

## ABORIGINAL PEOPLES

### LANDS

#### *Nunavik Inuit Land Claims Agreement*

##### Wildlife management

Judicial review of decision by Minister of Environment and Climate Change Canada (Minister) varying Nunavik Marine Region Wildlife Board, Eeyou Marine Region Wildlife Board (Boards) final decision regarding Total Allowable Take (TAT), non-quota limitations for harvesting of Southern Hudson Bay (SHB) polar bears within Nunavik Marine Region (NMR) pursuant to *Nunavik Inuit Land Claims Agreement* (NILCA), s. 5.5.12, *Eeyou Marine Region Land Claims Agreement Act* (EMRLCA), s. 15.3.7 — NILCA, Art. 5 establishing co-management regime seeking to integrate Inuit knowledge, approaches to wildlife management with Western scientific knowledge — Also containing decision-making process determining how conservation decisions made — Applicant, non-profit organization, legal representative of Nunavik Inuit — Primary role to administer lands of Inuit, protect rights, interests, etc. provided by agreements at issue — Boards main instruments of wildlife management in NMR, Eeyou Marine Region — Minister rejecting Boards' decision pursuant to NILCA, s. 5.5.3(a), EMRLCA, s. 15.2.1(a) — Inviting Boards to issue final decision by taking into account, *inter alia*, non-quota limitation of sex-selective harvest of two males per one female bear — Minister, *inter alia*, reducing Boards' annual TAT of 28 SHB polar bears to 23, indicating manner in which TAT to be implemented within NMR — Main issue whether Minister properly exercising jurisdiction; if so, whether decision to establish sex-selective harvest, vary other non-quota limitations decided by Boards reasonable [heading VI, A, B, at p. 38; 72, 106] — Minister having jurisdiction to vary non-quota limitations established by Boards [116] — Minister's approach not unconstrained authority — NILCA setting out what Minister could or could not do in ss. 5.5.7 to 5.5.11 — Process not specifying any additional steps for Minister to take in considering decisions of NMRWB, making own decisions — NILCA containing no specific restrictions on Minister's authority or jurisdiction to vary any non-quota limitations — Minister not exercising jurisdiction properly — Boards' ability to set non-quota limitations in accordance with NILCA, s. 5.2.19 not unconstrained — NILCA constitutionally protected Treaty — Minister's actions, steps taken having to be viewed in this light, with honour of Crown — Omission between response from Minister, NMRWB rendering Minister's decision unreasonable with respect to non-quota limitations — No evidence before Court of any discussions having occurred at NMRWB level or at technical representative level — Minister's consideration of *Convention on International Trade in Endangered Species of Wild Flora and Fauna*, July 2, 1974, (CITES) reasonable — Minister entitled to consider domestic interjurisdictional agreements or international agreements by virtue of NILCA, ss. 5.5.3, 5.5.4.1 — Minister not relying solely on CITES — Minister not unfairly, wrongfully considering interests of Nunavut Inuit over Nunavik Inuit — Minister not required by NILCA to re-engage with Boards or to provide Boards with analysis document — Minister's decision in not providing her concerns to NMRWB, reasonable in light of terms of NILCA — Minister taking available Inuit traditional knowledge into account when assessing available scientific evidence — Necessary, reasonable to adopt cautious management approach in light of state of information before Boards, Minister — NILCA, ss. 5.1.2(h), 5.1.4, 5.1.5, limited information before Minister, leading to adoption of cautious management approach — Minister recognizing need for further assessments of information by limited duration of her decision — Applicant not discharging evidentiary burden to establish bias or

to establish that Minister fettering her discretion — Minister's decision influenced by information before Boards — In conclusion, Minister's consideration, adherence to NILCA decision-making process correct — Minister's decision reasonable except for decision to establish sex-selective harvest, vary other non-quota limitations — Declaratory relief not appropriate at preliminary stage herein — Premature to grant declaratory relief on issues regarding interpretation of NILCA — Application dismissed.

MAKIVIK CORPORATION V. CANADA (ENVIRONMENT AND CLIMATE CHANGE) (T-1994-16, 2019 FC 1297, Favel J., reasons for judgment dated October 30, 2019, 80 pp.)