Real impact of Bill 5 on the acceleration of mining projects in Quebec

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Bill 5,[1] *An Act to accelerate the granting of the authorizations required to carry out priority national-scale projects* (Bill 5), tabled by Finance Minister Éric Girard, is part of a broader government strategy to accelerate the completion of strategic projects in Quebec. Inspired by federal law C-5,[2] Bill 5 aims to streamline the administrative process behind major projects so that they can be rolled out more rapidly.

Purpose of Bill 5: make it easier to grant authorizations for strategic projects

The government's stated intention is to stimulate the Quebec economy by accelerating the administrative process underlying strategic economic and energy projects to be designated by it. These projects must:

generate major economic spinoffs;
create jobs; and
further the energy transition.

During his opening speech of the session, Premier François Legault stressed the fact that lead times need to be shortened and administrative processes need to be streamlined, while maintaining high standards. The goals are clear, but does Bill 5 actually make it possible to achieve them?

Framework and scope of Bill 5: transition to a single authorization for large-scale projects

Bill 5 will allow the government to change how various laws are applied to accelerate national-scale projects in Quebec without circumventing environmental assessment processes and the rights of

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Indigenous communities.

It provides for the granting of a **single authorization** allowing both the project and all of the operations necessary for its completion to be carried out. In the context of a mining project, this means the granting of environmental authorizations under the *Environment Quality Act* ("EQA")[3] and mining titles under the *Mining Act,*[4] as well as the approval of a preliminary version of the rehabilitation and restoration plan required by the *Mining Act*[5] and any other authorization required by the *Natural Heritage Conservation Act*[6] of the *Act respecting the conservation and development of wildlife,*[7] among others.

Indigenous communities

Why James Bay and Northern Quebec are excluded

Section 2 of Bill 5 stipulates that the Bill applies subject to any act aimed at implementing the *Agreement concerning James Bay and Northern Québec*[8] and its amendments,[9] as well as the *Northeastern Québec Agreement*. These agreements are put into practice in particular under Title II of the EQA, which establishes an environmental and social impact assessment and review procedure in which Indigenous communities must participate, as prescribed by the agreements. Title II of the EQA is part of the list of provisions that the government cannot add to the list of laws having an authorization process that can be replaced by the authorization granted under Bill 5.

The constitutional obligation to consult Indigenous communities

Bill 5 stipulates that it must be interpreted in a manner consistent with the obligation to consult Indigenous communities, and that these communities must be consulted separately when circumstances warrant doing so.[10] Consulting Indigenous communities is one of the government's constitutional obligations. As such, it could not in any case have set that obligation aside.

In short, an authorization cannot be granted more rapidly under Bill 5 at the expense of the obligation to consult the Indigenous communities of southern Quebec. Also, in its assessment of an application for the designation of a project, the government may in particular consider whether the project takes the interests of local and Indigenous communities into account.[11] This implies prior consultation work by the project proponent, further to which it can document the concerns and interests of Indigenous communities and adapt its project accordingly.

In James Bay and Northern Quebec, mining projects are generally subject to the environmental and social impact assessment and review procedure provided for in Title II of the EQA. They fall completely beyond the scope of Bill 5.[12]

Contradictions in Bill 5 and implementation challenges

The challenges of the two-year implementation deadline

Although the Bill is presented as a way to fast-track projects, not a way to circumvent the law, a number of issues remain where mining projects are concerned.

Exclusion of mining projects in James Bay and Northern Quebec

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The text of Bill 5 is clearly intended to apply to mining projects. Take section 4 para. 2(1) which mentions, among the points that can be considered for the designation of a project, the fact that it would consolidate Québec's autonomy and resilience, in particular as regards energy, critical and strategic minerals or infrastructure.

However, Bill 5 cannot apply to projects governed by Title II of the EQA, that is, those located in the territory covered by the *James Bay and Northern Quebec Agreement*. As such, many mining projects are excluded by default.

This contradiction raises questions about the overall effectiveness of the Bill for mining projects, the implementation of which it claims to accelerate.

Prerequisites for granting authorization maintained

By its very nature, Bill 5 is intended to apply to large-scale projects, and section 1 of the Bill describes these as priority, national-scale projects.

However, large-scale projects such as these are likely to be subject to the environmental impact assessment and review procedure or, at minimum, to the EQA's ministerial authorization regime. It is important to note that, in order for an authorization to be granted under Bill 5, all the steps prior to that authorization must have been completed. Section 10 of Bill 5 stipulates that the application for authorization "must mention the permissions allowing the proponent to carry out the project ... and must be accompanied by the information and documents required as well as the payment of the duties and fees payable for the granting of those permissions."

If the project is subject to the environmental impact assessment and review procedure, the procedure must be completed before an authorization under Bill 5 can be granted. The only difference in the procedure is in section 30 of Bill 5, which stipulates that, when the impact statement for a designated project is deemed admissible, the Minister of the Environment mandates the BAPE to hold a public hearing, and the BAPE then proceeds without holding an information period.

With the recent amendments made to the EQA by the *Act to amend various provisions relating to the environment* (also known as Bill 81), which, according to representations made by representatives of the MELCCFP, aim to reduce the impact assessment and review procedure from 18 months to 9 months, we wonder whether Bill 5 will actually contribute to accelerating the administrative process underlying projects already subject to the impact assessment and review procedure.

Short-term implementation criterion

The requirement for short-term implementation (approximately two years taking into account the combined effect of sections 4 para. 2(5) and 20 of Bill 5) seems unrealistic for large-scale projects requiring comprehensive consultations and assessments.

In the case of mining projects, the granting of an authorization including a mining lease must be preceded at a minimum by the approval of a preliminary version of the rehabilitation and restoration plan and the payment of a provisional financial guarantee. Despite the fact that section 46 of Bill 5 scales down requirements,[13] the preparation, even of a preliminary version of such a plan, requires time and the collaboration of experts in the field to meet the expectations of the MRNF.

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Thoughts and outlook

While it may be appealing to think it possible to reduce the time required to grant the necessary authorizations for large-scale projects that could generate major economic spinoffs for Quebec, it appears that, in terms of environmental protection, Bill 5 does little to address a key issue, namely the time it takes to prepare application files, whether for a ministerial authorization or as part of the environmental impact assessment and review procedure.

Add to this the fact that, to complete these processes, additional studies are generally required, depending on the questions and requests for clarification raised during the analysis phase. Bill 5 offers no solution to the issue, which, however, is probably the most significant issue when we consider the time and energy that project proponents must devote to the file preparation phase.

Conclusion: We don’t know whether proponents will see greater efficiency

Bill 5 shows that the government is indeed trying to increase government efficiency and spur economic growth. However, it leaves mining project proponents hanging by immediately excluding projects located in the James Bay area and further north, and by not addressing the time it takes to prepare environmental impact assessment and review files or applications for authorization.

Takeaways

Does Bill 5 make it possible to avoid BAPE hearings?

In a word, no. The BAPE process continues to apply to designated projects, but the public information stage is eliminated to jump directly to the hearing stage, slightly reducing the time needed to complete the process.

Which mining projects will benefit most from Bill 5?

Primarily projects involving critical and strategic minerals located in southern Quebec, provided that proponents can demonstrate that short-term implementation is possible (approximately two years).

Why does Bill 5 not apply to James Bay and Northern Quebec?

Because the separate environmental and social assessment processes (Title II, EQA) that apply to these territories were established by agreements that Bill 5 cannot unilaterally amend.

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1. Bill 5, *An Act to accelerate the granting of the authorizations required to carry out priority national-scale projects*: https://www.assnat.qc.ca/en/travaux-parlementaires/projets-loi/projet-loi-5-43-2.html
2. Federal Bill C-5: https://www.parl.ca/documentviewer/en/45-1/bill/C-5/first-reading
3. *Environment Quality Act*: https://www.legisquebec.gouv.qc.ca/fr/document/lc/Q-2?langCont=en
4. *Mining Act*: https://www.legisquebec.gouv.qc.ca/fr/document/lc/m-13.1?langCont=en
5. Section 46 of Bill 5 scales down requirements regarding the rehabilitation and restoration plan, providing for the granting of an authorization instead of a mining lease without such a plan having been approved—that is, if a preliminary version of such plan has been approved by the Minister of Natural Resources and Wildlife and a provisional financial guarantee has been paid. The rehabilitation and restoration plan will likely still need to be considerably advanced. A mining authorization establishes the time limits within which the rehabilitation and restoration plan must be approved and the financial guarantee paid.
6. *Natural Heritage Conservation Act*: https://www.legisquebec.gouv.qc.ca/fr/document/lc/C-61.01?langCont=en
7. *Act respecting the conservation and development of wildlife*: https://www.legisquebec.gouv.qc.ca/fr/document/lc/c-

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8. *James Bay and Northern Quebec Agreement*: https://www.canada.ca/en/impact-assessment-agency/corporate/james-bay-northern-quebec-agreement.html
9. Section 2 of Bill 5 refers to section 1 of the *Act approving the Agreement concerning James Bay and Northern Québec*, which states the following: “In this Act, unless the context indicates a different meaning, the expression “Agreement” means the Agreement reached between the Grand Council of the Crees (of Québec), the Northern Québec Inuit Association, the Government of Canada, the Société d’énergie de la Baie James (the James Bay Energy Corporation), the Société de développement de la Baie James (the Société de développement de la Baie James), the Commission hydroélectrique du Québec (the Commission hydroélectrique du Québec) and the Gouvernement du Québec, dated 11 November 1975, and the Amending Agreement dated 12 December 1975, tabled in the National Assembly, 9 June 1976, as Sessional Documents, Nos 101 and 102.” Section 2 of Bill 5 also refers to section 1 of the *Act approving the Northeastern Québec Agreement*, which states: “In this Act, unless the context indicates otherwise, the expression “Agreement” means the Northeastern Québec Agreement reached between the Band of Naskapis of Schefferville and its members, the Gouvernement du Québec, the Société d’énergie de la Baie James (the James Bay Energy Corporation), la Société de développement de la Baie James (the James Bay Development Corporation), the Commission hydroélectrique de Québec (the Québec Hydroelectric Commission) (Hydro-Québec), the Grand Council of the Crees (of Québec), the Northern Québec Inuit Association and the Government of Canada, dated 31 January 1978, tabled in the National Assembly on 18 April 1978, as Sessional Papers, No. 113.”
10. Section 3 of Bill 5
11. Section 4 para. 2(3) of Bill 5
12. Schedule A of the EQA provides that “all mining developments, including the additions to, alterations or modifications of existing mining developments” are subject to the mandatory assessment and review procedure provided for in sections 153 to 167 and 187 to 204 of the EQA.
13. Section 46 of Bill 5 provides for the approval of a preliminary version of the rehabilitation and restoration plan and the payment of a provisional financial guarantee instead of the financial guarantee established on the basis of the final version of the rehabilitation and restoration plan.

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