

**Brief presented to the House of Commons  
Standing Committee on Justice and Legal Affairs**

**on**

***Bill C-68 / An Act Respecting Firearms and Other Weapons***

**Submitted jointly by:**

**Makivik Corporation**

**and**

**Kativik Regional Government**

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**Nunavik, May 1995**

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FOR FURTHER INFORMATION  
CONCERNING THIS BRIEF

PLEASE REFER TO

**MAKIVIK CORPORATION**

c/o Mr. Stas Olpinski *or* Me Stéphane Lavallée

650, 32<sup>nd</sup> Avenue, Suite 500

Lachine, Québec

H3T-3K5

Telephone: 1-514-637-4687

Telefax: 1-514-634-9730

**KATIVIK REGIONAL GOVERNMENT**

c/o Mr. Philippe Di Pizzo

P.O. Box 9

Kuujuuaq, Québec

J0M-1C0

Telephone: 1-819-964-2961

Telefax: 1-819-964-2956

## **Introduction**

The federal government tabled its firearms control program on November 30, 1994. On February 14, 1995, the Honourable Mr. Allan Rock, Minister of Justice and Attorney General of Canada, introduced Bill C-68 / *An Act Respecting Firearms and Other Weapons*. The Bill includes amendments to the *Criminal Code* as well as the enactment of a new *Firearms Act*.

Nunavik Inuit fully support the intent of Bill C-68 to address the high number of criminal offences perpetrated with the use of firearms. However, if Bill C-68 is adopted by Parliament without specific provision therein protecting the rights of the aboriginal peoples of Canada, it will negatively impact the way of life of the Inuit of Nunavik and severely prejudice the exercise of their harvesting and commercial hunting rights. The issues addressed through Bill C-68 must respect the legitimate use of firearms in the harvesting activities of the aboriginal peoples of Canada.

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On behalf of Nunavik Inuit, it is the position of Makivik Corporation <sup>1</sup> and the Kativik Regional Government <sup>2</sup> that the present Bill C-68, if adopted, would breach the constitutionally protected aboriginal rights of Nunavik Inuit. We are formally requesting a delay in the application of Bill C-68 to provide the necessary time to ensure that through consultation, the constitutionally protected aboriginal hunting and fishing rights of Nunavik Inuit are addressed and secured within the present federal firearms control program.

In order to effectively represent the rights and interests of Nunavik Inuit with respect to the proposed firearms control program, Makivik Corporation and the Kativik Regional Government are hereby jointly submitting the present brief to the House of Commons Standing Committee on Justice and Legal Affairs on Bill C-68.

The present Brief is divided into the following five sections :

- I. The territory and the harvesting and commercial hunting activities of Nunavik Inuit;
- II. Provisions in Bill C-68 supported by Nunavik Inuit;
- III. Provisions in Bill C-68 which could have adverse impacts on the way of life of Nunavik Inuit;
- IV. Constitutional issues regarding Bill C-68 in terms of aboriginal rights of Nunavik Inuit;
- V. Recommendations to address the rights of Nunavik Inuit

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1 Makivik Corporation has been incorporated pursuant to the *Act Respecting the Makivik Corporation*, Q.R.S. c S-18.1 following a specific obligation to that effect enunciated in Chapter 27 of the *James Bay and Northern Québec Agreement*. Sections 5 and 41 of the *Act Respecting Makivik Corporation* provide, in part, that the objectives of Makivik Corporation are to promote and protect the rights of the Inuit population of Nunavik<sup>1</sup>

2 The Kativik Regional Government is the municipal body administering the Kativik territory under the *Act Respecting Northern Villages and the Kativik Regional Government*, Q.R.S., c V-6.1. The enactment of this legislation followed specific obligations to that effect enunciated in Chapters 12 and 13 of the *James Bay and Northern Québec Agreement*.

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**1. The territory and the harvesting and commercial hunting activities of Nunavik Inuit**

'Nunavik' is comprised of an area of more than 560,000 km<sup>2</sup>, located north of the 55<sup>th</sup> parallel in northern Québec, an area equivalent to one-third of the Province of Québec. The geographic isolation and the climate represent a unique challenge in terms of providing products and services to the residents of Nunavik.

Nunavik, with a 90% Inuit population<sup>3</sup>, is comprised of fourteen corporations of northern villages<sup>4</sup> located along the coast of Ungava Bay, Hudson Strait and Hudson Bay.<sup>5</sup> There are no roads linking these communities to each other; the communities are accessible only by air or by sea during a limited ice-free shipping season. The first language of Nunavik Inuit is 'Inuktitut', with many being unilingual speakers.

Today, and throughout history, Nunavik Inuit depend on the resources provided by the territory. Hunting, fishing and trapping activities are central to the identity of Nunavik Inuit and to their customary and traditional way of living. Virtually all Nunavik Inuit, men and women alike, are engaged in some form of harvesting activities. Many continue to depend on hunting and fishing as their primary source of subsistence.<sup>6</sup> In addition, according to recent amendments to the *James Bay and Northern Québec Agreement*, Nunavik Inuit have in this territory the exclusive right to hunt commercially. In this respect, firearms are essential to the continuity of the Nunavik Inuit harvesting

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3 According to the Inuit beneficiary list kept by the Québec Minister of Health and Social Services, a number of 7,914 Inuit are presently living in Nunavik.

4 *An Act Respecting Northern Villages and the Kativik Regional Government*, Q.R.S. c V-6.1.

5 Those communities are Kuujjuarapik, Umiujaq, Inukjuak, Puvirnitug, Akulivik, Ivujivik, Salluit, Kangiqsujuaq, Quaqtaq, Kangirsuk, Aupaluk, Tasiujaq, Kuujjuaq and Kangiqsualujjuaq [see map – Annex 1].

6 On this specific issue, we refer the reader to: *James Bay and Northern Québec Native Harvesting Research Committee, Research to Establish Present Levels of Native Harvesting for the Inuit of Northern Québec*, 1988.

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activities. In Nunavik, contrary to other regions of Canada, firearms can be found in the majority of homes.

## **II. Provisions in Bill C-68 supported by Nunavik Inuit**

Nunavik Inuit fully support the objectives of Bill C-68 in terms of addressing the high incidence, and often irreversible impact, of criminal offences involving firearms. Recent studies have shown that the rate of escalation of criminal activity in Nunavik has become a serious problem.<sup>7</sup> In this respect, Bill C-68 does legitimately attempt to address the following issues:

- \* the enforcement of more severe penalties for those found guilty of crimes involving firearms;
- \* the enforcement of stricter rules to reduce the sale of illegal firearms; and
- \* the enforcement of stricter rules to substantially restrict possession of firearms for purposes other than harvesting.

Moreover, Nunavik Inuit agree that information on basic firearm safety should be a prerequisite to the possession or use of a firearm. On the other hand, any safety training course should take into consideration the peculiarities and the special needs of the region.

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<sup>7</sup> Inuit Justice Task Force, *Final Report – Blazing the Trail for the Future*, Lachine, March 1993 as well as Inuit Justice Task Force, a *Profile of Crime in Nunavik*, Lachine, May 1994.

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### **III. Provisions in Bill C-68 which could have adverse impacts on the way of life of Nunavik Inuit**

The right to possess and use firearms is an essential element of physical safety, survival and economies for Nunavik Inuit. Therefore, in order to ensure the continuance of harvesting activities, we believe there should be minimal restrictions on the right of Nunavik Inuit to possess and use firearms. On behalf of Nunavik Inuit, it is the position of Makivik Corporation and the Kativik Regional Government that should Bill C-68 be adopted by Parliament without specific provision therein to secure the rights of the aboriginal peoples of Canada, this could result in adverse impacts on the customary life and the survival of Nunavik Inuit.

Many Nunavik Inuit live primarily from the resources of the land and commercial hunting activities. *"Firearms are not hobby objects in remote northern communities, but essential for putting food on the table in areas where unemployment is high, and store-bought groceries extremely expensive."*<sup>8</sup> The imposition of restrictions on the purchase and registration of firearms would restrict the ability of many Nunavik Inuit to pursue their traditional hunting activities and economic hunting activities.

Although the implementation of a universal registration system for firearms in Canada may be legitimate, such a system should be structured in a way that would be easily accessible and comprehensible to all residents of Nunavik and take into account the unique culture, economy, language and traditional way of life of Nunavik Inuit. Moreover, to impose restrictions on the transfer and lending of firearms in Nunavik does not take into account the traditional way of life of Nunavik Inuit which is the sharing of firearms. Bill C-68 requires that individuals must register firearms and will be penalized if they do not follow proper administrative procedures when transferring firearms. This

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8 The Globe and Mail, "Canada's gun-control bill makes no sense in the North", edition of Monday, May 1, 1995 at page A-4.



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provision is inconsistent with and concretely inapplicable in terms of the resources and way of life of Nunavik Inuit.

The provision in Bill C-68 regarding the storage of firearms and ammunition will also be extremely difficult to enforce in Nunavik. Once again, the Inuit spend a substantial amount of time in summer and winter encampments (tents and igloos) during the harvesting season and therefore the storage and/or locking up of firearms is inconsistent with their traditional hunting, fishing and trapping activities as well as with their related available facilities.

Nunavik Inuit believe that the foregoing provisions in Bill C-68 create a complex and expensive administrative program which will simply not be effective in Nunavik and will not achieve the overall objectives of this Bill. In effect, the application of Bill C-68 in Nunavik would severely restrict the customary and traditional hunting activities of the Nunavik Inuit hunters and perhaps influence normally law-abiding people to become involved in a 'criminal' activity.

A recent modification to the *Criminal Code*, namely, the requirement to follow a Firearm Safety Course, is a perfect example of such inconsistency. While the objectives might appear to be perfectly legitimate, to date the federal government has failed to provide a program with an accessible regional content in a language that the population of Nunavik understands.<sup>9</sup> This obligation has been unreasonably onerous to Nunavik Inuit. The content of the course is largely irrelevant to the needs of the Inuit population. There has been little funding for this course, a lack of qualified firearm instructors, and the course materials have not been provided in the Inuktitut language. Therefore, it is the position of Makivik Corporation and the Kativik Regional Government that all issues

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<sup>9</sup> On this specific issue, we refer the reader to the letter attached to this brief as Annex 2 as well as to the Brief submitted by the Hunting, Fishing and Coordinating Committee on Bill C-68.

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arising from these safety courses be resolved before entering into the more complex system proposed by Bill C-68.

**IV. Constitutional issues regarding Bill C-68 in terms of aboriginal rights of the Inuit of Nunavik**

On behalf of all the Inuit of Nunavik, it is the position of Makivik Corporation and the Kativik Regional Government that the current Bill C-68, if adopted, would breach the following constitutionally protected aboriginal rights of Nunavik Inuit:

\* ***The James Bay and Northern Québec Agreement***<sup>10</sup>

The Nunavik Inuit signed the *James Bay and Northern Québec Agreement* in November 1975. This land claim settlement establishes the legal and administrative framework for the territory north of the 55<sup>th</sup> parallel and defines the benefits, rights and responsibilities of the Inuit who occupy the mainland area of Québec north of the 55<sup>th</sup> parallel, namely, the region of Nunavik. More specifically, the *James Bay and Northern Québec Agreement* contains specific obligations affirming the right of Nunavik Inuit to harvest with minimal governmental interference. The following provisions of the *James Bay and Northern Québec Agreement* establish the constitutionally protected treaty rights of Nunavik Inuit, which rights will be infringed upon through the passage in Parliament of Bill C-68:

Section 24.3.3      The Native people shall enjoy the sole and exclusive exercise of the right to harvest in accordance with the provisions of this Section.

Section 24.3.11    [...] a) Subject to the principle of conservation, the right to harvest refers to harvesting activity pursued with the Territory, for personal and community use, commercial trapping and commercial fishing. [...]

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<sup>10</sup> The James Bay and Northern Québec has been specifically ratified by the Federal Government with the *James Bay and Northern Québec Native Claims Settlement Act*, 25-26 Eliz. II, Ch. 32.

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c) Community use shall include the gift, exchange and sale of all products of harvesting consistent with present practice between Native communities and/or members of the Native community or communities. For greater clarity, community use shall not exclude the gift, exchange and sale of all products of harvesting between Native communities and members of the Native community or communities not presently conducting such activity. For Native people living in non-Native settlements such as Schefferville, Matagami, Chibougamau, etc., community use shall be restricted to the gift, exchange and sale of all products of harvesting consistent with present practice between such Native people and shall not include gift, exchange and sale with Native communities. In the case of migratory birds, community use shall be limited to the gift or exchange of meat and eiderdown consistent with present practice between Native communities and/or members of the Native community or communities, subject to the undertakings of Canada contained in Sub-Section 24.1.14. Community use shall not include the exchange or sale of fish and meat to non-Natives except in the case of commercial fisheries.

Section 24.3.12      The right to harvest shall include the right to possess and use all equipment reasonably needed to exercise that right [...] 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.

Section 24.3.16      The Native people shall have the right to trade in and conduct commerce in all the by-products of their lawful harvesting activities.

Section 24.3.18      The exercise of the right to harvest shall not be subject to the obtaining of permits, licences, or other authorization [...] Where, by exception, for the purposes of management, leases, permits, licenses or other authorizations 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.

Section 24.3.30      A minimum of control and regulations shall be applied to the Native people, which shall mean inter alia that:

a) When the Coordinating Committee or the responsible Federal or Provincial government decides that control of harvesting activities is necessary, the Coordination Committee or the responsible Federal or Provincial Government shall first formulate guidelines and/or advisory programs with respect to the control of such activity. Such guidelines or advisory programs shall be encouraged and promoted by the local and/or regional governments, under reserve of the right of the responsible Federal or Provincial Government to impose such controls in the event that such guidelines and/or advisory programs do not prove to be effective.

b) When the Coordinating Committee or the responsible Federal or Provincial Government decides that regulations are necessary the responsible Federal or Provincial Government shall make regulations with a minimum of impact on the Native people and harvesting activities by taking into account the impact on such factors as local native food production, the role of tallymen and the organization and boundaries of Cree traplines, accessibility of different sectors of the Native

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populations to harvestable resources, efficiency of harvesting, cost of harvesting and Native cash incomes.

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

Section 24.4.1 A Hunting, Fishing and Trapping Coordinating Committee (hereinafter referred to as the "Coordinating Committee"), an expert body made up of Native and government members, is established to review, manage, and in certain cases, supervise and regulate the Hunting, Fishing and Trapping Regime established by and in accordance with the provisions of this Section.

Section 24.4.23 The Coordinating Committee shall be a consultative body to responsible governments [...] 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 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 [...]

Section 24.6.2 The principle of priority of Native harvesting shall mean that in conformity with the principle of conservation and where game populations permit, the Native people shall be guaranteed level of harvesting equal to present levels of harvesting of all species in the Territory.

a) Such guaranteed levels shall be established by negotiation between the Native parties and the responsible Provincial or Federal Government through the Coordinating Committee (and the normal voting procedures shall not apply in such case) and shall be based principally upon the results of the "Research to Establish Present Levels of Native Harvesting" projects presently under way and to be continued during the four (4) years following the execution of the Agreement. The said parties shall establish such guaranteed levels within five (5) years of the execution of the Agreement.

b) Upon the execution of the Agreement, the said parties referred to in the above sub-paragraph shall forthwith establish by negotiations interim guaranteed levels of Native harvesting based principally upon the available results of the said research projects. Such interim guaranteed levels shall be reviewed periodically and may by agreement be revised.

c) The said guaranteed levels shall be without prejudice to the rights and obligations of the said parties in the establishment of the guaranteed levels of harvesting.

d) The establishment of the guaranteed levels referred to in sub-paragraphs a) and b) hereof shall be subject to the approval of the interested Native parties and the interested government parties.

In summary, the *James Bay and Northern Québec Agreement* provides for the exclusive right of Nunavik Inuit to harvest, including explicitly the right to use and

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possess the necessary firearms to exercise this right. Any proposed government restrictions on this right should be minimal and should be subject to prior review by the Hunting, Fishing and Trapping Coordinating Committee under Chapter 24 of *the James Bay and Northern Québec Agreement*. Finally, in situations where permits, licences or authorizations are required, they should be made automatic and fully accessible to Nunavik Inuit through the local governments at a nominal fee. For the government to do otherwise, would be a clear breach of the *James Bay and Northern Québec Agreement* treaty.

\* ***Canadian Charter of Rights and Freedoms, Canada Act, 1982, c. 11 (U.K.) in R.S.C., 1985, App.II, no. 44.***

The rights established pursuant to the *James Bay and Northern Québec Agreement* are constitutional rights entrenched in the Constitution of Canada in virtue of section 35 of the *Canadian Charter of Rights and Freedoms* and as such have priority over all federal and provincial legislation. In addition to the rights specifically stipulated in the *James Bay and Northern Québec Agreement*, are all other aboriginal rights that may be so affirmed by Nunavik Inuit. Section 35 of the *Canadian Charter of Rights and Freedoms* provides for the context in which aboriginal rights shall be evaluated in Canadian law:

#### Section 35. RIGHTS OF THE ABORIGINAL PEOPLES OF CANADA

- (1) [Recognition of existing aboriginal and treaty rights] The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.
- (2) [Definition of "aboriginal peoples of Canada"] In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.
- (3) [Land claims agreement] For greater certainty, in subsection (1) "treaty rights" includes rights that now existing by way of land claims agreement or may be so acquired.
- (4) [Aboriginal and treaty rights are guaranteed equally to both sexes] Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

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In light of this provision, the obligation to respect aboriginal rights has been recognized by the Supreme Court of Canada in numerous recent cases. In 1990, the Supreme Court of Canada established specific criteria that the government must follow in order to justify legitimate interference with existing aboriginal rights.<sup>11</sup> In this context, “*the special trust relationship and the responsibility of the government vis-à-vis aboriginals must be the first consideration in determining whether the legislation or action can be justified.*”<sup>12</sup> In matters of firearm control, the federal government assumes the responsibility to reduce crime and the use of illegal firearms. However, this responsibility should, with respect to Nunavik Inuit, be addressed in a way that would least interfere with the aboriginal right to possess and use firearms in the continuance of their traditional and customary harvesting activities:

“Within the analysis of justification, there are further questions to be addressed depending on the circumstances of the inquiry. These include the questions of whether there has been as little infringement as possible in order to effect the desired result [...] whether the aboriginal group in question has been consulted [...]. Suffice to say that recognition and affirmation requires sensitivity to and respect for the rights of aboriginal peoples on behalf of the governments, courts and indeed all Canadians.”<sup>13</sup>

## **V. Recommendations to address the rights of the Inuit of Nunavik**

Inuit of Nunavik recommend that in order to safeguard the legitimate objectives of Bill C-68, while at the same time ensuring the respect of the constitutionally protected rights of the Inuit of Nunavik, Bill C-68 should be amended as follows. These recommendations are of a preliminary nature and are made under reserve of the right of Nunavik Inuit to make any further representations and recommendations should this be found necessary.

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<sup>11</sup> *R. vs Sparrow*, (1990) 1 R.C.S. 1075

<sup>12</sup> *Ibid*, at page 1114.

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1. Bill C-68 should not come into force in Nunavik until proper modifications with respect to the constitutionally protected aboriginal customary and traditional harvesting rights of the Inuit of Nunavik have been resolved between the federal government and the Inuit of Nunavik.

2. The Federal Government should respect the obligations it has specifically undertaken under the *James Bay and Northern Québec Agreement* to consult with the Hunting, Fishing and Trapping Coordinating Committee on the proposed firearms control legislation referred to as Bill C-68 in order to ensure that it is in conformity with the rights provided for in the James Bay and the Northern Québec Agreement.

3. Bill C-68 should be amended to specifically provide for the respect and the promotion of the constitutionally protected aboriginal harvesting rights and commercial hunting as well as the respect of the regional and cultural values, economy and traditional and customary way of life of the Nunavik Inuit. This could be done through an appropriate non-derogation clause. In these regard, we recommend the following:

“Nothing in this Act shall be construed so as to abrogate or derogate from or otherwise conflict or be inconsistent with any existing aboriginal or treaty rights of the aboriginal peoples of Canada under the *Constitution Act, 1982*.”

4. Bill C-68 should be amended to authorize local Inuit governments to provide firearm safety courses, issue firearm licenses, register certificates and/or authorizations, the whole in conjunction with the Hunting, Fishing and Trapping Coordinating Committee, as provided for in section 24.3.18 of the *James Bay and Northern Québec Agreement*.

5. Bill C-68 should be amended so that all fees required for safety courses, licenses, registration of certificates and/or authorizations would be automatic and fully accessible

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<sup>13</sup> *Ibid*, at page 1119.

for a nominal cost and made available through the Inuit local governments, it being understood that a nominal fee is to mean no more than One Dollar (\$1.00), the whole in conformity with section 24.3.18 of the *James Bay and Northern Québec Agreement*.

6. The foregoing recommendations should be incorporated into the *Act respecting Firearms and other Weapons* directly and not through any subordinate legislation.

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