



la Convention
de la Baie-James
et du Nord québécois

**Comité consultatif
pour l'environnement
de la Baie-James**

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**MINUTES OF THE 118th MEETING
OF THE JAMES BAY ADVISORY COMMITTEE
ON THE ENVIRONMENT
(ADOPTED)**

DATE: July 13, 2000

LOCATION: 400 Youville
Outaouais/Saguenay room
Montréal, Québec

PRESENT: Yves Désilets, Canada
Marian Fournier, Québec
Susanne Hilton, CRA
Ginette Lajoie, CRA
Claude Langlois, Canada, Vice-Chairperson
Jacques Lefebvre, Québec, Chairperson
Pierre Moses, Québec
Jacques Robert, Canada

Denis Bernatchez, Executive Secretary

ABSENT: Carole Garceau, Québec
Willie Iserhoff, CRA
Diom Romeo Saganash, CRA
Harm Sloterdijk, Canada



1. **CALL TO ORDER AND ADOPTION OF THE AGENDA**

The Chairperson welcomed all members and called the 118th meeting of the JBACE to order. The following agenda was adopted.

1. Call to order and adoption of the agenda
2. JBACE operation in the coming months
3. Date and location of next meeting

2. **JBACE OPERATION IN THE COMING MONTHS**

The atmosphere during the JBACE's last few meetings has been tense at times, to the extent that some meetings were cut short or even cancelled. With serious and fundamental differences of opinion regarding the Committee's role and mandate threatening to compromise the Committee's work, the Chairperson decided to consult each of the parties to gain a better understanding of their concerns and identify possible solutions. On June 20, he met with three of the four CRA-appointed members in Québec City.

After meeting with the Cree members, the Chairperson decided to call a special JBACE meeting to discuss the Committee's operation in the months to come. This was the only item on the agenda. With its operations currently at a standstill, the objective was to find ways to get the Committee running again.

A member of the federal party tabled a copy of the JBACE's rules of internal management (*Règlement sur les règles de régie interne du CCEBJ*). He feels that the Committee should rely on these rules more often to avoid arbitrary pitfalls. At the last few meetings, no votes were taken and meetings were cancelled because there was not a quorum. The JBACE should stick to its role and mandate. Where a consensus cannot be reached, the issue should be put to a vote. We must operate according to the established rules and the mandates defined in the JBNQA.

According to a CRA-appointed member, complying with the rules of internal management is neither the cause of the problem nor the solution. The malaise affecting the JBACE and its operation runs much deeper than that and is related to the members' understanding of the Committee's role and mandate. The fact that everyone sees them differently is why the Committee has run into trouble in recent months.

One aspect of this issue, namely the "official" nature of the parties' respective positions, was subsequently raised. Does the fact that the members are appointed by the governments of Canada and Québec and the Cree Regional Authority automatically make them the official spokespersons of the appointing parties and their positions?

The situation is not the same for the members of the federal and Québec parties as for the members of the Cree party. Although they are appointed by the governments of Québec and Canada, the members do not represent those governments. They speak on their own behalf, based on their own personal education, training, professional experience and knowledge of the James Bay Agreement and territory. They play a technical rather than a political role. However, this is not to say that, when files involving a contentious issue or a legal point are being dealt with, they do not seek advice from the appointing party in order to feel more comfortable discussing the matter. Generally speaking, the members express their opinions freely and independently; they do not feel obliged to take any kind of government position, unless that position is known and the members are specifically instructed to maintain it, which is rarely the case.

The CRA-appointed members, on the other hand, while fully agreeing with the other members on the matter of scientific and technical competence, feel that the members should not limit themselves to simple scientific opinions, as the JBACE's mandate requires them to study and comment on environmental policies. According to these members, the appointing party considers the federal and Québec members of the JBACE to be representatives of their respective governments and so that is how the Cree members address them in the context of the Committee.

The CRA-appointed members also consider that, like the other members, they, too, are appointed based on their professional qualifications and expertise, but must nevertheless take into account the orientations of the party that appointed them. However, they are not political spokespersons and are not mandated to determine the political positions of Cree organizations and governments.

The members of the Québec and Canada parties repeated that that is not how it is for them. They are not given a political role to play, but rather that of scientific and technical advisors.

The Cree representatives are expected to convey a Cree position, whereas the members appointed by Canada and Québec are independent and autonomous, and this double standard is a fundamental problem.

As regards the JBACE's operation, a Québec-appointed member maintained that we need to establish priorities, because we cannot possibly address every issue. Forestry has been a priority concern for several years now. He senses that the members want to function on a consensual basis and are willing to propose changes to the current system. However, there are several users in the Territory. In the member's opinion, the Crees are important, but they are not alone. Another member pointed out that in recent years, the JBACE has always operated according to priority.

Pursuing the discussion, the Cree members said they do not consider it normal that they be the ones to raise the issues dealt with by the JBACE--as if the members of

the Canada and Québec parties were experts and it is up to them to decide whether or not action will be taken. While members acknowledged that the Cree party is often the one to raise the problems, several considered this to be normal. After all, the Crees are the best placed to identify the cause of problems affecting the Territory, since they are close to the people concerned. The CRA-appointed members deplored this passive attitude on the part of the JBACE, saying that it is not an appropriate attitude for a committee such as the JBACE, if you read its mandate properly. The Québec party pointed out that the Committee also has to consider the viewpoint of non-Native people living in the Territory.

The members acknowledged that the JBACE should adopt a proactive attitude and offer its opinion on issues it deems important, as provided for in Section 22 of the JBNQA, instead of always waiting to be consulted by the governments. When we wait for the governments to come to us, we have very little time to submit proposals, and the JBACE has neither the human nor the financial resources to draft briefs quickly or to comment on draft legislation or regulations. While all members must make an effort to bring relevant dossiers to the table, it is important to remember that, as some pointed out, we all have full-time jobs, which must take precedence.

Furthermore, the governments must establish a communications mechanism that would enable the JBACE to be systematically involved in the review of draft legislation, regulations, policies, plans or programs which might affect the JBNQA territory and its inhabitants, as stipulated in the Agreement. Currently, this is not the case.

As regards forestry, the JBACE developed a suite of criteria and indicators of sustainable forest management so that it is better equipped to comment on forest management plans (FMP) in keeping with the JBNQA. Whereas certain members feel that the Committee has made headway on the forestry issue over the past five years, especially since the active participation of MRN representatives in forestry subcommittee meetings, others remarked that the fundamental aspects of forest harvesting in the JBNQA territory have not changed, except for a few technical aspects and, even then, it is very localized. According to certain members, it is all a matter of perspective, and the situation is often viewed from the perspective of the appointing party and the member's individual training and work experience.

The JBACE does not have a lot of resources and, according to some members, it is important that it have at least one full-time analyst at its disposal. Clearly, the Secretary cannot do the job on his own and the members must have the resources needed to fulfil their mandate. However, a member pointed out that the JBACE was allocated a budget to review Québec's draft water management policy and to study and comment on forest management plans. These funds are still available. In one member's opinion, the fact that the Committee has not spent this money yet creates the impression that it is not capable of producing results and, consequently, it will be harder to justify our need for a bigger budget.

A member brought up the fact that the JBNQA provides for a secretariat consisting of up to five persons. He feels that the JBACE should hire more staff and ask for a proper budget in order to pay them. Another member agreed that administrative support is a problem; however, if we want to obtain the necessary resources, it is important that all JBACE members share the same objectives, since the human resource profile must be consistent with these objectives.

The members agreed on the importance of following up on JBACE recommendations more closely to ensure that they are considered. Again it was noted that, more often than not, the numerous opinions submitted to the governments have gone unheeded and gotten little reaction. However, the JBACE is responsible for overseeing application of the environmental and social protection regime established by and in accordance with Section 22 of the JBNQA and it must find a way to fulfil this mandate. The situation has gotten more difficult in the past few months given that the JBACE secretariat currently reports to the acting manager of the industrial and northern projects division of the *Direction des évaluations environnementales* (environmental assessment branch). The JBACE should not be part of an environmental assessment branch. It was pointed out that this decision was made without consulting the JBACE or obtaining its approval. As discussed in recent years, it is evident that the Committee should come under the jurisdiction of the *Conseil exécutif*, since this would give it more elbow room to promote its existence and ensure its recommendations are acted on. A member agreed with this, but remarked that we first need to work on building consensus within the Committee, something which seems to have been extremely difficult since November 1999.

A Québec-appointed member feels that the JBACE needs to take a particular situation, such as "forestry," and then decide how it intends to change that situation. And in terms of forestry, it was pointed out that, currently, Bill 105 (An Act to regulate the forest management activities of holders of timber supply and forest management agreements for the years 2000-2001 and 2001-2002) sends mixed messages with regard to forest management plans (FMP). The JBACE receives amendments to five-year plans, which gives the impression that they have already been adopted. The JBACE needs to clarify this situation. Other members feel that we should take the case of the forest system, adopt a procedural guide and then see the file through. A member said that, as a rule, it is best not to use the most problematic file to try and break an impasse, since you run the risk of not getting anywhere and only crystallizing the opposition between parties. Instead, we first have to determine the JBACE's resource needs for carrying out its mandate. Then we can address the forestry issue. Other members appointed by Québec feel that the JBACE has an obligation to comment on FMPs under the JBNQA. It would be a tactical and concrete step, plus we have \$100 000 at our disposal for this very purpose. We need to decide quickly and, in the very short term, the JBACE can suggest changes to the forest system that might be acceptable to the MRN.

The discussion continued after lunch, and the members set themselves an objective of defining the principal issues and strategies to be adopted by the JBACE. As far as the members of the Cree party are concerned, the issues are: land use planning and management in the Territory, the forest system and renewal of the environmental assessment procedure. Forest management incorporates non-timber values such as wildlife, recreation and tourism opportunities, and preservation of the Cree way of life. Section 24 of the JBNQA advocates management according to the present system of Cree traplines. Cree rights must be protected. In the short term, the JBACE has to comment on Bill 136. It has until August 18 to submit its brief. The rules need to be relaxed if the JBACE is to be involved in this file, because the deadline is pretty much unrealistic. Furthermore, the JBACE has to submit its draft brief to the Cree communities for consultation and approval if it wants the final document to reflect reality.

As a whole, the priorities for the Québec and federal parties are as follows: (1) the JBACE must submit its comments on Bill 136 (An Act to amend the Forest Act and other legislative provisions), (2) we must try and define the features of a separate forest system for the Territory, and (3) the best way to do this is by studying FMPs. Also, until the Act is amended, the JBACE will have to work with the system in place.

Some members feel that we need to forget about politics and not wait to see the outcome of Québec/Cree negotiations before addressing these files. However, there are a number of problems the Forest Act cannot address and we shouldn't limit ourselves to this file.

A Cree member feels that commenting on FMPs is an exercise in futility and will be a waste of the JBACE's financial resources. We need to approach the issue of building a separate forest system for the JBNQA territory from a totally different angle. Studying management plans will only lead to the same conclusion as that reached by Del Degan Massé in 1990, i.e. that FMPs did not meet the requirements of the JBNQA. The problem involves more than just studying the plans; it requires overhauling the forest system as a whole. Furthermore, the plans are currently prepared based on the MRN guide, which is not adapted to the JBNQA. In short, we need to forget about FMPs and prioritize defining a separate forest system.

Other members fully understand that FMPs are established on the basis of timber allocations and are not designed to meet the criteria of an impact study that is submitted to environmental assessment. As far as certain government-appointed members are concerned, it is clear that forestry development is exempt from environmental impact assessment under the JBNQA and that TSFMA holders are not required to conduct a full impact study of their forest operations. However, according to these same members, the JBACE can still consider whatever issues it wishes, provided that it comments on FMPs as stipulated in paragraph 22.3.34. If the JBACE does not comment on FMPs, no one else will. And studying the plans will at

least provide the JBACE with baseline data, which can be used to propose directions for a more fitting forest system for the 21st century. The MRN gave the JBACE \$100 000 to comment on FMPs. Not all members of the federal and Cree parties agreed, however, saying that these funds were in fact allocated to deal with forestry issues as a whole.

The members finally reached a consensus that new specifications should be drafted to replace the description of the service contract for studying and commenting on general and five-year forest management plans previously prepared. The new specifications will be for a contract to define a separate forest system. A sampling of FMPs will be used to demonstrate the need for a separate system. It was also suggested that a panel of experts be formed to assist the JBACE in its reflection and to meet with the firm awarded the contract. Susanne Hilton will draft the preliminary specifications and submit them to the forestry subcommittee. It was agreed to use part of the subsidy received from the MRN for this contract as well as to pay the fees of the experts invited to be on the panel. The forestry subcommittee will be asked to submit a more formal proposal to the JBACE for discussion and approval.

As regards commenting on Bill 136, the Cree party suggested mandating a scientific editor by the name of Geoff Quaile to draft a brief relatively quickly. Ginette Lajoie or Susanne Hilton will check to see whether Mr. Quaile is available and on what conditions. The other members do not know him, but seemed to agree that the Committee should go ahead. Mr. Quaile's mandate will consist in reading the reference documents and drafting a brief between five and ten pages long. The working document will be submitted to the JBACE members for their comments and eventually for adoption. The brief will be translated into French, as Mr. Quaile will be drafting it in English due to the tight deadline and in order to facilitate participation by the JBACE's Cree members.

The members would like the Secretary to call Nancy Ford to inform her that the JBACE is planning on submitting a brief on Bill 136 and wishes to be heard by the parliamentary committee.

Finally, the JBACE should soon be receiving the synthesis map for five-year forest management plans for the Abitibi region, to be sent by the MRN regional office.

3. DATE AND LOCATION OF NEXT MEETING

The next JBACE meeting will be held over two days at the end of September (possible dates: 26th, 27th and 28th), in Val d'Or.



DENIS BERNATCHEZ
Secretary

01-02-26