
The James Bay
and Northern
Québec Agreement



**The James Bay
Advisory Committee
on the Environment**

Annual Report 1997-1998

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ANNUAL REPORT

1997-1998

**JAMES BAY ADVISORY COMMITTEE
ON THE ENVIRONMENT**

GAWESHOUWAITEGO ASGEE WESHOUWEHUN

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June 21, 1998

The Honourable Paul Bégin
Minister of the Environment and Wildlife
Édifice Marie-Guyart, 30^e étage, boîte 02
675, boulevard René-Lévesque Est
Québec (Québec) G1R 5V7

Dear Sir:

It is my honour to present the activity report of the James Bay Advisory Committee on the Environment for the year ended March 31, 1998.

Respectfully submitted,

DIOM ROMEO SAGANASH
Chairman

June 21, 1998

The Honourable Christine Stewart
Minister of the Environment
Environment Canada
Les Terrasses de la Chaudière
10, rue Wellington, 28^e étage
Hull (Québec) K1A 0H3

Dear Madam:

It is my honour to present the activity report of the James Bay Advisory Committee on the Environment for the year ended March 31, 1998.

Respectfully submitted,

DIOM ROMEO SAGANASH
Chairman

June 21, 1998

Mr. Matthew Coon Come
Grand Chief
Grand Council of the Crees (of Québec)
2 Lakeshore Road
Nemaska (Québec) J0Y 3B0

Dear Sir:

It is my honour to present the activity report of the James Bay Advisory Committee on the Environment for the year ended March 31, 1998.

Respectfully submitted,

DIOM ROMEO SAGANASH
Chairman

CHAIRMAN'S MESSAGE

The tripartite forum established to oversee the application of the environmental and social protection regime for the North under Section 22 continues to be ignored and neglected by those it is supposed to serve on a preferential and official basis. Close to 25 years after the partners to the James Bay and Northern Québec Agreement agreed to put in place mechanisms that would allow for Cree participation in environmental and social protection and policy-making, meaningful implementation of the James Bay Advisory Committee on the Environment is yet to come.

This fastidious situation hinders the Committee to the point where it is almost impossible for it to adequately and fully assume its role and mandate as provided for under the Agreement. The Committee is not being used to its full potential, due mainly to the paralyzing and ongoing lack of resources allocated by Canada and Québec, a situation that has existed for the past two decades, with no redress, in spite of the constitutional obligations that bind both governments.

When one considers the meagre resources allocated to the Committee every year, it becomes painfully obvious that, after 20 years, the governments of Canada and Québec have no interest in implementing certain core sections of the James Bay and Northern Québec Agreement. This is the reality faced by JBACE members year after year, and a questionable attitude that threatens environmental and social protection in Northern Québec.

To continue denying the Committee the means and resources needed to properly fulfil its mandate can only be characterized as grave political disregard, and amounts to a contemptuous legal negligence on the part of both Québec and Canada.

The survival of the James Bay Advisory Committee on the Environment depends entirely on its members and secretary, their dedicated commitment and their invaluable capacity to accomplish things under deplorable conditions and despite the flagrant lack of government recognition. To them, I say *meegwetch*.

DIOM ROMEO SAGANASH
Chairman

**JAMES BAY ADVISORY COMMITTEE
ON THE ENVIRONMENT**

GAWESHOUWAITEGO ASGEE WESHOUWEHUN

MANDATE

The James Bay Advisory Committee on the Environment (JBACE) is a consultative body established by Section 22 of the James Bay and Northern Québec Agreement (JBNQA) and governed by the Environment Quality Act (R.S.Q., c. Q-2) and the James Bay and Northern Quebec Native Claims Settlement Act (S.C. 1976-1979, c. 32).

The JBACE is the preferential and official forum for the Québec and Canadian governments, the Cree Regional Authority (CRA), village corporations, Native bands, the Regional Zone Council and regional municipalities for formulating laws and regulations relating to the physical and social environment of the territory covered by the James Bay and Northern Québec Agreement (the "Territory"). This Territory refers to that area of Québec located south of the 55th parallel, excluding the area near Schefferville south of the 55th parallel, and west of the 69th meridian, including the Category I and II lands of the Whapmagoostui Crees, and whose southern boundary coincides with the southern limits of the Cree traplines as defined in the Act respecting hunting and fishing rights in the James Bay and New Québec territories (R.S.Q., c. D-13.1). Appendix 2 of this report contains a map delimiting this territory.

The JBACE is also mandated to oversee the administration and management of the environmental and social protection regime established by and in accordance with Section 22 of the JBNQA and Chapter II of the Environment Quality Act (EQA). Among other things, this entails making recommendations on:

- . the adoption of legislation, regulations and other appropriate measures related to the environmental and social protection regime;
- . existing environmental and social laws and regulations relating to the effects of development, as well as existing land use regulations and procedures which may directly affect the rights of Native people established by and in accordance with sections 22 and 24 of the JBNQA;

- . environmental and social impact assessment and review mechanisms and procedures applicable to the Territory.

The Québec and Canadian governments, the Cree Regional Authority and Cree village corporations consult the JBACE on major issues respecting the implementation of the environmental and social protection regime applicable to the Territory, and on land use measures.

Pursuant to the Environment Quality Act, the Minister of Natural Resources must submit the general and five-year forest management plans for public forests in the Territory to the JBACE, for consideration and comment, before such plans are approved by the Minister.

Upon request, the JBACE also provides Cree village corporations and bands with technical and scientific information, and advice or technical assistance which it periodically obtains from the federal or provincial government or a government agency.

Finally, the JBACE supervises the administration of the Evaluating Committee, also established by Section 22 of the JBNQA.

All decisions and recommendations formulated by the JBACE are forwarded to either the Québec or Canadian government, the Cree Regional Authority, the Cree village corporations, the bands, the Regional Zone Council or the municipalities for their consultation, consideration and appropriate action, where applicable.

COMPOSITION

The James Bay Advisory Committee on the Environment is a tripartite body composed of thirteen members, four of which are appointed by the Cree Regional Authority (CRA), four by Canada and four by Québec. The thirteenth member, the Chairman of the Hunting, Fishing and Trapping Coordinating Committee (HFTCC), is a member ex officio of the JBACE, except when this individual is appointed from the members appointed by the Inuit party, in which case the Second Vice-Chairman of the HFTCC is a member ex officio of the JBACE.

Each year, Québec, Canada and the Cree Regional Authority alternate in appointing a chairman and vice-chairman of the JBACE. In 1997-1998, the Committee Chairman, Diom Romeo Saganash, and Vice-Chairman, Ginette Lajoie, were appointed by the CRA.

On March 31, 1998, the JBACE was composed of the following members:

Paul Chénard
Consultant
(Canada)

Yves Désilets
Indian and Northern Affairs Canada
(Canada)

Susanne Hilton
Consultant
(Cree Regional Authority)

Willie Iserhoff
Director, Environment and Land Management
(Cree Regional Authority)

Ginette Lajoie, *Vice-Chairman*
Environmental Coordinator
(Cree Regional Authority)

Carol Martin
Consultant
(Canada)

Diom Romeo Saganash, *Chairman*
Consultant
(Cree Regional Authority)

Luc Bouthillier
Faculty of Forestry and Geomatics
Université Laval
(Québec)

Jacques Lefebvre
Continuing Education Department
Cégep de Saint-Félicien
(Québec)

The ex officio member for the Hunting, Fishing and Trapping Coordinating Committee was:

Violet Pachanos
Vice-Grand Chief of the GCCQ
(Grand Council of the Crees (of Québec))

The JBACE would like to thank the following members, who resigned during the year, for their valuable contribution:

Robert Daigneault
Director, Environmental Law Department
Attorney, Lapointe Rosenstein
(Québec)

Louise Filion
Centre d'études nordiques
Université Laval
(Québec)

Pierre Paulhus
Consultant
(Canada)

MEETINGS

The JBACE held four regular meetings, one ad hoc meeting and one conference call between April 1, 1997 and March 31, 1998, on the dates and at the locations indicated below:

98th meeting	May 5, 1997 (conference call);
99th meeting	June 19-20, 1997 (Waskaganish Band Council office);
Ad hoc meeting	July 16, 1997 (Val-d'Or, with TSFMA holders);
100th meeting	October 15-16, 1997 (Maison du Citoyen, Hull);
101st meeting	December 15-16, 1997 (Cree Regional Authority);
102nd meeting	March 11-13, 1998 (Cree trappers' camp in Waswanipi).

In addition to the regular meetings, the following ad hoc subcommittees also met several times during the year: forestry subcommittee, subcommittee on the MEF-JBACE administrative agreement, Section 22 subcommittee and subcommittee on the JBACE budgetary proposal.

JBACE ACTIVITIES IN 1997-1998

1. FORESTRY DEVELOPMENT IN THE JAMES BAY TERRITORY

1.1 Background

As indicated in the JBACE's previous annual reports, forestry is a major issue and the Committee shares the concerns voiced by Cree communities and organizations entirely. In the two decades since the JBNQA was signed, logging has drastically changed the face of the James Bay landscape: the annual harvesting rate on Cree traplines has doubled since 1975, and several traplines are now crisscrossed by heavy networks of forest roads with not even minimum control of wildlife harvesting, thus threatening the Crees' priority harvesting rights. Huge portions of ecosystems on which the Cree depend for their subsistence activities have been disturbed, and nothing in the forest management plans submitted to the JBACE indicates that regeneration will restore the ecosystems to their natural state, let alone enhance them. During 1997-1998, the forestry subcommittee (which also comprises MRN representatives) continued its work, albeit on a less regular basis.

1.2 Study of general and five-year forest management plans

Under paragraph 22.3.34 of Section 22 of the JBNQA, the responsible department must forward forest management plans to the JBACE for its consideration and comments before approving them. The Committee has 90 days to make its comments known to the department. Since the signing of the JBNQA in 1975, Québec has made substantial amendments to its Forest Act and attendant regulations, particularly as regards the preparation of management plans, which had been the responsibility of the forest companies, with the content of the plans determined by government regulation. These major changes were all made without involving or even consulting the JBACE.

Section 144 of the Environment Quality Act (EQA) stipulates that: "The Minister of Natural Resources shall transmit to the Advisory Committee, for consideration and comment, before approving them, the general and five-year forest management

plans for the forest in the public domain situated in the territory contemplated in section 133. The Advisory Committee must transmit its comments, if any, within 90 days." Given the importance of the forest to the James Bay Crees' traditional pursuits, the JBACE attaches tremendous importance to this mandate.

In accordance with Schedule 2 of Section 22 of the JBNQA, forestry development is exempt from environmental impact assessment when included in government-approved management plans, provided they have been forwarded to the JBACE for consideration and comment as stipulated in paragraph 22.3.34. This provision was apparently intended to be a crucial and significant step in the analysis of management plans by enabling the JBACE to assess the environmental and social impacts of the planned forest management activities. The plans were supposed to provide sufficient information to permit this assessment.

In addition, the changes made to the forest regime in 1987 and their interpretation by the Ministère de l'Environnement et la Faune (MEF) and the Ministère des Ressources naturelles (MRN) have led these departments to exempt virtually all forestry operations in the Territory from environmental assessment. The JBACE would like to repeat that it is against this practice and hopes the MRN will act swiftly to correct the situation, a situation that creates an even greater need for the JBACE to receive all relevant information enabling it to study the plans properly.

Very little headway was made with regard to forestry in 1997-1998. Several basic issues have gone unaddressed since the first five-year plans were submitted under the new Forest Act in 1989-1990. One of them is the type of information provided on maps included in the plans and the need to compile or group this information by trapline. The plans provide minimum mapping of proposed cutting areas and main forest roads, with this information being conveyed on numerous topographical or planimetric sheets of varying quality.

Given the number of changes submitted, the short time frame for studying them and the limited human and financial resources available to it, the JBACE is unfortunately unable to study the plans in any depth. This has been true for years now.

To help remedy this situation, the MRN agreed to give the JBACE greater support to enable it to comment on the management plans and changes thereto. It promised to make itself available to explain the plans and changes to the JBACE. While this measure does not satisfy all of the JBACE's resource needs, it will nevertheless enable the Committee--at least in the short term--to carry out its functions more efficiently within the time prescribed by the JBNQA.

The JBNQA mandates the JBACE to study the forest management plans in terms of the impact the planned activities will have on the Crees' traditional activities. Unfortunately, the JBACE has never been able to comment on general and five-year management plans or changes thereto in a way that enables even minimal achievement of the JBNQA's objectives or makes its guiding principles operative.

Once again, the JBACE has had to ask the MRN to provide it with the human and financial resources it needs to carry out its mandate.

So far, the JBACE's requests for funding have gone unanswered, as have its repeated requests since November 1995 to meet with the Minister of Natural Resources. The JBACE hopes that the Minister will grant the support needed to rectify this situation and thus protect the Crees' territory and way of life as intended under the JBNQA. Without the MRN's technical and financial support, the JBACE will never be able to achieve its forest management objectives.

1.3 Development of sustainable forestry criteria and indicators

To date, the forest management plans submitted for the JBACE's consideration and comments comply more or less with the guiding principles and special status and involvement for the Cree people stipulated in the JBNQA.

In order to assist timber supply and forest management agreement (TSFMA) holders in this regard, the JBACE developed its own set of socioeconomic, cultural and biophysical criteria and indicators that it wants built into the next set of general forest management plans. The mandate of developing the socioeconomic and cultural criteria and indicators was entrusted to Carole Lévesque,

an anthropologist at INRS-Culture et Société, while the biophysical criteria were developed by a working group comprising representatives of the MRN, CRA and MEF.

The aim is to enable the JBACE to comment on the forest management plans based on clearly defined criteria and indicators and propose measures to ensure that the plans are consistent with the letter and spirit of the JBNQA.

1.4 Meeting with TSFMA holders

On July 16, 1997, the JBACE held an ad hoc meeting in Val d'Or with all TSFMA holders for the James Bay territory. The meeting, organized with the valuable assistance of the MRN, was the first time since the signing of the JBNQA that the JBACE and TSFMA holders had met on a formal basis.

The JBACE used the occasion to explain its responsibilities and mandate under the Environment Quality Act and JBNQA, particularly as regards commenting on forest management plans submitted for its consideration in accordance with paragraph 22.3.34 of the JBNQA.

The JBACE reminded the participants that it has invested a great deal of time and energy in the forestry issue and that it sent the Minister of Natural Resources a brief proposing a separate forest regime for the North that takes the guiding principles of the JBNQA into account. Unfortunately, the MRN failed to act on the JBACE's recommendation.

The preliminary socioeconomic and cultural criteria and indicators were presented to the TSFMA holders, following which the JBACE fielded questions and got the holders' comments and reactions. The JBACE reminded the TSFMA holders that its goal is to work in partnership with the industry, whose involvement and commitment are crucial to the success of this exercise.

The JBACE identified the following elements as crucial to ensuring that general and five-year forest management plans are prepared and implemented in keeping with the letter and spirit of the JBNQA:

- creating a database on forest-related Aboriginal knowledge;

- updating human settlement and ecological maps of the Territory;
- consolidating all information available on the Cree way of life and land use;
- conducting an exhaustive literature review.

1.5 Sustainable forest development

On March 6, 1997, the JBACE received a consultation document on sustainable forest development criteria and indicators for its consideration and comments. The document, entitled "Critères et indicateurs de développement forestier durable - Plan de mise en œuvre - Document de consultation," was prepared by the MRN.

The JBACE informed the Minister of Natural Resources that, as part of its mandate to comment on forest management plans (par. 22.3.34 of the JBNQA), the Committee undertook the development of criteria and indicators to be used to prepare forest management plans.

In studying the MRN proposal, the JBACE noted that certain criteria in the national framework of criteria and indicators were not included in Québec's implementation plan. In the JBACE's opinion, these particular criteria have important implications in terms of the use of non-timber forest resources and, by extension, the use of forests and wildlife resources by Native people.

According to the MRN, its main reason for excluding these criteria at this time is because "*it is difficult, if not impossible, to obtain quantitative data on a regular basis that would enable us to monitor the trends in these practices,*" By "these practices" the JBACE assumes the MRN means Native peoples' subsistence activities.

Given its mandate, the JBACE wanted to make sure the MRN understood the importance of bearing these values in mind, particularly since the JBNQA recognizes the Crees' hunting, fishing and trapping rights.

The JBACE also stressed its interest in working with the MRN to develop appropriate databases on subsistence activities and the use of non-timber forest resources. Such databases would not only be useful for the Territory, but they could also serve as

models for other regions of Québec with Native settlements (e.g. Abitibi, Mauricie).

Moreover, Québec could use the data banks on subsistence economies developed elsewhere in the world, such as Greenland, Alaska and the Northwest Territories, as a model.

The JBACE also noted, in the section on public responsibility for the sustainable development of the forest resource ("Acceptation de la responsabilité de la société à l'égard du développement durable"), that the definition of "subsistence" is not clear in the indicators "area of land used for subsistence purposes" and "area of forested land on Indian reserves subject to integrated resource management plans."

The JBACE expressed its concern in this regard and informed the MRN that it wanted to make sure the situation in the James Bay territory is described accurately.

The MRN recognizes the importance of respecting Aboriginal rights and treaties; it's the interpretation of those rights in the Québec implementation plan that is questionable.

The JBACE proposed using its mandate to help enhance knowledge by, for example, improving the system for evaluating forest management plans. This would enable the JBACE and MRN to collaborate at the regional level to improve knowledge and clarify certain aspects for which there seems to be less control over information.

Moreover, taking local and regional populations' needs and expectations into account is one of the guiding principles of sustainable development. The JBACE hopes that the MRN will consider its comments and will be following this matter closely over the coming year.

1.6 Forestry subcommittee

The forestry subcommittee met twice during 1997-1998. Its May 6-7, 1997, meeting was devoted almost entirely to the development of socioeconomic, cultural and biophysical criteria and indicators to be integrated into general forest management plans. At its February 20, 1998, meeting, the subcommittee took stock of its activities and continued working on the criteria and

indicators so they would be ready to integrate into the forest management plans to be submitted beginning in fall 1998.

The JBACE still has a long way to go in developing a clear approach to the new requirements for preparing forest management plans. Greater emphasis must be placed on the social dimension of forestry and, in this respect, the Committee's requested moratorium on logging is of crucial importance. Obviously, the JBACE hopes the MRN's decision will be consistent with the Committee's actions on the forestry issue.

Admittedly, this issue is extremely complex and multifaceted, if only because of the vastness of the Territory. Unfortunately, several obstacles prevent the JBACE from being able to fulfil its mandate. As previously mentioned, the Committee has tried its best to overcome these obstacles, but if it does not have the ear of the governments it is mandated to advise, then it cannot do much. The will of its members will never be able to compensate for the chronic lack of research funding and support staff (analysts, etc.), let alone the difficulties in obtaining access to data or information in a useful form.

The JBACE is aware that in order to change the situation, it must work in consultation with the different stakeholders, particularly the Cree communities and forest companies. While it recognizes the forest companies' consultation efforts, it is forced to note that these efforts lack structure and do not comply with clearly defined guidelines and standards. The JBACE must work to see that Cree concerns are truly taken into account in the planning process and that consultation of the Cree communities affected by forestry operations is carried out in a structured, consistent manner that respects Cree values.

1.7 Consultation of Native communities

Consultation of Native communities on forestry development in the James Bay territory is of special concern to the JBACE. The Committee has noted that the Crees do not always understand the mechanics and concepts associated with forest management plans, to the extent that their reactions to the plans and their attendant impacts can be many-sided. The JBACE therefore wants to clarify the rules of consultation specific to management plans. Problems arise due to the fact

that more than one forest company conducts activities on the same trapline.

The JBACE has further noted that trappers and forest companies have a very different view of the forest and forestry operations. Trappers seek to protect their traplines so as to ensure they can sustain them as well as future generations, while forest companies seek to supply their processing plants. The challenge is to find common ground.

Forest companies are familiar and comfortable with the Forest Act. Trappers, on the other hand, function according to traditional values while keeping an eye to the future. Learning what the Crees want requires resources, something the JBACE does not have.

Negotiating with Cree communities at the local level, the practice currently advocated by forest companies, clearly favours the industry. A great deal of bargaining is required in order to satisfy the trappers. Steps must be taken to bring the two sides together, and the JBACE believes that, with the proper resources, it can play the role of instigator.

Forestry development must serve the development of the James Bay communities. While every little step counts, the MRN must understand that the JBACE also thinks it is important to look at the bigger picture. Joint JBACE/MRN databases would surely contribute to a better understanding of the whole forestry issue.

Consultation of the local communities is a sizeable challenge, and the JBACE's priority is to ensure that it is carried out in keeping with the guiding principles set forth in the JBNQA.

1.8 Allocation of timber supply and forest management agreements (TSFMA) in the forest reserve

In 1997-1998, the JBACE learned that the MRN had been asked to award another TSFMA in the forest reserve, this time to Donohue, which argued that it would otherwise be forced to close its sawmill due to a lack of timber supply. The MRN asked to meet with the JBACE to explain the application, which has been under study for two years now.

Mistissini Chief William Mianscum wrote to the JBACE saying that his band was against the project because of the potential impacts on Cree traplines.

The JBACE wrote to the MRN stating its opposition on the following grounds:

- the allocation of a TSFMA and additional volume of timber to Donohue goes against the moratorium requested by the JBACE;
- the documents submitted to the Committee do not contain enough information to understand and assess the adverse effects of forestry operations carried out on Cree traplines;
- the documents submitted do not say whether Donohue has consulted the community of Mistissini or the Cree hunters whose traplines will be affected, nor do they provide sufficient information to determine how the management plan integrates the concerns expressed by the community and hunters. Also, they do not indicate whether the MRN has consulted the community or Cree hunters or taken their concerns into account in its decision to allocate additional volumes of timber and management units or not;
- all of the jobs created will be in the Lac-Saint-Jean region; there is nothing to indicate that allocation of the TSFMA would create employment for the Crees;
- the additional silvicultural work associated with the new TSFMA appears to be concentrated in the southern portion of the management unit. It is important to understand the implications of there not being any work carried out in the north.

In light of the above, the JBACE could not recommend authorization of the Donohue project (TSFMA and management plan).

In the coming budget year, the JBACE intends to keep a close eye on MRN decisions that violate the letter and spirit of the JBNQA.

2. MEF-JBACE ADMINISTRATIVE AGREEMENT

Diane Gaudet, Deputy Minister of the Environment and Wildlife, informed the JBACE that she had mandated Denis Vandal, Acting Regional Director of the DRNQ, to negotiate a new administrative agreement with the JBACE. No headway was made on this issue in 1997-1998.

MEF was supposed to ask the government to allocate additional resources to the JBACE. The Committee was not informed of any change and so must continue to function with minimum human and financial resources.

In the coming year, the JBACE will continue its efforts to negotiate an administrative agreement with MEF so it can fulfil its functions under the JBNQA.

In a bid to obtain the support of the federal government, which contributes half of the secretariat's budget in accordance with the JBNQA, the JBACE decided to modify the brief on its status and operation that it submitted to the provincial Environment Minister for submission to the federal Environment Minister.

There has been no response from the federal minister on this matter. The Vice-Chairman and secretary of the JBACE met with two political attachés from Environment Canada in December 1997 to sensitize them to the importance of the JBACE's mandate, the difficulties encountered in trying to carry it out and the need to meet with the federal Environment Minister. Nothing concrete came out of the meeting. The JBACE will therefore have to continue its efforts in this regard during the coming year.

3. REVIEW OF SECTION 22 OF THE JBNQA

The JBACE formed a working group to propose issues for discussion and a review procedure for updating Section 22 of the JBNQA.

The JBACE endorsed the group's proposal and applied to the federal and provincial administrators as well as to the Grand Chief of the Grand Council of the Crees (of Québec) for the necessary resources to begin the process, which will

eventually be submitted to the JBNQA signatories for approval.

The JBACE considers the review an organizational, social and environmental necessity for the communities residing in the Territory, particularly since Section 22 has not been amended or renewed since the JBNQA was signed over 20 years ago. The following sections present the main observations, the basis for the review, the basis of the environmental and social protection regime and the JBACE's action priorities.

a) Main observations

The main observations made during the JBACE's deliberations are summarized below:

The review of Section 22 must not be limited to schedules 1 and 2. Adding or removing certain types of projects to or from the schedules is certainly part of the review, but not all. Forestry is probably the best example.

It is fair to say that many of the problems can be attributed to the fact that the JBNQA provision for the adoption of laws and regulations (par. 22.2.2 a) has not been enforced. For over 20 years now, the focus of the environmental and social protection regime's application has been on the mechanics of environmental assessment, to the point that those involved have perhaps expected too much of the procedure. The latter was intended to be applied through the JBACE, among other bodies.

Communication between the JBACE and the other committees established by Section 22 has been poor, if not non-existent, over the years. This is part of the reason why nothing has changed: JBACE members have always been isolated and rarely informed of problems related to development projects or the committees' assessment of projects.

Whether or not the signatories of the JBNQA are even interested in reviewing Section 22 is another question that needs to be addressed. The JBACE committed to reviewing this section months ago and subsequently reiterated its intention to the federal and provincial environment ministers. The Cree communities are relatively unaware of the Advisory Committee's efforts to renew the environmental and social protection regime.

No serious attempt has been made to review the application of Section 22 since the JBNQA was signed in 1975. Since then, however, both the federal and provincial governments have revised their environmental commitments on more than one occasion, going so far as to pass legislation in this regard (e.g. Canadian Environmental Assessment Act). In the past few years, they have slashed their environmental budgets and begun deregulating the sector.

The impact assessment of the Great Whale hydroelectric development project in the early 1990's brought several problems to light, particularly as regards the environmental assessment procedure and the resource development policy applicable to the Territory. The Cree, provincial and federal governments invested a tremendous amount of time and energy in this project, but the lessons learned risk being lost if the JBACE is not careful.

Some of the recommendations will require amendments to the JBNQA while others can be acted on within the scope of the current regime. But clearly, no recommendations or solutions can be implemented unless all parties are willing. It is the JBACE's opinion that the governments cannot shun their obligations in this regard.

b) Action priorities

The JBACE proposes organizing the review around five priorities related directly to the problems defined above. The work plan will be established accordingly. This will be a sizeable task and it is crucial that the JBACE receive the necessary financial and technical support from the responsible governments.

Action priorities have been divided into five themes:

- fulfilment of the JBACE's role and mandate;
- identification of legislative and regulatory needs in the Territory;
- information and public awareness;
- updating of the environmental assessment procedure;
- land use planning in the Territory.

Fiscal 1998-1999 will be a decisive year for the Section 22 review project. If the federal and provincial governments come through with the

necessary human and financial resources, the JBACE will be able to complete the initial stages, i.e. information and public awareness and a review of the environmental assessment procedure.

Once these stages have been completed, the JBACE will be in a position to verify whether the JBNQA signatories are interested and motivated to begin amending Section 22.

4. MEETINGS BETWEEN THE JBACE AND VARIOUS INDIVIDUALS

4.1 Meeting with the Québec Minister of the Environment and Wildlife

The Chairman and Vice-Chairman of the JBACE met with Environment and Wildlife Minister Paul Bégin on October 7, 1997. The Minister seemed to know nothing about the draft MEF-JBACE administrative agreement. In response to the issue of insufficient funding, the Minister said that the government revises its estimates in December of each year and promised to apply to the National Assembly for supplementary estimates to enable the JBACE to meet its objectives, particularly as regards commenting on forest management plans.

While the JBACE does not know whether the Minister followed through on his promise, one thing is certain: its human and financial resources remain meagre.

4.2 Meeting with the Federal Administrator

The JBACE met with the Federal Administrator of the JBNQA, Sid Gershberg, at its 100th regular meeting on October 15, 1997. Mr. Gershberg was accompanied by Robert Connelly, Vice-President, Policy Development, and Michel Bourgon, Director, Panel Operations - Quebec Region, of the Canadian Environmental Assessment Agency (CEAA).

This was the first time a federal administrator had met with the JBACE since the signing of the JBNQA.

The JBACE told Mr. Gershberg that it would like to develop and maintain closer relations with the federal government and be more involved in the formulation of laws and regulations affecting the James Bay territory.

The JBACE outlined the issues that are currently the focus of its attention, namely forestry, public participation in the environmental and social impact assessment and review procedure, and the Section 22 review. It wanted to know what kind of support it could expect from the Federal Administrator in these matters.

Mr. Gershberg described his role as being responsible for the administration of the Canadian Environmental Assessment Act. Although the Canadian Environmental Assessment Agency is a non-government body, it answers to the federal Environment Minister. As administrator of sections 22 and 23 of the JBNQA, Mr. Gershberg's role is restricted to ensuring projects under federal jurisdiction respect the guiding principles set forth in Section 22. Mr. Gershberg is also charged with appointing and remunerating the federal government members of COMEV and COFEX-South and paying Canada's share of the JBACE's budget.

With regard to the JBACE's funding application, the Federal Administrator felt that the Committee would have a better chance of obtaining resources for specific projects. Mr. Gershberg said he would like to be informed of the JBACE's intentions regarding the environmental assessment procedure under the Section 22 review. He said he was open to considering an application for resources for this purpose. He also agreed to discuss the matter of resources with his colleagues at Environment Canada and Indian and Northern Affairs Canada.

The respective parties said they were pleased with the meeting and hoped that there would be others so as to ensure a common understanding of the issues affecting the James Bay territory.

5. MEETINGS IN THE JAMES BAY TERRITORY

In 1997-1998, the JBACE held two of its meetings in the James Bay territory. It tries to do so whenever possible so it can strengthen its relations with the leaders and members of the Cree communities. In addition to making the JBACE more visible, it gives the Committee members a chance to actually see, and therefore get a better grasp of, certain aspects of Cree life.

5.1 Tour of Waskaganish

The JBACE held its 99th regular meeting in the Cree community of Waskaganish. The members, accompanied by the Local Environment Administrator, toured the following environment-related facilities: the new water intake, the sewage treatment lagoon, the solid waste disposal site and the scrap metal recovery area. The members greatly appreciated the LEA's collaboration and thanked him for making himself so available.

The main purpose of this meeting was to meet with Chief Billy Diamond, a signatory of the JBNQA, to get his view of Section 22.

His main opinions are summarized below:

Before the JBNQA, the Crees were considered squatters and had no rights, water, electricity or jobs.

The environmental and social protection regime established by Section 22 of the JBNQA was intended to protect the Crees' rights and way of life. Chief Diamond referred to the guiding principles set forth in Section 22 as the basic elements to be considered when applying the regime. In Chief Diamond's opinion, all mining, forestry, hydroelectric and tourism developments should be subject to environmental impact assessment.

As of 1975, the JBACE was considered the principal forum and was mandated to oversee the regime's application.

The JBACE members need to work cooperatively, regardless of their appointing party. As specialists, it is up to the members to ask the necessary questions pertaining to development in the Territory. The JBACE should have access to the human and financial resources needed to fulfil its mandate. Chief Diamond feels that any regime that has been around for over 20 years needs to be renewed.

At the time the James Bay and Northern Québec Agreement was signed, there was very little forestry development in the territory and what development there was people believed was compatible with the Cree way of life. Forest roads were subject to environmental impact assessment. It is crucial that the JBACE review forest

management plans to ensure they respect the guiding principles set forth in the JBNQA. The local administrators do not see TSFMA's for what they really are. Often, all they see are maps that provide very little information on the actual sites.

The JBACE was very happy to have had the chance to meet with Chief Diamond and particularly appreciated his historical and pragmatic perspective on the Advisory Committee's role and mandate in the minds of those who negotiated the JBNQA.

5.2 Meeting in a Cree trappers' camp

The JBACE held its 102nd meeting in a Waswanipi Cree trappers' camp, where it met with Jane Gull, Jackie Gull, Mario Lord and Abraham Ottereyes. The JBACE had wanted to meet with Cree hunters and trappers to discuss their traditional activities and get their views on the impact of logging on the Cree way of life. The members even got a visit a trapline on snowmobile to check the beaver traps.

The members were very happy to have had the opportunity--a rare one indeed--to spend a few days in a Cree trappers' camp and would like to thank their hosts for their generous hospitality and availability. It is very important that the JBACE win and maintain the trust of the local communities in order to better understand their needs and the problems they encounter.

6. HUMAN AND FINANCIAL RESOURCES AND JBACE OPERATIONS

6.1 Operating difficulties

As it did last year, the JBACE took numerous steps in fiscal 1997-1998 to obtain the human and financial resources needed to fulfil its mandate as defined in the JBNQA. Funding requests were made to MEF for the JBACE's general operations and to the MRN for mandates related to forestry as a whole.

These steps produced few results and the JBACE is forced to accept that it will be next to impossible to obtain the funding required to carry out its mandate properly.

In spring 1997, the JBACE passed the following resolution regarding the relocation of its secretariat:

- **TO REASSERT** the JBACE's administrative authority over its secretariat in accordance with section 138 of the Environment Quality Act;
- **TO INFORM** MEF that any decision regarding the relocation of the secretariat without the JBACE's first assessing the effects and without the Minister's stating his position with regard to the brief submitted by the JBACE would, at this point in time, be premature;
- **TO ASK THAT** MEF postpone any decision regarding the relocation of the JBACE/COMEV secretariat and not make any administrative changes without prior approval from the JBACE;
- **TO ASK THAT** MEF confirm with the JBACE, no later than ten days following receipt of this resolution, that no decision regarding the secretariat's administration will be made without prior approval from the Advisory Committee;
- **TO REMIND** the Minister of the Environment and Wildlife that the issues addressed in the brief submitted to him by the JBACE on December 20, 1996, require his immediate attention.

Despite this substantiated and firm position on the part of the JBACE, Diane Gaudet, Deputy Minister of the Environment and Wildlife, officially announced that the JBACE secretariat would fall under the Direction régionale du Nord-du-Québec (DRNQ) as of June 2, 1997. This unilateral decision by MEF to move the JBACE secretariat goes against the letter and spirit of both the Environment Quality Act (EQA) and the JBNQA.

While the JBACE secretariat is currently under the administrative authority of Denis Vandal, Acting Regional Director of the DRNQ, the Secretary received delegation of signing authority for all JBACE expenditures. This at least gives the JBACE greater freedom in managing its meagre budget. In the past, the director of environmental assessment had signing authority.

Steps were taken to have the JBACE and COMEV secretariats moved to the Hunting, Fishing and Trapping Coordinating Committee (HFTCC) secretariat.

The matter of the relocation of the JBACE secretariat should be settled in the coming year.

The JBACE will nevertheless continue its fight to become independent from an administrative standpoint.

6.2 Financing of the secretariat

The JBACE secretariat is located in the offices of the Ministère de l'Environnement et de la Faune du Québec (MEF). Under an administrative agreement with MEF, the latter makes human and material resources available to the JBACE.

In 1997-1998, the JBACE secretary was Denis Bernatchez. The secretary of the Evaluating Committee (COMEV) was Michael O'Neill, who was also secretary of the Review Committee (COMEX). Secretarial duties were performed by Diane Dussault, who divided her time between the JBACE, COMEV and COMEX.

It is important to note that in accordance with the JBNQA and the Environment Quality Act (EQA), the JBACE provides the Evaluating Committee with the necessary secretarial services.

6.3 Funding

All JBACE members except for those appointed by Québec are remunerated and any expenses incurred for attending meetings are reimbursed by the party that appointed the member. The fact that only the Québec representatives are not remunerated for their services creates an inequality which, in the JBACE's opinion, impedes Committee operations. Despite numerous representations to the Québec government, the JBACE has never been able to rectify this situation.

The budget for the secretariat is allocated by Québec, which is allowed to claim half this amount from the Government of Canada under paragraph 22.3.19 of the JBNQA and the second paragraph of section 174 of the EQA. In 1987, the terms governing funding of the secretariat were established under an agreement between the Canadian and Québec governments. Since that agreement has expired, the two governments have begun negotiating a new administrative agreement. These negotiations will continue in 1998-1999.

Expenditures related to the secretariat for the fiscal year ended March 31, 1998, are shown in Table I. It should be noted that these expenditures include expenses incurred by the Evaluating Committee under section 150 of the EQA.

TABLE 1: SUMMARY STATEMENT OF JAMES BAY ADVISORY COMMITTEE ON THE ENVIRONMENT AND EVALUATING COMMITTEE EXPENDITURES FOR THE FISCAL YEAR ENDED MARCH 31, 1998

- Salaries (wages and fringe benefits) for secretariat staff	\$115 464.13
- Travelling expenses	\$6 565.30
- Translation	\$10 992.98
- Office space	\$16 815.00
- Telecommunications	\$1 090.88
- Printing and photocopying	\$2 846.61
- Miscellaneous	<u>\$902.77</u>
SUBTOTAL:	<u>\$154 677.67</u>
- Administrative expenses	\$7 733.88
- TOTAL	<u>\$162 411.55</u>

APPENDIX 1

LEGISLATIVE PROVISIONS GOVERNING ENVIRONMENTAL AND SOCIAL PROTECTION IN THE JAMES BAY TERRITORY

Environment Quality Act (R.S.Q., c. Q-2), sections 131 to 167, 205 to 214 and schedules A and B;

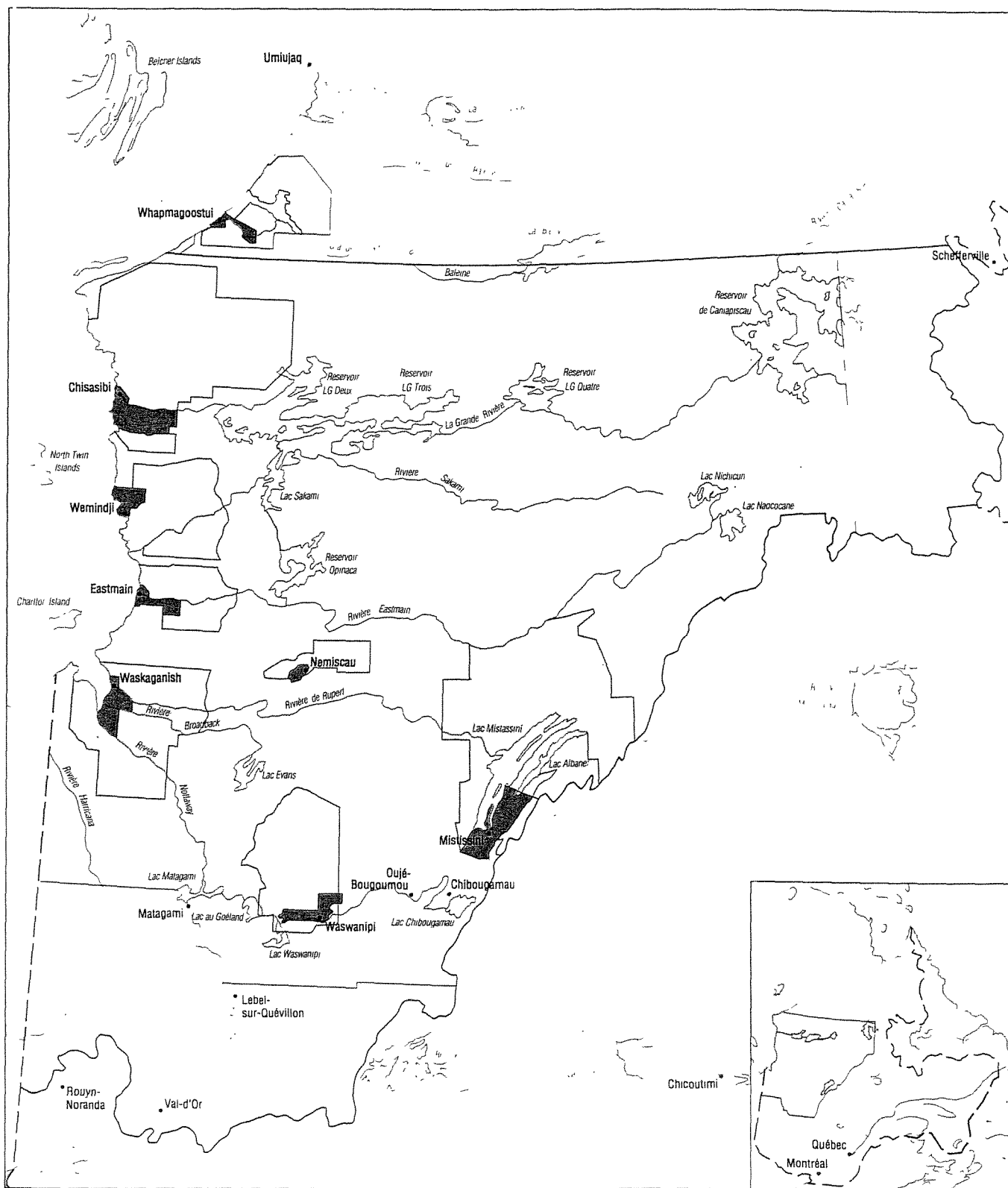
Regulation respecting certain bodies for the protection of the environment and social milieu of the territory of James Bay and Northern Quebec [O.C. 433-79, 14 February 1979, Environment Quality Act (1972, c. 49. s. 124 and 240 a and b)];

Regulation respecting the environmental and social impact assessment and review procedure applicable to the territory of James Bay and Northern Québec [O.C. 3452-79, Environment Quality Act (R.S.Q., c. Q-2)];






Rules of internal management of the James Bay Advisory Committee on the Environment [c. Q-2, r. 21, Environment Quality Act (R.S.Q., c. Q-2, s. 140)];

James Bay and Northern Quebec Native Claims Settlement Act (S.C. 1976-1979, c. 32);

Environmental Assessment and Review Process Guidelines Order (P.C. 1984-2132, 21 June 1984).



Carte d'application du régime de protection de l'environnement

-  Territoire d'application du régime
-  Terre de la catégorie I crie
-  Terre de la catégorie II crie
-  Limite du territoire de la Convention de la Baie-James et du Nord québécois
-  Frontière du Québec

Les terres de la catégorie I et II crie sont incluses dans le territoire d'application du régime.

La limite sud du territoire d'application du régime, tel que définie sur la carte, n'est pas reconnue par les crie.