



MINUTES OF THE 160th MEETING OF THE JAMES BAY ADVISORY COMMITTEE ON THE ENVIRONMENT

(Adopted)

- DATE:** September 30, 2009
- PLACE:** JBACE secretariat, Montréal
- PRESENT:** Serge Alain, Québec
Josée Brazeau, Québec
Glen Cooper, Cree Regional Authority (CRA)
Annie Déziel, Canada
Ginette Lajoie, CRA, Vice-Chairperson
Maryse Lemire, Canada
Denise Morasse, Canada
Jean Picard, Canada
Marc Jetten, Executive Secretary
- ABSENT:** Ashley Iserhoff, CRA, Chairman
Willie Iserhoff, ex-officio member, HFTCC
Joanne Laberge, Québec
Chantal Otter Tétreault, CRA
Pierre Moses, Québec
- GUEST:** Kelly LeBlanc, researcher

Call to order and adoption of the agenda

The Vice-Chairperson welcomed the members and then proposed proceeding with the adoption of the agenda.

On motion by Annie Déziel, seconded by Serge Alain, the agenda was adopted as amended.

1. ADOPTION OF THE MINUTES OF THE 159TH MEETING (JUNE 23, 2009)

On motion by Maryse Lemire, seconded by Josée Brazeau, the minutes of the 159th meeting of the JBACE were adopted as amended.

2. ITEMS CONCERNING ADMINISTRATION OF THE JBACE***a. Competition to fill the analyst position***

52 candidates applied for the analyst position and 5 were invited for interviews on October 2, 2009. The selection committee was asked to make the final decision and hire the successful candidate.

b. Review of the Policy on Human Resources Management – sick leave

The JBACE's Administrative Committee suggested amending the Policy on Human Resources Management to clarify the provisions relating to sick leave. After assessing the possible budgetary implications of allowing unused sick days to be carried forward to the next year, the Administrative Committee decided that the JBACE could not allow such practice due to the repercussions on its operations and finances.

JBACE Resolution 2009-09-30-01 regarding amendment of the Policy on Human Resources Management:

- WHEREAS the current wording of the Policy on Human Resources Management is not clear as to whether unused sick days may be accumulated and banked for used in a subsequent year;
- WHEREAS the JBACE does not wish to allow sick days to be accumulated and carried over from one year to the next, because it might result in major financial commitments;

On motion by Serge Alain, seconded by Jean Picard:

It is hereby unanimously resolved **to amend the Policy on Human Resources Management to specify that unused sick days may not be accumulated and carried over from one fiscal year to the next.**

c. Planned talks on the annual subsidy starting April 1, 2010

The Administrative Committee wants to meet with the funding parties¹ to explain the JBACE's financial requirements starting in fiscal 2010-2011. A member for the CRA feels that the funding parties need to understand that the JBACE's accumulated surplus has been significantly depleted; in fact, there is barely enough left to cover the Committee's operating expenses until it receives the annual subsidy.

The member explained that the funding parties agreed to restore the JBACE's funding for the current year to the 2002 level, i.e. \$251 000. However, the Committee wants to create a permanent analyst position, which would require an increase in the annual subsidy. The JBACE should therefore adopt its strategic plan for 2009-2012 as soon as possible to support its request for increased funding.

A CRA member feels it is also important to mention that \$30 000 is automatically withheld from the subsidy granted to the JBACE to fund the Evaluating Committee (COMEV) secretariat. Since the JBACE does not see that money, we should really talk about a budget envelope of \$221 000 for the current year.

The secretary will contact the funding parties and Administrative Committee members to see if they would be available for a meeting in late October.

3. FILE UPDATE

a. Parliamentary committee hearings on Bill 57, Forest Occupancy Act

The National Assembly's Committee on Agriculture, Energy and Natural Resources invited the JBACE to present its brief on the proposed *Forest Occupancy Act* on October 1, at noon.

Members Jean Picard, Serge Alain and Glen Cooper were designated by their respective parties to represent the Committee. The executive secretary will join them and prepare a summary of JBACE actions in the area of forestry in case the members of the parliamentary committee ask more precise questions.

A CRA member feels it is important to clearly explain the JBACE's role in relation to the environmental and social protection regime and to remind the parliamentary committee that the JBACE endorsed the establishment of an adapted forestry regime, which came to pass in 2002 under the Agreement Concerning a New Relationship Between Québec and the Crees (ANRQC).

¹ Ministère du Développement durable, de l'Environnement et des Parcs, Canadian Environmental Assessment Agency and Cree Regional Authority.

Bill 57 would, among other things, amend the *Environment Quality Act* (EQA) by replacing “general forest management plans” with “tactical plans for integrated forest development”. According to a member for the CRA, the JBACE’s brief underestimated the scope of this amendment. Indeed, this is a major amendment because forest management plans would no longer be drawn up by forest companies, but rather by the government. The JBACE must insist on being consulted about any amendment to the EQA.

b. Land use planning initiatives

In June 2009, the Grand Chief of the Crees wrote to Marco Trudel, regional affairs director at MRNF (Northern Québec region), reminding him that the JBACE must be consulted on any proposed public land use plan (PLUP). Mr. Trudel wants to present the work carried out on the PLUP to the JBACE, but was not available to attend today’s meeting.

The JBACE needs to point out that all land use planning initiatives must conform to the PLUP, and since there is as yet no approved PLUP for the James Bay region, the Committee wonders why a regional plan for integrated resource and land development (PRDIRT) is currently being prepared? This is a problem because the initiative does not account for the Cree participation mechanisms established by the JBNQA and the Agreement Concerning a New Relationship Between Québec and the Crees (ANRQC).

c. Contaminated mine sites in James Bay (exchange of letters)

In reply to the JBACE’s letter expressing concerns about the current restoration measures and lack of Cree involvement in follow-up studies of the failure of the impoundment dike at the Opemiska mine, the associate deputy minister of mines informed the Committee that the MRNF will begin major remedial work this fall.

The associate deputy minister also said that he’s willing to consider proposals from the JBACE on how to enhance Cree participation in the follow-up studies. In a CRA member’s opinion, Cree participation should have been provided for in the specifications given to the consultants hired to conduct the studies. If it had, it would have made it easier to, for example, document the condition of Slam Creek (spawning sites) prior to the Opemiska dike failure. The member is also of the opinion that the MRNF should submit its remediation plan to the community of Waswanipi, which has been affected by the environmental impacts arising from the dike failure.

d. Progress on project to establish protected areas in James Bay

The Ministère du Développement durable, de l'Environnement et des Parcs (MDDEP) has tabled the impact statements for the five protected areas announced in 2003, namely the proposed Muskuuchii Hills, Missisicabi Plain, Boatswain Bay and Ministikawatin Peninsula biodiversity reserves and the proposed North Harricana River aquatic reserve. Work is also continuing on four other proposed protected areas in the James Bay region announced in 2004. In the coming months, the MDDEP hopes to work collaboratively with regional and local bodies on four new proposed protected areas around Waswanipi and Nemaska.

Consultations on the protected status of the territory of Pointe Louis-XIV-Rivière Roggan-Lac Burton should take place soon. A CRA member feels it is important to make sure the communities concerned approve the proposed status. The member pointed out that Pointe Louis XIV harbours a contaminated former Mid-Canada Line radar site. The contamination precludes the development of this area for any other purposes, such as outfitting activities or as a protected area. A Québec member thinks that if the territory were designated as a park, the former radar site might be cleaned up. Members will check to see if the correspondence received from the MDDEP and Environment Canada contains information about the status and condition of the site.

A Québec member thinks that if Pointe Louis XIV were designated as a protected area, perhaps the waters next to it could be designated as a protected marine area, thereby enlarging the protected area. Of course, that would require negotiations between the Government of Canada, which has jurisdiction over protected marine areas, and the Québec government officials responsible for establishing protected areas in Québec.

As regards proposed parks, a member for Québec explained that work on the Assinica project is continuing and that the Québec government and Cree representatives are currently studying the proposed boundaries of the park.

e. Life-cycle assessment of residual materials management scenarios

The CIRAIG consultants expect to submit the final report on life-cycle assessment of residual materials management scenarios in the near future. Some data on the impacts of burning in landfill sites were found, such that this option could be compared with landfilling without burning and with incineration. The recycling option is also being assessed.

The members agreed to invite the CIRAIG consultants to the next JBACE meeting to present the results of their assessment.

f. Research project with the Cree Trappers' Association on climate change impacts

A member for Canada will see if he can attend the third project-related workshop, which is supposed to be held in Mistissini on November 11-12. The person hired for the analyst position, as the case may be, could also attend.

g. Review of schedules 1 and 2 of Schedule 22

The MDDEP is conducting an in-house consultation as well as consulting other departments on the JBACE's recommendations regarding the review of the lists of developments subject to and exempt from impact assessment (schedules 1 and 2). According to a Québec member, most of the comments received from analysts with the MDDEP regional office are in favour of the recommendations. However, it was proposed that new project categories be added to the exemption list (Schedule 2).

Several federal departments and agencies are consulting their environment officials as well. A member for Canada said that the feedback has consisted mainly of questions about the JBACE's recommendations. The few comments received to date deal with the proposed exemption of wastewater treatment plants and the distinction between contaminated mine sites and hydrocarbon-contaminated sites.

The same member pointed out that the JBACE's recommendations concern the federal Environment Minister as well as the Minister of Indian Affairs and Northern Development. The departments involved should therefore agree on a procedure for amending Section 22 of the JBNQA.

A member for the CRA is encouraged to see that the JBACE members champion issues addressed by the Committee within their respective departments. This encourages their departments to consider and follow the recommendations the JBACE makes to the governments.

A member for the CRA said that the JBACE's recommendations were submitted to the CRA's board of directors, but nothing has been done since. She underlined that most of the CRA's environment officers attended the JBACE workshop on the schedule review. The recommendations could be studied in the context of the sectoral roundtable on the environment set up jointly with Indian and Northern Affairs Canada. There is currently no similar roundtable uniting the CRA and the Québec government.

4. PRESENTATION BY KELLY LEBLANC ON HER RESEARCH ON CREE INVOLVEMENT IN ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENT

As part of a partnership between the JBACE and the Université de Montréal's geography department, Kelly LeBlanc did her master's thesis on the public consultation process under the Section 22 (JBNQA) impact assessment and review procedure. Under the supervision of a steering committee struck by the JBACE, Ms. LeBlanc assessed observed practices relative to international criteria for good public participation.

The Section 22 procedure is special in that it includes no public consultation mechanism. As a rule, the evaluating and review committees proceed with consultations on an ad-hoc basis. One of the objectives of the research project was to propose ways to improve Cree involvement in the environmental and social impact assessment of projects.

For the purpose of her research, four development projects were evaluated on the basis of the related public consultation processes: the Eastmain-1-A powerhouse and Rupert diversion project; the Troilus mining project; the Waskaganish permanent road project; and the proposed development of an artillery test site. Interviews were conducted with 36 people representing proponents, Cree organizations and the evaluating and review committees.

The first criterion studied was access to information. Several respondents mentioned the lack of transparency in the Section 22 procedure. The fact that the evaluating and review committees do not produce a report explaining their decisions makes it hard to determine how much consideration is given to the views expressed by Crees. With regard to the dissemination of information, respondents said that not enough information on projects and the environmental assessment process is provided.

In addition, interviewees said that consultations conducted in James Bay were not always adequately adapted to the context. For example, consultations are sometimes scheduled for the same date as a planned community activity. Interviewees also felt that not much importance is given to Cree traditional knowledge. However, respondents remarked that judicious use is made of local resources and relations with the community in consultations conducted by proponents.

As regards the importance that consultations be initiated early and sustained, most respondents said it is rare that consultations are initiated before a project is reviewed; in fact, the review process is the last stage before authorization of a project. The lack of formal and foreseeable consultation under the Section 22 procedure was also raised. However, committee members said they appreciated the

fact that the informal nature of public hearings makes the current process more flexible.

The research culminated in four recommendations to the JBACE regarding the Section 22 impact assessment and review procedure:

- Adopt procedural rules for the conduct of public participation.
- Create an environmental assessment registry containing all information on projects.
- Produce a public participation best practice handbook for proponents.
- Contribute to the implementation of an awareness program on the environmental and social impact assessment and review procedure.

Questions and comments

A member for Canada asked if the research also targeted projects for which no consultation was held. Ms. LeBlanc explained that, no, such projects were not studied, mainly because of the lack of information on them.

A Québec member feels that “focused on negotiable issues” is an important criterion. The member wanted to know if, on the whole, stakeholders feel their participation can change the project. Kelly LeBlanc said this criterion can indeed have a direct impact on the credibility of the process.

A member for the CRA thinks that the ill-planned nature of consultations at the project review stage is problematic. The impact statement is not always available, or is available only in French. Also, the technical language used in impact statements makes it hard for community residents to understand the content.

The same member feels that some people appreciate the fact that the current process is flexible because the scope of consultations can mirror that of the project. However, it is important to remember that even a more formal consultation process can be flexible.

According to a member for Canada, when people think of a formal consultation process, they think of the process followed by the Bureau d’audiences publiques en environnement (BAPE). However, more flexible models exist and could be drawn on to develop a consultation process adapted to the James Bay context. For example, the process could be adapted to reach segments of the population that are poorly represented during consultations, such as women and youth.

Another member for Canada feels that the evaluating and review committees need to facilitate the dissemination of information by adequately documenting their decisions, and this should be done before developing a consultation process. A CRA

member agreed, adding that cooperation from evaluating and review committee members will be crucial, just as it was during the review of schedules 1 and 2 of Section 22. The JBACE must emphasize that developing a formal, foreseeable consultation process would make the evaluating and review committees more credible. Another member for Canada feels that not only would adopting a consultation process not hinder the assessment and review procedure, it would actually improve implementation of the guiding principles of Section 22.

Once established, the consultation process would be approved by the parties through amendment of Section 22. According to a member for Québec, we also need to look at what changes could be made without amending the JBNQA, because the amendment process is long.

A CRA member suggested writing to the administrators of the assessment and review procedure to ask them to initiate development of a public consultation process adapted to the James Bay territory. The member pointed out that under the current procedure, the administrators authorize the evaluating and review committees to hold public consultations. It is important that they provide the committees with the human and financial resources needed to conduct consultations.

JBACE Resolution 2009-09-30-02 regarding adoption of recommendations for developing public consultation rules under Section 22 of the JBNQA:

- WHEREAS a JBACE advisory committee supervised the preparation of a report evaluating current public consultation practices in relation to recognized best practice principles for public participation;
- WHEREAS the JBACE endorses the recommendations made in the report, particularly the development of procedural rules for the conduct of public consultations and an environmental assessment registry for the James Bay territory;
- WHEREAS the JBACE intends to contribute, along with the stakeholders contemplated by Section 22 of the JBNQA, to the development of procedural rules for public consultations;

On motion by Ginette Lajoie, seconded by Annie Déziel:

It is hereby unanimously resolved to write to the administrators and persons responsible for the assessment and review procedure to initiate development of procedural rules for public consultations adapted to the James Bay territory.

5. STEPS TAKEN WITH REGARD TO STRATEGIC ENVIRONMENTAL ASSESSMENT OF THE NORTHERN PLAN (FURTHER TO THE CROWLEY REPORT)

The members made a few changes to the draft letter on strategic environmental assessment of the Northern Plan. Among other things, they asked the Minister of Natural Resources and Wildlife to appoint someone to give the JBACE a presentation on the status of the Northern Plan.

A CRA member underlined that government policies and plans often open the way for draft legislation and regulations that the JBACE must examine; therefore, governments must involve the Committee during the formulation of policies and plans, including the Northern Plan.

The members wish to follow up on Michel Crowley's report on preliminary identification of issues for strategic environmental assessment of the Northern Plan. The secretary will ask Mr. Crowley to prepare a proposal relating to a draft framework document outlining issues and a summary of case studies in the areas targeted by the Northern Plan (energy, mines, etc.).

6. TAILINGS DIKE FAILURE AT OPEMISKA MINE: STEPS TAKEN WITH REGARD TO THE IMPACT ON FISH AND THEIR HABITAT

A member for the CRA explained the work undertaken by the MRNF and MDDEP since the dike failure at the old Opemiska mine in June 2008. She said follow-up studies focus on water quality in Slam Creek and Obatogamau River. However, according to this member, tailings have been found up to 100 km downstream from the dike, that is, in Waswanipi and Gull lakes. In addition, Cree trappers have observed changes in fishing quality.

The same member feels that the impact of the dike failure on fish habitat has not been adequately studied. Since fish habitat is protected under the federal *Fisheries Act*, the member wonders which federal department should be responsible for studying this aspect. According to a Québec member, federal departments get involved only if they feel the work conducted by MRNF-Wildlife is inadequate.

A member for Canada said that restoring the Opemiska site presents major challenges because there is little information on the reference state. Moreover, fish habitat cannot be restored until water is no longer contaminated. A member for the CRA feels that Cree traditional knowledge could partially compensate for the absence of data on the reference state of Slam Creek and Obatogamau River.

Members for Canada will contact the officials at Environment Canada and Fisheries and Oceans Canada to find out what measures have been taken to protect fish

habitat. As well, the JBACE will write to the deputy minister of the environment of Canada to get information on follow-up studies of fish habitat in the area impacted by the Opemiska dike failure. A CRA member feels it is important to also keep the chief of Waswanipi abreast of matters given his community's concerns about the quality of fish caught.

7. ADOPTION OF THE REPORT OF ACTIVITIES FOR 2008-2009

JBACE Resolution 2009-09-30-03 regarding the report of activities for 2008-2009:

- WHEREAS each year the JBACE must submit, for tabling in the National Assembly, a report of its activities for the preceding fiscal year;
- WHEREAS the JBACE's Administrative Committee reviewed the draft annual report and deemed it satisfactory;

On motion by Glen Cooper, seconded by Jean Picard:

It is hereby unanimously resolved to adopt the report of JBACE activities for fiscal 2008-2009 as prepared.

8. ADOPTION OF THE 2009-2012 STRATEGIC PLAN

The members have not had a chance to read the latest version of the Strategic Plan. The secretary will send the electronic version to all the members, who were asked to submit their comments within the next two weeks so that the Strategic Plan can be adopted.

9. PRESENTATION BY ANNIE DÉZIEL ON THE COURT OF APPEAL'S DECISION ON ENVIRONMENTAL ASSESSMENT OF THE VANADIUM MINE

Annie Déziel of the Canadian Environmental Assessment Agency explained the decision handed down by the Québec Court of Appeal in 2008 regarding applicability of the Canadian Environmental Assessment Act (CEAA) to a vanadium mine project in territory governed by the James Bay and Northern Québec Agreement. The Grand Council of the Crees asked the courts to order the Government of Canada to assess the project under the federal review process provided for in Section 22 of the JBNQA rather than under the CEAA process.

Ms. Déziel said that although the April 2008 decision of the Court of Appeal upheld the applicability of the CEAA in Cree territory, the Court ordered that the CEAA environmental assessment process be replaced by the federal review process under Section 22 of the JBNQA. In short, the courts ruled that the CEAA applied to the territory while ensuring that the Crees are involved via the JBNQA review process. In practice, however, replacing the CEAA review process by the Section 22 process requires adjustments given the inherent differences between the two. Talks are currently taking place between the Government of Canada and the Cree Regional Authority.

A member for Canada pointed out that projects subject to the CEAA procedure must meet all of the following conditions: a federal authority must be involved; the project must involve one of the triggers for environmental assessment; the project must meet the definition of “project” under the CEAA; the project must not be included in the Exclusion List. If even one of these conditions is not met, the CEAA does not apply. These conditions for application of the CEAA are an important difference in relation to the Section 22 procedure.

Annie Déziel explained that a “hybrid” procedure coupling the terms and conditions of the CEAA and those of Section 22 would apply as follows: if the CEAA triggers are present, the project would be submitted to the federal administrator of the Section 22 procedure. If, based on the recommendation of the Evaluating Committee, the administrator decides that the project must be assessed, he sends it to the Federal Review Panel established by Section 22 (COFEX-South). At the end of its review, COFEX-South transmits its recommendation to the federal administrator. If applicable, the administrator forwards the recommendation to the federal authority responsible under the CEAA for a decision in accordance with that legislation.

According to Ms. Déziel, such a hybrid procedure would trigger the federal review process under Section 22 more often. She gave as examples the borrow pit, road and bridge projects in Mistissini: the project component requiring federal permits and licences will be subject to the federal process.

Note that Québec maintains the project is subject only to the provincial review process under Section 22 and not to the federal process or the CEAA procedure. The Attorney General of Québec therefore appealed the decision to the Supreme Court of Canada; in June 2009, the Court agreed to hear the case. If need be, the terms and conditions of the Court of Appeal’s decision will be reviewed in light of the Supreme Court’s decision, which is expected within a year.

10. OTHER BUSINESS

a. Information regarding an article on bulk water export

A CRA member informed the others of an open letter published in the newspapers regarding a project to produce hydroelectricity and export drinking water. The project, proposed by a retired engineer, would consist in diverting part of the waters of three rivers in James Bay to the Great Lakes–St. Lawrence Basin. According to the member, the project and subsequent activities entailed appear to underestimate the environmental and social impacts of large-scale hydroelectric projects. In addition, the member thinks that we need to refer to data published by the United Nations on the impacts of water extraction projects. She suggested checking Québec's legislative and regulatory framework in this regard, including the *Act to affirm the collective nature of water resources and provide for increased water resource protection* recently passed by the National Assembly. A member for Canada agreed.

b. Review process for the Matoush uranium exploration project

A member for the CRA explained that the federal and provincial review processes under Section 22 were triggered simultaneously for this uranium exploration project in the area of the Otish Mountains (north of Mistissini). She believes that the federal and provincial administrators should enter into discussions to avoid duplication in the processes, pointing out that the JBNQA allows the parties to Section 22 to combine the two review bodies when the federal and provincial processes are triggered simultaneously.

The same member also pointed out that this is the first advanced uranium exploration project in Québec. Owing to the community of Mistissini's concerns about the project, the Grand Chief of the Crees asked the Canadian Nuclear Safety Commission to host an information session about the impacts of such projects and the procedure applied. Because the federal review process under the JBNQA was triggered, the Federal Review Panel (COFEX-South) took part in the information session.

The members agreed to write to the administrators of the Section 22 process, the Grand Chief and the review bodies to remind them that the review bodies may be combined for the purposes of the Matoush project. If the parties choose not to combine the review bodies, the JBACE will ask that they at least coordinate their consultations in the community of Mistissini.

c. Relevance of pre-meeting mailings

The executive secretary suggested that the Committee stop mailing printed material to the members prior to meetings. Instead, all documents needed for a meeting could be posted in the "Members only" section of the JBACE Website. The members agreed. However, printed material may be mailed to a member at his or her request.

11. NEXT MEETING

The next JBACE meeting will be held on Tuesday, December 8, 2009, in Québec City.



**Marc Jetten
Executive Secretary
December 23, 2009**