



Comité consultatif pour l'environnement de la Baie James  
James Bay Advisory Committee on the Environment

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# The Environmental and Social Protection Regime and Québec's Sustainable Development Plan

Brief Presented to Thomas Mulcair  
Minister of Sustainable Development, Environment and Parks

By the  
James Bay Advisory Committee  
on the Environment (JBACE)

As part of the Consultation  
of the Sustainable Development Plan  
of the gouvernement du Québec

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## INTRODUCTION

We would like to constructively use the present exercise to examine the correspondence between the principles underlying the application of sustainable development, as proposed in the Sustainable Development Plan, and the guiding principles of the environmental and social protection regime of the James Bay and Northern Québec Agreement (JBNQA – Section 22). This examination will help to ensure the compatibility of the sustainable development concept and its proposed application, in particular as concerns the James Bay Territory, with the principles of the JBNQA.

Moreover, we would like to present our strategic planning approach, which clearly shows the contribution of the James Bay Advisory Committee on the Environment (JBACE) to the promotion of sustainable development in the Territory. It is worth noting that our joint parity Committee is composed of members appointed by the Government of Canada, that of Québec, and the Cree Regional Authority. Our planning approach is based on close to 30 years of experience with the environment and social milieu. By responding to the needs and expectations of James Bay communities, the JBACE's strategic plan is intended to be as modern as possible. It bears repeating that our brief is not intended to replace the Cree Nation's vision of the sustainable development of the Territory.

A table is presented in the appendix that summarizes our sketch of the correspondence between the principles governing the JBNQA and the Sustainable Development Plan.

### **A. THE PRINCIPLES OF THE ENVIRONMENTAL AND SOCIAL PROTECTION REGIME**

The JBNQA, signed in 1975, has a considerable scope in terms of sustainable development: it lays down links between economic development on the one hand, and protection of Native rights, the environment and society on the other. More recently, the Agreement Concerning a New Relationship Between the gouvernement du Québec and the Crees of Québec (ANRQC, called the "Peace of the Braves", signed in 2002) applied these same principles, particularly to sustainable forestry development. Moreover, this agreement strongly emphasizes the economic and social development of the Cree Nation, as does Section 28 of the Agreement. The dynamic nature of this development has had a considerable impact in the region and the province.

The JBNQA's environmental and social protection regime covers the environmental, social and economic aspects of development. It differs from regimes in vigour elsewhere through its inclusion of social and economic components along with the

environmental component. Because of its holistic nature, we believe that sustainable development was already at the heart of this regime because of the consideration given to all of these factors in development projects on the Territory.

The regime identifies two distinct processes to achieve sustainable development. The first consists in adopting acts and regulations concerning the environment, social milieu and land use in order to reduce as much as possible the undesirable impacts of development on the Native population and wildlife resources. The second process ensures the assessment and review of project repercussions on the environment and social milieu, likewise with the goal of reducing the negative impacts. These two processes are part of the right to development.

The JBNQA mandates the JBACE with the responsibility of supervising the administration of this regime. It is worth noting that this Committee is the primary organization and official forum which the governments consult concerning the development of proposed bills and regulations that might affect the environmental and social protection regime.

The governments and organisms created by virtue of this regime must take into account a series of guiding principles in the Territory's development (see Appendix 1). We will attempt to establish a correspondence between these guiding principles and the sustainable development principles of the draft bill.

### ***1. The Protection of Aboriginal Rights***

The JBNQA has established a hunting, fishing and trapping regime that is based on conservation principles and that acknowledges the Crees' land tenure system, the priority of wildlife harvesting, and guaranteed harvesting levels. Because of the social importance of these practices for the Crees, the rights and guarantees established by virtue of the hunting, fishing and trapping regime are also part of the environmental and social protection regime. In our opinion, these provisions are inspired by notions of social equity, environmental protection, and biodiversity preservation.

So as to ensure the importance of the social and economic components, the regime specifically requires that the protection of the Native people, their economy, societies and communities be taken into account in development in the Territory. This guiding principal sanctions the specificity of the Cree society and culture while stating the terms of its preservation in an economic development context. We believe that maintaining practices (both in their traditional and evolving senses) and social bonds in a Native community has a favourable effect on health and quality of life.

Furthermore, the Crees have administrative rights and powers over the JBNQA's category 1 lands. The environmental and social protection regime calls for the protection of these rights. Exercising these rights demonstrates an empowerment and commitment at the local level that we as an organization must encourage.

## **2. *Special Participation Status***

The protection of the environment and the social milieu becomes significant when the people affected by these measures are involved in their application. The regime requires that a Cree body arising from the Agreement nominate the Cree representatives to each of the entities involved in the regime's implementation, namely the JBACE, the Evaluating Committee and the review committees. Even though the role of these entities is essentially to make recommendations, they facilitate both the consultation of the Territory's Native and non-Native communities during development projects and the consideration of their rights and interests.

One of the roles of the JBACE is to facilitate an informed participation of local governments by disseminating information, particularly advice and technical data from governments (paragraph 22.3.33). This tight link between access to information and participation in the regime constitutes another of the Agreement's avant-garde provisions. With respect to this, we consider that the regime satisfies the principles of sustainable development as concerns participation, commitment and access to knowledge.

## **3. *The Right to Development***

The regime of Section 22 states the conditions by virtue of which it is possible to develop the Territory's natural resources. Moreover, one of the guiding principles deals with the right of people to develop the Territory through legitimate means. We believe that the right to development, valid for both Natives and non-Natives, has certain similarities with the principal of economic efficiency.

## **4. *The Rights and Interests of non-Natives***

As the JBNQA is enshrined in the Constitution, the rights of the Territory's Native people, particularly concerning local administration, wildlife harvesting, and participation in the environmental and social assessment process, are now constitutionally acknowledged. It bears repeating that this context does not cancel the rights of non-Natives as concerns the Territory. The environmental and social

protection regime requires that due consideration be given to guiding principles, including the rights and interests of non-Natives.

## **B. THE JBACE'S PRIORITIES**

In order to play our role more effectively, we have adopted a strategic plan identifying the priorities of the JBACE for the next three years (2005-2007), namely the revision of the impact assessment and review procedure, the sustainable development of the Territory, and the sustainable management of waste matter.

### ***1. The Impact Assessment and Review Procedure***

By helping to reduce the undesirable impacts of development, the assessment and review procedure has shown itself to be a crucial tool in sustainable development. However, this tool needs to be updated in keeping with social and technological changes. We have begun to examine the impact assessment and review procedure as it applies to James Bay, category 1 lands. If necessary, we will make recommendations for greater environmental and social protection. This is the first stage in our examination of the procedure's application to the whole Territory.

Such an examination would initially imply that the lists of development projects subject to the impact assessment and review procedure be updated. Under the JBNQA, these lists are supposed to be revised every five years. Such a revision would make it possible to subject project categories to the assessment procedure that were not considered in the past. Conversely, types of projects whose assessment is assured by other means such as the application of a regulation would be exempted.

We would also like to pay particular attention to the community consultation process. Even though the JBNQA does not formally call for public hearings on project impacts, the evaluating and review committees increasingly tend to hold this type of consultation. At the end of this initiative, we would like to propose various consultation procedures adapted to the Cree communities that would give appropriate consideration to Aboriginal knowledge.

Moreover, impact monitoring after a project is completed has often been identified as the weak link in environmental and social assessments. A study of the procedure must lead to recommendations for improved post-project monitoring, in particular by increasing the targeted community's involvement. The knowledge acquired in our monitoring programs must be better integrated into our decision-making process.

Finally, we ask those in charge to better coordinate their work when several environmental assessments apply to the same project. For example, the harmonization of assessment criteria and deadlines would facilitate the planning of a project and the public's understanding of it. We would particularly like to draw the attention of decision makers to the harmonization mechanisms foreseen in the environmental and social protection regime.

## ***2. The Sustainable Development of the Territory***

Due to the JBACE's mandate concerning land use, particular attention will be paid to the sustainable development of the James Bay Territory. Accordingly, we would like to invite the gouvernement du Québec to better coordinate the various territorial planning initiatives: land use plans, vacation development, forestry protection and development (“OPMV”), and protected area projects. The management framework proposed in the draft bill thus represents an interesting asset: the systematic revision of standards, policies and programs in the light of environmental and social considerations can only create better links between various territorial planning projects. Moreover, this would most likely increase the reliability and accessibility of territorial data.

We believe that the strategic environmental assessment (SEA) tool would be useful in ensuring more consideration for social and environmental factors. By considering these factors in policies, plans and programs, this tool would help to lessen the deficiencies inherent in a project by project assessment.

## ***3. The Integrated Management of Residual Materials***

Due to legislative changes and coherent regulations, the southern regions of Québec now have financial support for initiating waste matter recycling programs. We believe that it would only be fair that northern regions such as James Bay benefit from financing that facilitates the implementation of recycling programs. We are aware, moreover, of the challenges that small, remote communities face in achieving an integrated, waste matter management. Accordingly, the JBACE is studying the possibility of proposing regulatory approaches adapted to the Territory.

We have also undertaken initiatives likely to encourage waste matter recycling. In 2004, a work placement project led to the creation of a directory of recyclers serving the James Bay Territory. In 2005, the JBACE will work with a Cree community to set up a recycling program.

## CONCLUSION

We have seen that the environmental and social protection regime of the JBNQA is governed by guiding principles that are in keeping with the principles of the draft bill of the Sustainable Development Act. The protection of Native people's rights, participation in the impact assessment and review procedure, and local empowerment concur with the objectives of sustainable development. In our Committee's opinion, the project for a Sustainable Development Plan should nonetheless be improved by adapting it to the Territory's particularities.

As part of the JBACE's strategic planning, we would like to reinforce the regime's strengths while providing the Committee with the means to act more efficiently. This could be achieved by, first of all, updating the impact assessment and review procedure, and then by fostering the sustainable development of the James Bay Territory and the sustainable management of waste matter.

We support the gouvernement du Québec's initiative for the Sustainable Development Plan but, as mentioned above, this plan must contain more direct references to the JBNQA, to its Territory, to the institutions arising from the Agreement and to Native people. The initiatives already undertaken by the JBACE will reinforce the government's initiative. We think that the JBACE, due to its mandate, should be considered in the new management framework that will lead all government partners to adhere to sustainable development principles. Indeed, the JBACE must continue to fully assume its supervisory role of the regime and, consequently, of government measures affecting the James Bay Territory's environment and communities. Accordingly, the JBACE is willing to cooperate with the future Sustainable Development Commissioner as a natural extension of its role.

It bears repeating that our joint parity Committee is composed of members appointed by the Government of Canada, that of Québec, and the Cree Regional Authority. The JBNQA designates the JBACE as the preferential and official forum which the governments consult with regard to proposed bills and regulations having an impact on the Territory, its communities and its environment.

Accordingly, we hope that our recommendations will extend beyond the presentation of a brief. Indeed, we hope for close cooperation, particularly with the ministère du Développement durable, de l'Environnement et des Parcs, that would allow the JBACE to be better informed and to contribute more to government projects that affect the James Bay Territory. For example, the implementation of a reinforced network of protected areas, one of the government's objectives, contains numerous opportunities for cooperation. The application of sustainable development principles will require such cooperation.



## APPENDIX 1

### The Regime's Guiding Principles Compared to the Principles of the Draft Bill

Regime's guiding principles (JBNQA)	Corresponding principles of the draft bill of the Sustainable Development Act
a. Protection of the Native people's hunting, fishing and trapping rights	2° Social equity 11° Respect for the ecosystems' support capacity
a. Protection of Native people's rights in category 1 lands (local administration)	1° Health and quality of life 5° Participation and commitment
b. Reduction of the repercussions of development on Native people	2° Social equity 3° Environmental protection 8° Prevention
c. Protection of Native people, societies, communities, economies	1° Health and quality of life 2° Social equity 4° Economic efficiency
d. Protection of wildlife resources, the physical and biotic environment, and ecological systems	10° Biodiversity preservation 11° Respect for the ecosystems' support capacity
e. Rights and guaranties of Native peoples in category 2 lands (section 24: hunting, fishing and trapping)	2° Social equity
f. Involvement of the Cree people in the regime's application	5° Participation and commitment 6° Access to knowledge
g. Rights and interests of non-Native people	2° Social equity
h. Right to engage in development	4° Economic efficiency
i. Impact assessment and review procedure	3° Environmental protection 5° Participation and commitment

## **APPENDIX 2**

### **Composition of the JBACE**

#### **Members appointed by Québec :**

- Guy Demers, ministère du Développement durable, de l'Environnement et des Parcs
- Marian Fournier, ministère des Ressources naturelles et de la Faune, secteur Forêt
- Pierre Moses, Municipalité de la Baie James
- Denis Vandal, ministère des Ressources naturelles et de la Faune, secteur Faune

#### **Members appointed by Canada :**

- François Boulanger, Canadian Environmental Assessment Agency
- Chantal Leblanc-Bélanger, Indian and Northern Affairs Canada
- Claude Saint-Charles, Environment Canada
- Gilles H. Tremblay, Fisheries and Oceans Canada

#### **Members appointed by the Cree Regional Authority (CRA) :**

- Glen Cooper, Cree Regional Authority
- George L. Diamond, Cree Board of Health & Social Services of James Bay
- Ginette Lajoie (Chairperson), Cree Regional Authority
- Diom Romeo Saganash (Vice-Chairperson), Cree Regional Authority

#### **Ex-officio member :**

- Willie Iserhoff, Hunting, Fishing and Trapping Coordinating Committee

#### **Secretariat :**

- Marc Jetten, Executive Secretary
- Louise Bélanger, Secretariat Officer