



Comité consultatif pour l'environnement de la Baie James
James Bay Advisory Committee on the Environment
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BRIEF ON BILL 57:
FOREST OCCUPANCY ACT

**Submitted to the National Assembly of Québec's
Committee on Labour and Economy**

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

September 2009

The mission of the James Bay Advisory Committee on the Environment (JBACE) is to oversee the administration and management of the environmental and social protection regime established by Section 22 of the James Bay and Northern Québec Agreement (the "James Bay Agreement"). Accordingly, the JBACE is the official forum for advising responsible governments during the formulation of laws and regulations that might affect the Section 22 regime.

The JBACE's functions also include commenting on general forest management plans before they are approved by the Minister of Natural Resources and Wildlife (James Bay Agreement, par. 22.3.34).

The members of the JBACE are equally appointed by the signatory parties to Section 22 of the Agreement, namely, the governments of Canada and Québec and the Cree Regional Authority (CRA).

The comments made in this brief pertain solely to the provisions of Bill 57 that affect the environmental and social protection regime.

Although the JBACE was consulted about the Green Paper on the New Forest Regime, no consultations were carried out when the government deliberated the new approach set out in Bill 57.

We would like to emphasize that the bill must comply with the adapted forest regime set out in the Agreement Concerning a New Relationship Between Québec and the Crees (the "Peace of the Braves"). This agreement, which is specific to the James Bay territory, cannot be amended without the consent of the Québec government and the Crees.

We would also like to point out that the adapted forest regime is subject to the guiding principles of Section 22 of the James Bay Agreement and therefore continues to be closely related to the provisions of the environmental and social protection regime. These principles also include protection of the Crees' rights and interests, as described in Section 24 of the Agreement. This section concerns the hunting, fishing and trapping regime.

1. **Concept of "forest occupancy"**

The title of the bill does not seem appropriate, given that "forest occupancy" is not defined in either the explanatory notes or the body

of the bill. Furthermore, not one provision in the bill seems to promote forest occupancy.

The James Bay territory has long been occupied by the Cree Nation of Eeyou Istchee; in fact, there are more than 300 Cree family traplines in the territory.

We suggest that the name of the statute be based on concepts set out in the explanatory notes to the bill, such as "sustainability of the forest heritage" or "sustainable forest development." The statute should therefore be called "An Act respecting sustainable forest development."

2. Transfer of forest management responsibilities to the regions

Bill 57 would give effect to the transfer of responsibilities initiated by the Québec government through the program to create regional land and natural resources commissions (CRRNT). As an advisory body to the responsible governments, the JBACE must stress the importance of respecting the provisions of the James Bay Agreement and the Peace of the Braves. One purpose of both agreements is to involve the Crees in land and forest development and management.

The government's aim in creating and funding regional commissions was to make the regions responsible for forest management and harmonious land use planning. However, the program is not suited to the James Bay territory; on the one hand, the James Bay regional conference of elected officers (CRÉBJ) represents non-Aboriginal municipalities and, on the other hand, the Cree Regional Authority represents Cree communities. The program does not take account of the bodies established pursuant to agreements entered into with the Crees or the territorial jurisdiction provided in such agreements.

These deficiencies are such that the CRRNT appointed by the CRÉBJ has begun, in a unilateral fashion and with funding obtained from the Québec government, preparing a regional plan for integrated land and resource development (PRDIRT). It is important to note that neither the Grand Council of the Crees of Eeyou Istchee (GCCEI), nor the CRA, nor even the CRÉ-CRA has had the opportunity to play this role despite the many requests made, and despite their respective jurisdiction. Given that the purpose of the plan is to determine the priorities for land and natural resource use in the region, it seems to us that respecting the mechanisms for Cree involvement provided for

in the James Bay Agreement and the Peace of the Braves is imperative.

Moreover, Bill 57 proposes that the new integrated forest development plans be consistent with the regional plan for integrated land and resource development (s. 55). In the current context of resource management in the James Bay territory, such a measure would only confirm the disquieting role played by a regional commission led by the CRÉBJ; this situation is all the more unacceptable in that the bill does not recognize the GCCEI, the CRA or the CRÉ-CRA as entities that can carry out regional plans in accordance with their jurisdiction.

Similarly, the regional conferences of elected officers would be responsible for holding consultations on the location of intensive silviculture zones (ISZs) (ss. 17 to 19). It should be noted that ISZs cannot be implemented in the James Bay territory unless the Québec government and the Crees agree to amend the Peace of the Braves for that purpose.

The Minister would consult Native communities on the proposed zones *after* the consultations have been carried out. At the very least, the consultations should be equivalent to the mechanisms provided for in the James Bay Agreement and the Peace of the Braves, which provide for real and meaningful involvement of the Cree people upstream from the process. Cree involvement in these decisions is all the more crucial considering the feared impacts of intensive silviculture on wildlife habitat of special interest to the Crees.

In this regard, it is important to remember that the treaty rights of the Cree people do not apply solely to Category I lands; some, including the right to harvest wildlife, apply to the entire James Bay territory (including Category II and III lands). Moreover, their territorial organization is based on a trapline system that the James Bay Agreement recognizes in perpetuity.

Bill 57 would empower the minister to implement special measures for the territory covered by the adapted forest regime under the Peace of the Braves (s. 361). This provision, the only reference in the bill to an agreement entered into with the Crees, is too vague. The discussions on aligning the proposed measures with the agreements signed with the Crees have made very little progress since the reform of the forestry regime began in 2008. At present, section 361 does not meet the government obligation of including the adapted forest regime under the Peace of the Braves in the legislation.

In the JBACE's opinion, Bill 57 must include the adapted forest regime in the new forestry regime in the James Bay territory and thus make sure that the regime is consistent with the mechanisms provided for in the James Bay Agreement and the Peace of the Braves. Furthermore, the bill must take account of the role played by the bodies established by these two agreements in order to avoid overlap and ensure the involvement of the Cree people.

The environmental and social protection regime created in 1975 was based on the ability to adapt laws and regulations to the territory; the JBACE was to act as the transmission belt in that respect. The creation of an adapted forest regime was repeatedly requested by the JBACE: it would therefore be unfortunate if Bill 57 ignored this major advance in sustainable forest management.

3. Contracts awarded to forest management enterprises

The bill provides for the award of contracts to forest management enterprises for forest planning and development or timber transportation. In keeping with the spirit of the James Bay Agreement and the Peace of the Braves, the JBACE recommends that Cree bodies and enterprises be given priority when such contracts are awarded for activities in the James Bay territory. Doing so would strengthen the economic development mechanisms in these two agreements.

4. Location of biological refuges

Bill 57 provides for the designation of forest areas as biological refuges in order to protect certain mature or overmature forests (ss. 30 to 32). The JBACE supports biodiversity conservation measures, but must point out that biodiversity refuges, like the other forest resource protection and development objectives, are an integral component of general forest management plans.

In accordance with the adapted forestry regime provided for in the Peace of the Braves, this means that the location of biological refuges must be determined jointly by the forest producer and the Cree tallyman concerned. However, the JBACE noted that some of the biological refuges contained in the general forest management plans studied in 2007 and 2008 overlapped sites of interest or areas presenting wildlife interest identified by Cree tallymen. Clearly, the tallymen were not consulted on the boundaries of the refuges.

The JBACE believes that the reform of Québec's forest regime must improve application of the provisions of the Peace of the Braves. Also, Bill 57 should reiterate Cree participation in defining the boundaries of biological refuges in the James Bay territory.

5. Local forests

Considering the forest's crucial role in Cree traditional activities, some communities might find the creation of local forests an interesting idea. In some ways, the Waswanipi Cree Model Forest experience and the adapted forestry regime are consistent with the aims of a local forest that is managed according to the community's needs. The bodies established for the adapted forest regime could be called on to survey the interest of Cree communities and develop proposals for local forests.

In the event that a local forest proposal is made by a non-Aboriginal body from James Bay and the proposed forest affects a Cree trapline, the Crees must be consulted. Moreover, the Crees should play a significant role in managing local forests, especially if the forest concerned is to supply timber to a neighbouring community.

6. New consultation policy

Bill 57 provides for the adoption of a consultation policy, but makes no reference to *Québec's Consultation Policy on Orientations for the Management and Development of the Forest Environment*. Like this policy, the new consultation policy should entrench the JBACE's advisory role concerning policies, laws and regulations that might affect the environmental and social protection regime of Section 22 of the James Bay Agreement.

7. Amendment of the *Environment Quality Act*

Bill 57 would amend the *Environment Quality Act* (EQA) by replacing "general forest management plans" by "tactical plans for integrated forest development" (s. 319). Although this is a minor amendment, Chapter II of the EQA gives effect to Section 22 of the James Bay Agreement; consequently, the proposed amendments must be the

subject of consensus among the parties concerned, namely, the Québec government and the Cree Regional Authority.

Conclusion

The JBACE is particularly concerned about the current arrangements for transferring responsibility for forest management to the regions. Far from changing tack, Bill 57 still steers off course. For instance, the regional land and natural resources commission for James Bay would remain responsible for determining the priority usages of land and natural resources. What's more, the James Bay regional conference of elected officers would be responsible for holding the consultations on the location of intensive silviculture zones.

It is important to note that neither of the above bodies represents Aboriginal people, and that the GCCEI, the CRA and the CRÉ-CRA were not invited to play a similar role, even though they have the jurisdiction to do so. Therefore, the JBACE feels that Bill 57 must reflect the provisions of agreements entered into with the Cree people, particularly the James Bay and Northern Québec Agreement and the Agreement Concerning a New Relationship Between le Gouvernement du Québec and the Crees of Québec (the "Peace of the Braves"). The bill must make specific reference to the adapted forest regime under the Peace of the Braves.

The James Bay Agreement and the Peace of the Braves provide for Cree involvement in land use and forest management decisions. Moreover, the Canadian Constitution provides that, in the event of an inconsistency between a law and a treaty with a First Nation, the treaty takes precedence.

We would like to conclude by reiterating the importance of naming the bill as a function of its objective and thereby respecting the Crees' ancestral occupancy of the James Bay territory. We therefore recommend that it be called "An Act respecting sustainable forest development."