense we are led to pose the following questions:

- How will a discretionary application of SEA ensure consistency (i.e. that they are conducted for the same types of plans, programs, or strategies throughout the province)?

[4] By definition, we understand that land use plans, as well as regional and sectoral development plans and strategies can be the object of SEAs.

[5] Per Article 116 of the Bill, the term 'Administration' may refer to the Gouvernement du Québec, the Conseil éxécutif, the Conseil du trésor, a government department, or a government agency within the meaning of the *Auditor General Act* (CQLR c. V-5.01).

- How will a discretionary and thus incomplete application of SEA improve the credibility of planning processes? How will sustainable area-wide planning be facilitated if an SEA is conducted in one region for a given plan, program or policy, but not in an adjacent region?

- How will the interested entities and the public be informed of why a given plan was not subjected to an SEA?

As such, the scope for the application of SEA should not be limited or applied on a voluntary basis. A foreseeable and consistent application of SEA to plans, programs, policies and strategies across the province will improve the credibility of the exercises, and will serve to support the planning benefits that SEAs are designed to provide. A purely discretional triggering of SEA, based only on the in-house decision of the Administration responsible for a plan, program, policy, or strategy, is not suitable. If SEAs are to occur in a predictable, systematic and credible fashion, clear triggers are required. In our opinion, clear triggers for SEAs need not overly limit the flexibility and adaptability of the conduction of SEAs once triggered.

These triggers could take several forms. For example, an Administration could obtain the advice of the SEA Advisory Committee to determine, based on a set of criteria of what constitutes "*likely environmental effects,*" if SEA should occur (or not). Another example, and what the JBACE recommends, would be to include a schedule in the *Environment Quality Act* ('EQA' hereafter), or to adopt a regulation thereunder, listing the types of plans, programs, policies, and strategies that should be automatically subject to SEA, and to create a set of criteria to assess the need to require an SEA for the initiatives not listed.

Here, in the spirit of the Section 22 environmental and social protection regime, we underscore the importance of including a thorough consideration of the potential social impacts of strategic planning initiatives when determining the need for SEAs, and over the course of their conduction. Social impacts should be part of what may constitute the '*likely effects*' that may warrant SEAs.

In the event that an Administration determines that an SEA is not required for a given plan, program, policy, or strategy, justifications should be published in the SEA register. And, a mechanism to evaluate the validity of these justifications, and to recommend that SEAs are conducted in the event that they are deemed unfounded, should also be built into the process.

All the while, given the JBACE's status as the official and preferential forum in the Territory for advising responsible governments in such matters, we recommend that the various Administrations seeking to undertake an SEA and the SEA Advisory Committee should request the JBACE's comments regarding their scope when they apply to the James Bay Territory, or may affect the Cree people, the communities, or the wildlife resources of the Territory.

We must also express our concern regarding the Bill's lack of clarity surrounding the crucial terms "*strategies, plans and other forms of guidelines*" that may be the object of an SEA. Clear definitions must be included in the revised EQA in order to set out exactly what is meant by 'strategy,' 'plan,' 'programme,' and 'policy,' and 'other forms of guidelines.' Such definitions will greatly improve the clarity and foreseeability of the SEA procedure.

Indeed, our recommendation that policies must be part of the planning instruments that may be the object of an SEA stems in part from this lack of clarity – notwithstanding the very important connotations that policies may have for orienting downstream actions and initiatives. This is so, because we understand that a 'policy' refers to a guidance instrument for action, defining a set of declared orientations or objectives intended to frame ensuing actions or development initiatives that may or may not be specific for a given sector or for a given issue.[6]

[6] Adapted from the definitions available in *Burton's Legal Thesaurus,* 4th Edition (2007), and *West's Encyclopedia of American Law,* 2nd Edition (1998).

For the JBACE, examples thus include a mining policy, a consultation policy, and an energy policy; all of which would benefit greatly by subjecting them to SEAs.

Having said this, we note that many of the above-mentioned issues may be hashed in an eventual regulation. If and when this occurs, we affirm our intention to comment thereon in accordance with our mandate.

(2) Conduct of SEAs and of their related consultations in JBNQA territory

We understand and welcome that SEAs may be applied to planning initiatives throughout the province, including the James Bay Territory. However, in order to avoid all possible ambiguity, we suggest that this be more explicitly set out in the revised statute. The revised EQA should thus include a specific provision that sets out its application in the territory subject to the Section 22 environmental and social protection regime.

As mentioned in our brief on the matter in response to the *Livre vert*, dated September 2015, we stressed the need to ensure a degree of flexibility in order to adapt the conduction of SEAs, and their related public consultations, to various contexts – namely, to respect the guiding principles of Section 22 of the JBNQA, as well as the Cree's special status of involvement set out therein (more on this below). We also recommended that alternative forms of public consultation may be required in northern regions with the assistance of existent bodies. Our concern regarding these matters has not changed since then.

The Bill states that the Administration is obligated to undertake either targeted or broad public consultations. Although the Administration may seek the SEA Advisory's Committee's guidance, the manner in which the consultations are to be conducted will be up to the Administration in question.

We strongly support the obligation to consult the public during all SEAs. However, the Administration tasked with public consultation for SEAs in the region subject to the JBNQA, must ensure that the consultations are conducted in a manner adapted to its unique legal and cultural contexts.

Because an SEA of a plan may bear on both southern and northern parts of Québec, the legal framework for SEA must respect the JBNQA, the attribution of local and regional governments, as well as the already well-established committees and organizations involved in environmental and social impact assessment. These institutions should be included in these public consultations as they have invaluable and long-standing experience in doing so in the Territory.

The legal framework for SEA must also respect one of the most important provisions of Section 22 of the JBNQA in matters of public consultation: any consultation process must ensure that the Crees are consulted above and beyond what is provided for the public in general.[7] In order to ensure the will and intent of the JBNQA, the JBACE, as well as other specific committees such as the Evaluating Committee (COMEV) and Provincial Review Committee (COMEX), have been instituted with Cree representatives. For these reasons, we do not believe that consultations for SEAs to be held in the James Bay Territory can be successfully planned out exclusively by the Administration undertaking the SEA. We strongly recommend that the Administration initiating an SEA, and/or the SEA Advisory Committee, consult with the JBACE as early as feasible to discuss the planning of the consultations in the James Bay Territory.

[7] See paragraph 22.2.2.c of the JBNQA.

Based on the JBACE's recent experience with the uranium inquiry, any strategic-type of assessment must give due regard to already-existing institutions who may greatly assist in successful and meaningful participation of the region's stakeholders. In this case, the JBACE and the *Bureau d'audiences publiques sur l'environnement* (BAPE) each established their own commissions which worked together to undertake the consultations in the James Bay Territory. The JBACE commission was composed of four JBACE members (two of whom were appointed by the Cree Nation Government).[8]

With this in mind, the Administration or the SEA Advisory Committee should be required to seek out the JBACE's insights regarding their related consultation activities for SEAs that are to be conducted in the Territory or that will involve stakeholders active therein. Here, we remind readers that such advice falls squarely within the JBACE's mandate to oversee the Territory's unique environmental and social protection regime:[9]

> "*The* [James Bay] *Advisory Committee shall be the consultative body to responsible governments and shall be the preferential and official forum for responsible governments in the Territory concerning their involvement in the formulation of laws and regulations relating to the environmental and social protection regime and as such shall oversee administration and management of the regime through the free exchange of respective views, concerns and information.*"
>
> "*The* [James Bay] *Advisory Committee shall be consulted from time to time on major issues respecting the implementation of the regime of the environmental and social protection and land use measures and may advise responsible concerned governments in the implementation of the environmental and social protection and land use regimes."*

In addition, the JBACE's post-mortem following its collaboration with the BAPE for the uranium inquiry determined that early preparatory discussions between the 'players' involved in the planning of such matters greatly assist in ensuring representative, credible, and adapted consultations.[10] We thus strongly recommend that the SEA Advisory Committee rapidly connect with the JBACE to have upstream discussions on the planning of conducting consultations in the Territory and therefore avoid having to hastily develop an ad hoc approach on the eve of the first SEA-related consultation in the Territory.

Beyond this, we reiterate that flexibility must be built into the logistical and planning aspects of public participation activities during the conduct of SEAs. And, as a rule, all such activities in the James Bay Territory should be compatible with Cree cultural activities (e.g. calendar of traditional hunting periods).

(3) The SEA register

We understand and applaud the fact that an SEA's focus report and final environmental report will be published on a new SEA register on one central website – that of the Ministère du Développement durable, de l'Environnement et de la Lutte contre les changements climatiques (MDDELCC). We welcome this insofar as a centralised register will be established for all SEAs, thus avoiding the situation of having to access the different websites of each Administration that conducted an SEA.

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[8] The participation of the JBACE during the inquiry on uranium facilitated its completion in a manner that accounted for the guiding principles of the Section 22 regime and for the Cree traditional way of life (e.g. adapted calendar, respect for oral tradition, key Cree intervenors, and translation).

[9] See paragraphs 22.3.24 and 22.3.28 of the JBNQA.

[10] The JBACE's post-mortem report offers several important recommendations regarding the planning of public consultations that require the collaboration of several 'players' in strategic-type assessments in the James Bay Territory. Readers can access it here: www.ccebj-jbace.ca/en/news/70-post-mortem-of-uranium-commission.

We stress ease of navigation and suggest that a hyperlink should be provided between the SEA register and the project-level register that is still currently in development by the MDDELCC. We also suggest that certain key documents for SEAs that concern the Territory or its inhabitants be made available in English and in Cree to further promote understanding and awareness of these initiatives.

Recommendations on SEA

1. SEA should not be left to the discretion of each Administration. Clear triggers for what should be the object of SEAs are needed. A schedule should be included in the EQA, or a regulation adopted thereunder, listing the types of plans, programs, policies, and strategies that should be automatically subject to SEA and a set of criteria should be included therein to assess the need to require an SEA for the initiatives not listed. Social impacts should be part of what may constitute the '*likely effects*' that may warrant SEAs.

2. The Administration undertaking an SEA and the SEA Advisory Committee should request the JBACE's comments regarding their scope when they apply to the James Bay Territory, or may affect the Cree people, the communities, or the wildlife resource of the Territory, given the JBACE's status as the preferential and official forum for the exchange of such advice.

3. The Administration should be obligated to provide justifications if it determines that an SEA is not required for a plan, program, policy, or strategy. These justifications should be published in the SEA register. And, a mechanism to evaluate the validity of these justifications, and to ensure that SEAs are conducted in the event that they are deemed unfounded, should also be built into the process.

4. The proposed addition of article 95.5 to the EQA should be revised to stipulate that policies may also be the object of SEAs. Article 95.5 should also include clear definitions that set out exactly what is meant by 'strategy,' 'plan,' 'programme,' and 'policy,' and 'other forms of guidelines' in order to improve the clarity and foreseeability of the SEA procedure.

5. The SEA Advisory Committee should connect as early as possible with the JBACE – upstream from the first SEA-related consultation in the Territory – in order to discuss the planning of conducting consultations in the Territory and to avoid having to hastily develop an ad hoc approach on the eve of the first consultation.

6. The Administrations undertaking SEAs and the SEA Advisory Committee should request the JBACE's insights, as early as possible, regarding the planning of their related consultations when these SEAs apply to planning initiatives in the Territory or that have the potential to affect the Territory.

7. We concur that the SEA register should occur on one centralised platform – the MDDELCC's website. It should be easy to navigate and include a link to the project-level registry now in development. Certain key documents for SEAs that concern the Territory or its inhabitants should be made available in English and in Cree in the register so as to further promote understanding and awareness of these initiatives.

B. Changes to the authorization regime for development projects (a risk-based and simplified system)

Authorizations will continue to be required in the north as in the south of Québec, either under the current or proposed authorization regime. The modernization of the authorization regime is thus an issue of great concern for the JBACE, as expressed in our brief on the *Livre vert* (Sept. 2015). Even though the changes proposed may not seem to have a direct implication on the Section 22 environmental and social protection regime (currently chapter II of the EQA), the JBACE considers that they may have implications on the said regime and on its objectives to protect the rights and guaranties set out in the hunting, fishing and trapping regime established in Section 24 of the JBNQA.

To be clear, projects that proceed through Section 22 environmental and social impact assessments and reviews (per chapter II of the EQA) and are approved by the responsible Administrator must still then obtain all of the relevant sectoral certificates of authorization required under chapter I of the EQA. The two chapters of the EQA are thus not hermetically separate from each other. In light of this reality on the ground, the JBACE is particularly concerned with what may be considered as 'incoherence' between certain aspects of the Section 22 regime and the authorization regime per chapter I of the EQA. We note that the Section 22 regime, and indeed the conditions required of project proponents by the relevant Administrator once approved, must account for the guiding principles of the Section 22 regime. Here, for example, the project's impacts on Cree society, Cree traplines, Cree wildlife harvesting rights, and on the specificities of the affected local northern environment must be accounted for. All the while, the current authorization regime per chapter I of the EQA does not have to account for these aspects, nor do the conditions that accompany the authorizations issued thereunder. We thus affirm that greater coherence with what is currently chapter II of the EQA must be a priority when considering any changes to the authorization regime currently outlined in chapter I thereof.

The JBACE welcomes a simplified authorization regime that focuses attentions on projects that pose significant risks, or that are likely to produce environmental impacts. We are not opposed to a risk-based categorization of projects and of their respective authorization based thereon, as proposed in the Bill.

However, we are preoccupied by the fact that the Bill does not outline what projects will be considered in each category. We understand that this information will only be hashed out in regulations that have yet to be developed. As such, we reiterate the JBACE mandate to advise the governments in the development of laws and regulations that may affect the section 22 regime, its territory of application or Cree rights. We thus affirm our intention to comment thereon. Given the importance of these regulations and the extensive analyses that will be required to formulate meaningful comments and recommendations on the matter, we request that the timeframes for the development of these regulations be realistic and commiserate with the workload. We feel that the usual 45-day commentary period may not suffice in this regard.

And, although we understand that the revision of the authorization regime will apply province-wide, we cannot overstress that what constitutes a negligible or low-risk project in Québec's southern regions, may not necessarily be the case in northern areas; particularly when considering the potential to generate significant cumulative effects that may arise from multiple projects at the scale of a Cree family trapline. Indeed, the Territory's organization according to Cree family traplines exemplifies the marked 'structural' differences between northern and southern realities. The entire James Bay Territory is organized into more than 300 family traplines, managed by Cree Tallymen, and upon which the Cree may exercise their traditional hunting and fishing activities at all times of the year without administrative authorization. And, on all Cree traplines throughout the Territory, certain fur-bearing and fish species are exclusively reserved for the Crees. This system of family traplines is a cornerstone of Cree society.

The categorization of projects based on risk must thus thoroughly account for the Territory's biophysical, cultural and social environments. The JBACE questions whether the notion of risk includes social and cumulative impacts. Measures must be taken to ensure that the risk-based categorization of projects – and the authorizations that will be required in their regard (or not) – include due consideration of their potential social impacts, and the capacities to support the potential cumulative effects of multiple developments in their receiving areas. In the north, for instance, a preliminary mineral exploration project or small gravel borrow pit, may be deemed a no-risk project while a large number of them in a limited or sensitive area or in a single trapline (Cree family hunting territory) might collectively pose a moderate to a major risk.

Finally, since there will no longer be authorizations for certain type of projects, we raise the issue of the public's awareness, especially the Cree in the Territory, of these projects. We thus suggest that the MDDELCC include the information related to all authorizations issued under a revised EQA, as well as the conformity attestations that will be presented to the MDDELCC for negligible risk projects, in the public register.

Recommendations on the changes to the authorization system

1. Given its mandate, the JBACE should be solicited for comments when the regulations are being established to categorize what projects constitute negligible, low, medium and high-risk projects. Due to the importance of these regulations and the extensive analyses that will be required to formulate meaningful comments and recommendations on the matter, we request that the timeframes for the development of these regulations be realistic and commiserate with the workload.

2. The categorization of projects based on risk must account for the specific northern biophysical, cultural and social environment. Measures must be taken to ensure that the risk-based categorization of projects – and the authorizations that will be required in their regard (or not) – include due consideration of their potential social impacts, and the capacities to support the potential cumulative effects of multiple developments in their receiving areas.

3. The information related to all authorizations issued under a revised EQA, as well as the conformity attestations that will be presented to the MDDELCC for negligible risks projects, must be made available in the public register.

Important note concerning changes to the authorization regime and the revision of Schedules 1 and 2 of Section 22 of the JBNQA

Schedules 1 and 2 of Section 22 of the JBNQA outline what projects are automatically subjected to and exempted from the Section 22 environmental and social impact assessment and review procedure. The JBACE has issued several recommendations regarding the revision of these schedules, given that they have yet to be revised since the signature of the JBNQA.[11]

The JBACE's recommendations regarding these schedules accounted for the existing regulatory framework, including the existing provincial authorization regime applicable to development projects.

Discussions between the JBNQA's signatory parties have already occurred on the basis of these recommendations. In light of the changes that may be adopted relative to a new environmental authorization regime under a revised EQA, the applicability of these recommendations may shift, and thus, perhaps, raise the question of new discussions between the said parties.

[11] Readers can access the JBACE's recommendations regarding the schedules on our website (www.ccebj-jbace.ca).

C. Social impacts

We feel it necessary to underscore the importance of accounting for potential social impacts during the authorization of development projects. In accordance with the guiding principles of the Section 22 environmental and social protection regime, the environmental, social, and cultural impacts of development activities are considered on an equal footing when approving development projects or when exempting or subjecting them to Section 22 impact assessments and reviews (chapter II of the EQA).

Thus, in order to better reflect the principles of Section 22 and as a means of improving the coherence between the two current chapters of the EQA, we believe that strategic planning initiatives subjected to SEAs and projects subject to authorizations under a modernized EQA (i.e. a revised chapter I of the EQA), should also afford due regard to social impacts (we include cultural and socioeconomic impacts under this umbrella term). Due consideration should be afforded to the following elements:[12]

- The protection of Cree hunting, fishing and trapping rights as set out in Section 24 of the JBNQA;

- The protection of the Cree people, of their societies, communities and economies – including the integrity of the Cree traplines that organize the Territory – all of which may differ greatly from southern realities;

- The protection of the James Bay Territory's wildlife resources and environment, upon which the Cree depend.

In this sense, the characterization of project risk-levels to establish a streamlined authorization regime must do the same. Similarly, means of accounting for the social impacts of development projects should also be within the purview of the conditions that may be fixed to the said authorizations once issued.

On another note, the JBACE would like to highlight its intention to produce a guide for proponents. Although confirmations are still pending, our aim is to develop the guide in partnership with the MDDELCC, the federal government, and the Cree Nation Government in order to ensure that it meets the realities and the needs of the Cree communities. One of the primary objectives of the guide will be to assist proponents in their public participation activities with Cree communities in order to more thoroughly consider the social impacts of their project proposals with Cree input. The guide will be geared to assist those proponents whose projects are exempt from a formal Section 22 environmental and social impact assessment and review – but that are, of course, still subject to authorizing regime of the EQA – and for proponents whose projects are indeed subject to assessments and reviews.

Recommendations relating to social impacts

1. Potential social impacts must be considered when authorizing projects.
2. The characterization of project risk-levels to establish a streamlined authorization regime must do the same.
3. The attenuation of a project's social impacts should be within the purview of the conditions that may be fixed to project authorizations.

[12] See paragraph 22.3.24 of the JBNQA.

D. Access to information, transparency, participation, and the responsibilities of the ministry and proponents

The JBACE welcomes article 117 of the Bill which proposes the obligatory inclusion of a wealth of information and documentation regarding project authorizations and environmental assessments in a centralised public register, maintained by the MDDELCC. We applaud this advancement and we share the intention to promote transparency and public access to information. We concur with the notion that greater transparency will further solidify the credibility of authorization and assessment and review procedures.

We note, however, that the proposed addition of article 118.5.0.1 in the EQA – the portion outlining what documents and information will be included in the public register – applies to the environmental assessment and review procedure applicable in southern Québec.[13]

Based on the JBACE's recommendations issued on the matter over the years, we are keenly aware that the MDDELCC, the Section 22 Evaluating Committee (COMEV), the Provincial Review Committee (COMEX) and the federal Review Panel (COFEX-South) recognize that similar information should be also available to the public for northern projects and, in our opinion, in one centralised register.[14] Here, COMEX has established a register on its website for projects reviewed under the Section 22 provincial review procedure. COFEX-South has established the same for projects under the Section 22 federal procedure (courtesy of the Canadian Environmental Assessment Agency's website), and the MDDELCC continues to include some information regarding the authorizations issued for northern projects on its own website.

And so, we encourage the MDDELCC and the Section 22 committees to continue in their efforts and to ensure that all of what is to be publicly-available – per the proposed addition of article 118.5.0.1 – is also made available for northern projects to ensure coherence province-wide. Here, we reiterate our previous recommendation that all authorizations and conformity attestations required under a revised EQA for northern projects must also be publicly-accessible via the register.

In line with our longstanding opinion that there should be one centralised register for projects subject to the Section 22 assessment and review procedure, we recommend, in the meantime, that hyperlinks be established between the various platforms with information on projects subject to the same procedure. This will be crucial for the sake of accessibility and ease of navigation.

Beyond this, we recommend that the information made available in the register for the authorization and assessment and review of northern projects be accessible to northern audiences. Here, we refer to our previous recommendations concerning the registry, such as the inclusion of relevant summaries in English and Cree, as well as the publishing of information in plain or non-technical language.

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[13] The proposed addition of article 118.5.0.1 will apply to subdivision 4 of Division II of Chapter IV of the revised EQA, which, itself, is currently Division IV.1 of Chapter I of the EQA (i.e. the environmental impact assessment and review procedure for southern Québec).

[14] Please see the JBACE website (www.ccebj-jbace.ca) for additional information regarding the JBACE's previous interventions on matters relating to public access to information in the Territory.

Recommendations on access to information, transparency, participation[15]

1. All of what is to be included in the register (per the proposed addition of article 118.5.0.1) must also apply for projects subject to the Section 22 environmental and social impact assessment and review procedure applicable in the James Bay Territory. All authorizations and conformity attestations required under a revised EQA for northern projects must also be publicly-accessible via the register.

2. A centralised register for projects subject to the Section 22 assessment and review procedure would be preferable. In the meantime, hyperlinks must be established between the registers to ease navigation.

3. The information made available in the register(s) pertaining to the authorizations and the assessments and reviews of northern projects must be accessible to northern audiences. Information in plain language, and in English and in Cree should be included.

E. Climate Change

The JBACE agrees that measures must be taken to combat climate change. We thus applaud the intention to address the reduction of GHGs and measures to adapt to the effects of climate change via authorization conditions.

Along with conditions to reduce emissions, we reiterate, however, that northern regions are already experiencing some of the negative impacts associated with climate change. In these regions, the said conditions should also address adaptations to these impacts. In this sense, and in order to further enhance this positive proposal, we recommend that such conditions account for the realities of the regions in which a given project or activity is located and authorized. By definition, given the paucity of information on the matter in northern areas of the province, this will require additional understanding of northern realities and circumstances (i.e. baseline studies).

Recommendations on climate change

1. The conditions that may be affixed to project authorizations should not solely address reductions of emissions. They should also address the actual conditions in the project's location, including potential adaptations to the impacts of climate change which may already be manifest in some regions.

2. The fixing of conditions for development projects in order to combat climate change presupposes a keen understanding of the climate-related circumstances present in the project area. Efforts must be mobilized to better this understanding in order to ensure performance of project assessment (baseline studies).

[15] The current recommendations are provided in addition to our previous ones made on these matters.

Conclusion

The JBACE has made efforts to improve and revise the Section 22 protection regime. In this sense, we welcome the current revision exercise to modernize the EQA. Indeed, we applaud the volition to instill a framework for SEA, to simplify the authorization regime and to maximize public involvement and access to information on projects subject to the EQA.

From this perspective, and in the current context where environmental and social protection are key concerns for all of the Territory's communities, we believe that both of these concerns must be considered on an equal basis when planning and authorizing projects.

In this sense, the comments and recommendations in this brief are designed to further strengthen the already very positive proposals provided in the Bill.

We remain, per our mandate, available to provide additional commentary if and when regulatory amendments arise following the adoption of the Bill. In order to undertake the necessary analyses to provide the highest-quality comments and the most relevant recommendations regarding these amendments, we respectfully request that the timeframes for their development be realistic and commiserate with the workload.