

# **Qikiqtani Inuit Association**

## **Comment on MHTO Notice of Motion re: Recording of SOP Community Roundtables**

On June 19, 2023, the Mittimatalik Hunters & Trappers Organization (“MHTO”) made a motion to the Nunavut Impact Review Board (NIRB) seeking an order requiring that the intervenor presentations at the Iqaluit Community Roundtable (CRT) be recorded, and replayed at the start of the Pond Inlet Community Roundtable. The rationale for the motion is that time for intervenor presentations has only been allocated at the Iqaluit CRT, and that not sharing the same information at the start of the Pond Inlet CRT puts the participants at the Pond Inlet CRT at a disadvantage.

Qikiqtani Inuit Association (QIA) supports MHTO’s motion and asks NIRB to grant MHTO’s requested order.

### **INUIT PARTICIPATION GENERALLY**

Ensuring that Inuit, particularly Inuit from the communities most impacted by the Mary River Project, have meaningful opportunities to participate in NIRB’s processes is among NIRB’s most important responsibilities.

Consultation with Inuit, and Inuit participation, is woven throughout NIRB’s statutory regime and its purpose. The Board’s powers and activities are set with Inuit involvement,<sup>1</sup> its rules must have regard to Inuit traditions,<sup>2</sup> it is an institution of public government established by the *Nunavut Land Claims Agreement*,<sup>3</sup> and among its primary objectives to “to protect and promote the existing and future well-being of” Nunavummiut.

Because operational limitations<sup>4</sup> have impacted NIRB’s ability to be flexible in its design of the Sustaining Operations Proposal (SOP) public hearing, effort ought to be made to make all reasonably possible adjustments to the existing procedure to enhance Inuit participation.

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<sup>1</sup> *NuPPAA*, s 22.

<sup>2</sup> *NuPPAA*, s 26(2).

<sup>3</sup> *NLCA*, s 12.2.1.

<sup>4</sup> Including but not limited to other scheduled hearings and space limitations in Pond Inlet.

## LIMITING PROCEDURAL OPTIONS

In the current proceeding regarding Baffinland Iron Mines (Baffinland) SOP application, several circumstances arose which constrained NIRB's ability to provide the level and breadth of participation opportunities to which Inuit have become accustomed in relation to the Mary River Project.

Some of those circumstances are out of NIRB's control (for example, the Responsible Ministers' section 114 letter,<sup>5</sup> and the timing of Baffinland's application). It is unfortunate, for example, that the timing of the CRTs overlaps with important periods in the calendar during which many Inuit are exercising their harvesting rights or are otherwise on the land, and are thus unable to contribute to this important process. The loss of those contributions to the current hearing is significant, and NIRB should not be content to rely on the record from past hearings to fill those gaps. In the future, care ought to be taken to avoid overlaps between regulatory timelines and important harvesting periods.

However, not all of the circumstances which have limited the procedural options are outside of NIRB's control. Some of those circumstances have been caused by NIRB. In particular, NIRB's choice to make the CRTs available only for in-person attendance, and to not provide a hybrid/remote participation option, significantly compounds the existing operational challenges, and presents another obstacle to Inuit participation. The high cost of travel to and from the impacted communities and Iqaluit, as well as limited accommodations in Pond Inlet and Iqaluit, compounds the decision to proceed in-person only.

Participants may not be able to have their technical support or their preferred representatives present. Community concerns which may need to be addressed at the CRTs will be more difficult to both address, and respond to. The dynamic back-and-forth which often takes place at CRTs and NIRB hearings will likely be impacted.

QIA notes that the problem which MHTO's motion seeks to solve would not be an issue if remote participation were allowed. In the future, QIA urges NIRB to allow for remote participation to supplement in-person participation in all NIRB proceedings.

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<sup>5</sup> Letter from The Honourable Dan Vandal to Kaviq Kaluraq, April 20, 2023. NIRB Registry #344411.

## PLANNING FOR THE COMMUNITY ROUNDTABLES

The CRTs are an indispensable part of NIRB's regulatory process. They must not be merely an opportunity for Inuit affected by the project to "blow off steam",<sup>6</sup> and NIRB must take care to ensure that the way it operationalizes the CRTs does not inadvertently lead to such an outcome.

The evidence presented by Inuit at the CRTs is substantive, significant, and must be accounted for in Baffinland's operations and NIRB's decision-making. Because of the regulatory timeline associated with the SOP, which QIA has already objected to in a separate motion, the participants' submissions will be over a month old by the time of the Pond Inlet CRT. In addition, the Iqaluit CRT will have occurred with the opportunity for Intervenor presentations.

Inuit participating in the Pond Inlet CRT will be entirely deprived of the opportunity to hear Intervenor presentations on key mitigation and monitoring questions that will impact Pond Inlet residents more than any other community. The Pond Inlet participants will also not have the benefit of directly knowing any changes or updates to the positions of the Designated Inuit Organizations (DIOs), regulating governments, or intervenors which may have resulted from Baffinland's responses to their initial submissions and any discussions which might have taken place in the interim, including at the Iqaluit CRT.

Every effort must be made to ensure that the evidence given at the CRTs can be fully integrated into NIRB's decision-making process. Allowing the participants in the Pond Inlet CRT to watch the intervenor presentations from the Iqaluit CRT will assist with that.

Nrejudice will result to any party from the presentations being recorded and replayed. If any party's position, or the content of their presentation, has changed in the intervening days between the Iqaluit and Pond Inlet CRTs, allowance can be made for those changes to be noted at the start of the Pond Inlet CRT.

Granting MHTO's motion will improve the procedural fairness of this process. While it may not be enough to fully address the procedural fairness deficiencies QIA has previously identified, QIA urges NIRB to grant MHTO's motion.

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<sup>6</sup> *Mikisew Cree First Nation v Canada* 2005 SCC 69 at para 54.

**Submitted on behalf of the Qikiqtani Inuit Association this 4<sup>th</sup> day of July, 2023.**

  
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**Corey Shefman, Legal Counsel to QIA**