

NATIONAL ASSEMBLY

SECOND SESSION

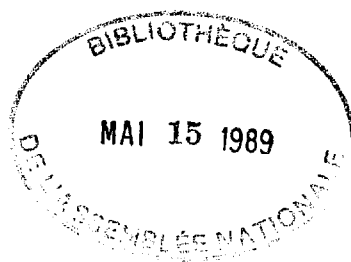
THIRTY-THIRD LEGISLATURE

Bill 122

**An Act to amend the Act respecting
hunting and fishing rights in the
James Bay and New Québec
territories**

Introduction

**Introduced by
Mr Yvon Picotte
Minister of Recreation, Fish and Game**



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EXPLANATORY NOTES

This bill amends the Act respecting hunting and fishing rights in the James Bay and New Québec territories in order to implement the Complementary Agreement No. 10 of the James Bay and Northern Québec Agreement.

It prolongs, by ten years, the right of first refusal of the Native people to establish outfitting operations and operate as outfitters.

The bill defines what constitutes a transfer subject to the right of first refusal, lists certain exceptions and sets out the terms and conditions governing the exercise of that right. If a transfer is made otherwise than according to the rules prescribed, the Minister may revoke the outfitter's licence. The Minister's decision may be appealed before the Court of Québec.

The bill also sets forth the obligations of parties at the time a new outfitter's licence is issued for the territory covered by a revoked licence, and penalties for non-compliance with certain measures introduced by the bill are established.

Bill 122

An Act to amend the Act respecting hunting and fishing rights in the James Bay and New Québec territories

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. Section 48 of the Act respecting hunting and fishing rights in the James Bay and New Québec territories (R.S.Q., chapter D-13.1) is amended by replacing the figure “2005” in the first line by the figure “2015”.

2. Section 49 of the said Act is replaced by the following section:

“49. The right of first refusal provided for in section 48 shall not be exercised with respect to at least three applications made by non-Native persons out of every ten applications made by any person wishing to establish and operate an outfitting operation in Category III lands.

The Native people may decide in respect of which applications they shall or shall not exercise the right of first refusal provided that they do not exercise such right with respect to at least three applications from non-Native persons out of every ten applications from any person.

The Coordinating Committee shall oversee the implementation of the terms of this section and shall, from time to time, inform the Cree Regional Authority, the Makivik Corporation, the Naskapi Landholding Corporation and the Governments of Canada and Québec as to the requirements for such implementation.”

3. The said Act is amended by inserting, after section 50, the following sections:

“50.1 Any direct or indirect transfer of the ownership of an outfitting operation including, in the case of a partnership or corporation that owns an outfitting operation, a change in the effective control of the partnership or corporation, shall constitute a transfer subject to the right of first refusal of the Native people.

Changes in effective control include but are not limited to

(1) a change of the partner or shareholder holding a majority of the partnership interests or of the issued full voting shares;

(2) if no partner or shareholder holds a majority of the partnership interests or of the issued full voting shares,

(a) a transaction whereby one of the partners or shareholders acquires a majority interest;

(b) a transaction or the last in a series of transactions, within a period of four years or less, that changes the ownership of a majority of the partnership interests or of the issued full voting shares of the corporation, except where there are no partners or shareholders other than the partners and shareholders who owned such interests or shares at the beginning of the said period.

Any agreement for the lease or management of the outfitting operation or any other agreement to the same effect for a term of more than four years shall also constitute a transfer subject to the right of first refusal of the Native people.

In calculating the term of the agreement, the term of its renewal shall be taken into account if the lessee or the manager has the right to oblige the other party to renew the agreement.

“50.2 Notwithstanding section 50.1, the right of first refusal of the Native people does not apply to the following transfers:

(1) a transfer by succession;

(2) a transfer in favour of the spouse or an ascendant, a descendant or a collateral relation to the second degree of the holder of an outfitter's licence or, in the case of a partnership or corporation holding such a licence, in favour of such a relative of a partner or shareholder;

(3) a transfer in favour of a creditor for the sole purpose of securing the repayment of a debt;

(4) a transfer where the transferor of an outfitting operation is a natural person and the transferee is a partnership or a corporation,

if all the partnership interests or all the issued full voting shares of the capital stock are owned by the transferor immediately after the transfer;

(5) a transfer where the transferor of an outfitting operation is a partnership or a corporation and the transferee is a natural person, if the person is, immediately before the transfer, the owner of all the partnership interests or all the issued full voting shares of the capital stock of the transferor;

(6) a transfer where the transferee of an outfitting operation is a new partnership made up of two or more partnerships or a new corporation resulting from the amalgamation of two or more corporations, if all the partnership interests or all the issued full voting shares of the capital stock of the transferee are owned by the persons who owned all the partnership interests or all the issued full voting shares of the former partnerships or the amalgamated corporations;

(7) a transfer where the transferee of an outfitting operation is the parent corporation of the transferor, a subsidiary of the transferor or a subsidiary of a corporation that is a subsidiary of the transferor;

(8) a transfer where the transferor of an outfitting operation is a subsidiary of a corporation that is a subsidiary of the transferee;

(9) a transfer where both the transferor and the transferee of an outfitting operation are subsidiaries of the same parent corporation or subsidiaries of one or several corporations that is or are, as the case may be, a subsidiary or subsidiaries of the same parent corporation;

(10) a transfer where the transferor and the transferee of an outfitting operation are non-profit entities if, at the time of the transfer, all the members of one entity are members of the other entity.

For the purposes of subparagraphs 7, 8 and 9, a corporation is a subsidiary, at a particular time, of another corporation, called the "parent corporation", where all the issued full voting shares of its capital stock are owned by the latter.

"50.3 In the event of a transfer subject to the right of first refusal of the Native people, the holder of the outfitter's licence, except in the cases referred to in sections 51.3 and 51.4, shall submit an application for a transfer of licence in accordance with section 51."

4. Section 51 of the said Act is amended

(1) by inserting, after the second paragraph, the following paragraph:

“Every application for the issue or the renewal of an outfitters’ licence shall indicate, as the case may be, the names of the partners and their respective interests in the partnership or the names of the shareholders owning full voting shares, the number of shares held by each shareholder and the number of votes attached to each share.”;

(2) by replacing the word “sixth” by the word “seventh” in the first line of the last paragraph;

(3) by adding, at the end, the following paragraph:

“The Native party that exercises the right of first refusal at the time of an application for the transfer of an outfitter’s licence shall replace the intended transferee from the date on which the Native party informs the Coordinating Committee in accordance with the seventh paragraph. From that date, the Native party shall have the same rights and the same obligations as the intended transferee had at the time of the offer to transfer, with such changes as are necessary with respect to the delays stipulated therein.”

5. The said Act is amended by inserting, after section 51, the following sections:

“51.1 The right of first refusal shall apply and be exercisable only in respect of the assets of the outfitting operation in the case of

(1) a transfer in which the assets to be transferred include assets relating to activities other than those of the outfitting operation;

(2) a transfer of interests in a partnership or shares of a corporation in which the assets include assets relating to activities other than those of the outfitting operation.

If the interested Native party exercises its right of first refusal, the owner shall transfer the assets of the outfitting operation to the interested Native party.

“51.2 In the event of a transfer of part of the interests in a partnership or part of the shares of a corporation, the right of first refusal shall apply and be exercisable in respect of the interests of all the partners or the shares of all the shareholders.

If the interested Native party exercises its right of first refusal, all the partners or shareholders shall transfer their interests or shares to the interested Native party.

“51.3 For the purposes of the right of first refusal, in the case of a transfer of the assets of an outfitting operation made at the time of a judicial sale or a sale by a trustee in bankruptcy, a liquidator or a sequestrator, the acquirer shall, within sixty days after the sale, submit an application for a transfer of licence, in accordance with section 51.

If the interested Native party exercises its right of first refusal, the acquirer shall transfer the assets of the outfitting operation to the interested Native party for an amount equal to the sale price and costs plus ten per cent.

“51.4 For the purposes of the right of first refusal, in the case of a transfer of the assets of an outfitting operation to a creditor realizing on security for the repayment of a debt, the creditor shall, within sixty days after the assets are transferred, submit an application for a transfer of licence, in accordance with section 51.

If the interested Native party exercises its right of first refusal, the creditor shall transfer the assets of the outfitting operation to the interested Native party.

“51.5 In the cases referred to in sections 51.1 to 51.4, the Cree Regional Authority, the Naskapi Landholding Corporation or the Makivik Corporation and any person subject to the right of first refusal of the Native people shall determine the value of the assets of the outfitting operation or the value of the interests of the partners or shares of the shareholders in respect of which the right of first refusal of the Native people may be exercised.

The said value shall be determined by agreement between the interested parties or, if there is no agreement, by an evaluator appointed in accordance with section 51.7.

The period of four months referred to in the seventh paragraph of section 51 to inform the Coordinating Committee that a Native party intends to operate the outfitting operation referred to in the application for transfer is computed from the date on which the value of the assets of the outfitting operation or the value of the interests of the partners or shares of the shareholders that are subject to the right of first refusal is determined.

“51.6 Except where there is agreement as to the terms and conditions of sale, the interested Native party shall pay, in cash, the sale price of assets sold under sections 51.3 and 51.4 or the sale price of any part of the partnership interests or shares of the corporation that was not included in the transfer application but must be transferred pursuant to section 51.2.

The payment shall be made within thirty days of the date on which the Cree Regional Authority, the Naskapi Landholding Corporation or the Makivik Corporation informs the Coordinating Committee in accordance with the seventh paragraph of section 51.

“51.7 Upon a request therefor, the Minister shall appoint an evaluator acceptable to the parties or, if there is no agreement between the parties, an evaluator of his own choice

(1) in the event of disagreement between the parties as to the proportional value of the assets of the outfitting operation in the cases referred to in section 51.1;

(2) in the event of disagreement between partners, shareholders or the interested Native party as to the value of any part of the interests or shares that was not included in the transfer application but must be transferred in the case referred to in section 51.2;

(3) in the event of disagreement between the parties as to the proportional value of the assets of the outfitting operation, where the sale included assets other than those of the outfitting operation in the case referred to in section 51.3;

(4) in the event of disagreement between the parties as to the value of the assets of the outfitting operation in the case referred to in section 51.4.

The decision of the evaluator shall be binding upon the parties and without appeal; the evaluation costs shall be borne equally by the parties.

“51.8 If the Minister believes that a transfer of an outfitting operation has been made otherwise than in accordance with every provision of sections 50.3 to 51.4 or as a result of false declarations, he shall notify the licence holder.

On receiving the notice, the licence holder shall inform the partners or the shareholders, if any.

The notice of the Minister shall require the licence holder and the partners or the shareholders, if any, to comply with the provisions of sections 50.3 to 51.5 and 51.7 within the time fixed by the Minister.

“51.9 If the licence holder or a partner or shareholder fails to comply with the notice of the Minister within the time specified therein, the Minister may, after giving the licence holder an opportunity to be heard, cancel the licence.

“51.10 The decision to cancel the licence shall be in writing and state the reasons for the revocation. It shall be transmitted to the interested party by registered or certified mail.

“51.11 Within thirty days of receiving the decision to cancel his licence, the holder may appeal from the decision to the Court of Québec.

An appeal shall suspend the execution of the decision of the Minister, unless the court orders provisional execution.

“51.12 The appeal is brought by filing a motion at the office of the Court of Québec in the judicial district where the outfitting operation is located.

The motion shall be served upon the Minister and the interested Native party which may intervene.

“51.13 On receiving the motion, the Minister shall transmit to the office of the Court of Québec a copy of the record relating to the decision being appealed from.

“51.14 The Court of Québec may decide, with the consent of the parties, that the appeal be heard at the chief place of the judicial district of Québec or Montréal.

“51.15 The appeal shall be heard and decided by preference and the decision of the court is final and without appeal.

“51.16 The Court of Québec shall render its decision on the record transmitted to it by the Minister and on any additional evidence, if any, presented by the parties.

“51.17 The Court of Québec may, in the manner prescribed by the Courts of Justice Act (R.S.Q., chapter T-16), adopt such rules of practice as it deems necessary for the carrying out of sections 51.11 to 51.16.

“51.18 Where an outfitter's licence is cancelled and a new licence is issued to a third party for the site covered by the cancelled licence, the third party must acquire the buildings, facilities and equipment situated thereon and used for the activities of the outfitting operation, and the person whose licence is revoked must sell such buildings, facilities and equipment.

If there is no agreement between the parties as to the value of the property, the Minister shall appoint an evaluator acceptable to the

parties or, if there is no agreement between the parties, an evaluator of his own choice.

The decision of the evaluator shall be binding upon the parties and without appeal; the evaluation costs shall be borne equally by the parties."

6. The said Act is amended by inserting, after section 96, the following section:

"96.1 Every person who infringes any provision of sections 50.3, 51.1, 51.2, 51.3 or 51.4 or who knowingly furnishes false information in respect of the transfer of an outfitting operation is guilty of an offence and liable, in addition to payment of the costs, to a fine of not more than \$10 000 in the case of a natural person and of not more than \$30 000 in the case of a corporation."

7. This Act comes into force on 1 July 1989.