THE JAMES BAY AND NORTHERN QUEBEC AGREEMENT

Natural resources, public lands, and the implementation of a native land claim settlement.

An exploratory survey of the James Bay and Northern Québec Agreement, and of the implementation of its provisions relating to the involvement of the James Bay Crees in environmental protection and the management of natural resources.

Prepared for the Royal Commission on Aboriginal Peoples.

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Table of Contents

Preface

The essay that follows is based on a presentation to a workshop sponsored by the Royal Commission on Aboriginal Peoples on the theme of 'Lands, Resources and Environmental Regimes'. The workshop was held in Ottawa on November 5 and 6, 1993.

The author worked for the James Bay Crees as one of a group of technical advisors during the litigation on the subject of the La Grande hydro-electric project and during the subsequent negotiation of the James Bay and Northern Québec Agreement. He was a member of the sub-committees responsible for the land selection, land administration, environmental protection and wildlife management sections of the Agreement. Because there is a very limited public record of these negotiations, this essay relies extensively on the author's own observations of the negotiating process. He has continued to work with the Cree Regional Authority during the subsequent implementation of the Agreement, and the analysis of implementation is similarly based on the author's personal experience.

The author wishes to point out that the essay presented here deals only with the experience of the James Bay Crees, and not with either the Inuit or the Naskapi of Québec. Other papers, presented by L. Brooke and P. Wilkinson at the same workshop, cover topics of concern to the Inuit and Naskapi.

I also acknowledge the assistance of colleagues who reviewed this manuscript, in particular L. Brooke, K. Lawand, and I.E. LaRusic.

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EXECUTIVE SUMMARY

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Natural resources, public lands, and the implementation of a native land claim settlement.

The James Bay and Northern Québec Agreement, often represented as a modern, comprehensive land claims settlement, has become a source of controversy. This is particularly evident in matters relating to the use of hydro-electric and forest resources. This essay explores the recent evolution of the natural resources 'frontier' in northwestern Québec - the area historically used by the James Bay Crees - in relation to the negotiation and subsequent implementation of the Agreement.

The James Bay territory was created by an Act of the Government of Québec, for the express purposes of hydro-electric development, and bears only a loose relationship to the areas used by the James Bay Cree as a hunting society. It has come, as a result of the Agreement, to define the boundaries of the Cree area of interest, with consequent boundary disputes, north, south, east and west. The southern portion of this region became an area of frontier settlement earlier this century, and the mining and forestry frontier moved north into the Cree hunting territories during the last 35 years. The demographic composition of the territory depends on where the northern frontier is drawn, but the opening of the James Bay territory for hydro-electric development means that the Cree have become a minority group within their hunting territories. Their communities, mostly on the geographical periphery, are nearly exclusively Cree, however, and in many respects are economically and socially isolated.

The Agreement was a settlement, out of court, of litigation initiated by the Cree and Inuit against the La Grande development. This litigation had failed to establish before the Québec courts the legitimacy of the claim to unsurrendered aboriginal title, and had failed to halt the construction of the hydro-electric project. The content of the settlement was strongly influenced by these historical and geographical circumstances. In particular, the Crown agencies directly involved in the hydro-electric development were parties to and signatories of the Agreement itself.

The Agreement, signed in 1975, builds on a framework Agreement in Principle concluded in 1974. These texts contain measures intended to support and protect the Cree (and Inuit) hunting economy. The Cree objective had been to secure the protection of the subsistence resource base through the concept of a 'guaranteed level of harvest' and through participation in wildlife management through a Hunting, Fishing and Trapping Coordinating Committee. An environmental and social impact

assessment procedure was introduced, along with a body charged with the development of regulations (or other measures) designed to alleviate the impacts of development. The procedure used by Québec to direct the course of land selection is used to illustrate the negotiating process.

Provisions relating to wildlife management and to environmental protection should, however, be read alongside the parallel sections dealing with hydro-electric development, the administration of public lands, mining and forestry. There are significant problems of compatibility, and the protection of subsistence harvesting rights is generally subordinate to the 'right to develop' acknowledged and defined in the Agreement. It is noteworthy that hydro-electric development was exempted from the assessment of social impacts (including those resulting from ecological impacts), and that forestry was similarly exempted from both environmental and social impact assessment. The La Grande Complex, the construction of which had already commenced, was exempted from both ecological and social impact assessment. Public access to the territory has also so far been exempt from assessment of ecological and social impacts. These exemptions have contributed to a situation in which the Cree have had little or no influence on those forms of development chiefly responsible for the reduction in their territorial base and the weakening of their tenure arrangements (hunting territories). Hydro-electric development and forestry have together taken out of production (from a Cree perspective) between 20 and 25,000 km^2 of land. Cree participation in wildlife management and in environmental impact assessment must be assessed accordingly.

The structures providing for participation in wildlife management and environmental protection have themselves so far proved cumbersome and ineffective. The concept of the 'advisory committee' relies on assumptions, inadequately explored, about the ways in which authority is assigned and consensus is achieved. In cross-cultural settings, the advisory committee concept frequently excludes or obscures native participation. Linguistic background and the technical nature of the language involved act as further obstacles to effective participation.

Government policies, for public land administration, access, forest tenure, mineral exploration and especially hydro-electricity have all evolved sustantially since 1975. These policy developments have taken place independently of and largely without reference to advisory structures in the Agreement, raising questions about the relevance or utility of these advisory bodies. Some consequences of these failings of the Agreement for Cree society are discussed, with particular reference to the growing distance between the James Bay Crees and the Federal and Provincial government in matters relating to the use and allocation of natural resources. The essay closes with some recommendations based on discussions at the workshop at which this essay was presented.

1. INTRODUCTION

Northern Québec - especially the area known as 'the James Bay territory' - has a distinctive place in contemporary debate about native land claim settlements. The James Bay and Northern Québec Agreement (referred to here as the Agreement, or the JBNQA) is a contemporary land claims agreement - and at the time of its signature in 1975 it was widely noted that it was the first treaty to be concluded since Treaty No. 11 in 1921. However, it was also an out-of-court settlement of litigation directed at the La Grande hydro-electric development. This litigation, and the role played by the Québec government and its agencies responsible for the development of the James Bay territory, profoundly influenced the negotiation process as well as the content of the Agreement and its subsequent implementation.

Is the Agreement, and the recent industrial transformation of the James Bay territory, relevant to contemporary land claim settlements elsewhere in Canada? Or do the specific geographical and historical circumstances set this case apart? I argue in this essay that the terms of settlement and subsequent implementation encountered in Northern Québec have a more general relevance to land claim settlements across northern Canada. The James Bay territory has come to play a strategic role in the Québec economy (electricical energy, mines and forests). The development of natural resources in this geographical region, I believe, contains lessons that other groups facing implementation of native claim settlements may find worth study.

This essay was prepared for a workshop commissioned by the Royal Commission on Aboriginal Peoples. The workshop was intended, in part, as an occasion to review the experience gained from the implementation of agreements with aboriginal peoples in matters relating to the management of natural resources, with particular emphasis on wildlife. My purpose here is to provide a review of the historical and geographical circumstances leading to the James Bay and Northern Québec Agreement; to try and explain some key

issues in negotiations relating to natural resources; and to situate the subsequent implementation of the Agreement in relation both to provisions in the Agreement and the subsequent evolution of public policy in Québec in matters relating to public lands, environmental protection and the use of wildlife.

The material presented here is based on the experience of the people known as the James Bay Cree and on the development of the area known as the James Bay territory. The essay does not attempt to address the circumstances of the Inuit and Naskapi populations in northern Québec. The conclusions reached should here not be interpreted as necessarily applying to them.

I begin this essay with a short geographical review, dealing first with the origins, and significance, of the boundaries of the area now known as the James Bay Territory, and some demographic observations. I then provide some notes on the economy of this region, dealing first with the northern migration of the forestry, mining and hydro-electric frontier, and then with the economy of Cree society. The essay then turns to the James Bay and Northern Québec Agreement, addressing first Québec's original offer of settlement and the Agreement-in-Principle, and then the negotiation of the Agreement. I then discuss the implementation of the Agreement, and attempt to situate the experience of implementation in the regional context of evolving public policies in Québec towards the management and use of natural resources. A concluding section reflects upon diverging views of the underlying objectives of the Agreement, and the implications in the longer term of the conflicting perspectives of native communities and the state. Finally, the author offers some recommendations arising from this experience which may be applicable to the implementation of other land claim settlements.

2. POLTICAL AND DEMOGRAPHIC BOUNDARIES

This essay is about recent change in a region known as the 'James Bay territory'. This expression is commonly used to refer to the drainage basins of the rivers flowing into James Bay from Québec - the object of the original 'James Bay hydro-electric development. However, it is also a source of confusion, and I will begin with a brief discussion of the nature of the boundaries of the region which has come to be known as the 'James Bay territory'.

The boundaries of Québec were extended northwards first to the Eastmain River in 1898 and then to Hudson Strait and Ungava Bay in 1912.[i] The James Bay territory was created by a statute of the Government of Québec in 1971.[ii] It straddles the boundary between these two boundary extensions, and includes most of the drainage basins of the rivers flowing from Québec into James Bay. This territory is defined by the boundaries of the James Bay Municipality, the area of jurisdiction of the James Bay Development Corporation.[iii] Although the James Bay territory is often treated as coincident with the lands traditionally occupied by the Cree of northern Québec (hence the 'James Bay Cree'), it should be emphasised that the boundaries of this territory exclude a significant portion of the contemporary areas of Cree interest and areas originally occupied by them.

The northern limit of the James Bay municipality lies at the 55th parallel, which is approximately the dividing line between the hunting territories of the Chisasibi and Whapmagoostui (Great Whale) Cree. One of the Cree communities (and its hunting territories) thus lie entirely to the north of the James Bay territory. The coastal Cree Communities (Whapmagoostui, Chisasibi, Wemindji, Eastmain and Waskaganish) use the islands in southeastern Hudson Bay, James Bay and Rupert Bay as well as the complex coastline (particularly of James Bay). These islands (and a still indeterminate portion of the coastal ecosystems) lie outside the boundaries of Québec, and fall - in a technical if not a practical sense - within the jurisdiction of Northwest

Territories or the Federal government (in the case of inshore waters). To the east, the boundaries of the territory are defined by the height of land separating the Arctic from the St. Lawrence watersheds in Québec. Cree hunting territories extend beyond this height of land over much of its length. Finally, the southern boundary of the James Bay territory is set at the 49th parallel of latitude. The height of land runs further to the south, and the land in between includes the mining and forestry-based towns of Val d'Or and Amos and a strip of agricultural land, settled primarily between the two World Wars. There are several Cree groups in this zone (located near Senneterre, Parent and La Sarre), and they also have hunting territories which extend southwards from the 49th parallel of latitude.

Further complications arise from the administrative sub-division of the James Bay territory by the Government of Québec for the purposes of managing natural resource extraction. For most of the time since the coming into force of the JBNQA, the territory has been divided from north to south, the western half of the region falling into administrative region 08 (Northwestern Québec), and the eastern half in region 02 (Sagenuay-Lac St-Jean). For a time in the early 1980's, a separate administrative region was recognised north of the Eastmain river, and administered from Radisson (a village built to house the families of the professional staff working at the LG-2 construction site). Since 1987, Northern Québec has been defined by the southern limit of the James Bay territory, i.e. the 49th parallel. In many respects, though, the administrative subdivisions used by the Québec government do not correspond to the boundaries which formed the basis of the James Bay and Northern Québec Agreement.

Both the internal and external administrative boundaries established by the JBNQA have historical and geographical origins which bear little relationship to the territorial boundaries recognized by the Crees themselves. The external boundaries are the source of continuing territorial disputes, and the internal boundaries (discussed later) reflect continuing ambiguity in the

relationship between the Cree communities and Québec's public administration.

The relative demographic weight of Cree and Euro-Canadian populations, consequently, depends on the administrative boundaries employed. The regional demographic status of the Cree population thus depends on whether the non-native populations of the towns within and on the margins of the James Bay territory are included in the calculation. For example, between the 49th parallel (the southern limit of the territory) and the height of land, the non-native population is of the order of 80,000. If we take the 49th parallel as the effective southern boundary, the number of non-natives north of this line is of the order of 20-25,000, and is concentrated in the so-called 'enclaved' municipalities of Chibougamau, Chapais, Quévillon and Matagami. North of the 50th parallel, the non-native population is almost entirely associated with hydro-electric development, and is largely transient (residence of a few months to a few years). This labour force based on hydro-electricity fluctuates from year to year, but typically has fallen in the range 2,000 - 5,000. The resident Cree population is about 11,000 and growing at roughly 2.7% per annum[iv], but unlike the populations of the southern mining and forestry towns (which have been experiencing decline) and the labour force at the hydro-electric plant construction sites, it is young. The resident Cree population aged 20 and over is approximately 4,800.

The James Bay territory is something of a new frontier in Québec, and it attracts significant numbers of visitors, many of whom are equipped with licences for fishing and hunting. Numbers for the James Bay territory as a whole are difficult to establish, but visitors passing through Matagami en route for the La Grande project have been periodically enumerated - yielding figures for visitors to the La Grande Complex region in the range 15-25,000 per year.[v]

THE JAMES BAY TERRITORY

The main demographic features of the region have therefore changed profoundly during the last thirty years. In the 1950's, an area of some 350,000 km^2 was used almost exclusively by the Cree (with some overlap with the Inuit further north). In the 1990's, most calculations point to a situation in which the adult Cree population is largely outnumbered by the adult non-native population, even in the northern portions of the James Bay territory. This situation, combined with a deliberate policy of 'opening the north' has had important implications for subsequent Cree participation in public administration and in the management of natural resources. It is worth noting, as well, that the non-native communities in the territory south of the 50th parallel were not represented directly during the negotiation of the JBNQA, and also are not represented in the administrative structures created by it. The resulting sense of exclusion has probably reinforced the already sharp social boundaries between native and non-native communities.

The extreme southern region (between the 49th parallel and the height of land - the Amos/Rouyn region) became an area of pioneer agricultural settlement at the turn of the century, and a mining and forestry district during the interwar years. The limit of permanent settlement, however, remained south of the Cree hunting territories until the late 1950's and 1960's, with the construction of the mining towns of Chibougamau, Chapais and Matagami. These were followed by the town of Lebel-sur-Quévillon, built in 1967 to house the workers at the pulp and paper mill sited there. These towns (as well as Senneterre, Amos and Val d'Or) have also become the operating base for a substantial regional forest products industry. Most of the mill capacity was installed in the mid-1970's, the time of the negotiation of the JBNQA. Limited pulpwood and saw log cutting on the margin of Cree hunting territories had expanded by the early 1980's into the mechanised harvesting of some 400-500 km^2/year. The James Bay territory now accounts for approximately 15% (in volume) of Québec's forests products output.[vi]

3. NOTES ON THE REGIONAL ECONOMY OF NORTHWESTERN QUÉBEC.

An understanding of the JBNQA, and of the difficulties encountered in its implementation, requires some knowledge of the regional (primarily non-native) economy of Northwestern Québec. The Agreement is often, and justifiably, linked to Québec's decision to develop the hydro-electric potential of the rivers of Northwestern Québec. More generally, however, the Agreement was designed to take into account the evolving natural-resource based economy of the region.

European settlement of the extreme southern fringe of the James Bay territory dates back about 80 years to the opening of the Transcontinental railroad and to the pioneer agricultural settlements of the region west of Val d'Or. The Chapais - Chibougamau region was also the subject of geological exploration shortly after the turn of the century, and the major geological features of this region were documented nearly fifty years before road and railroad penetrated the area in the 1950's and 1960's, when the area acquired its contemporary significance as a source of gold, copper and zinc. Gold and non-ferrous metal production in the region extending from Val d'Or('la vallée d'or') to Rouyn-Noranda dates back to the 1920's and 1930's. Most of the mining towns in this region were incorporated in the period 1935-1945.[vii]

Up to this point, the development frontier had reached the southern limits of Cree hunting territories without actually encroaching on them. It was after the second World War that the mining - and later, forestry - frontiers reached the Cree hunting territories. The key stages were the opening of the mining towns of Chapais (1958), Chibougamau (1950), Matagami (1963) and of Quévillon in 1967.[viii] The towns were linked to the south by both road and rail, and from 1965 onwards, the Abitibi and Saguenay - Lac St-Jean regions were linked by both road and rail east-west linkages. The decade preceding Bourassa's initiative to open the James Bay territory thus saw a substantial expansion of both mining and forestry in the watershed of the Nottaway River system. The

mining towns, however, faced declining world prices for copper and zinc, and growing production costs for gold - although sharp increases in the price of gold in the early and later 1970's made it possible for many of the copper producers to concentrate on gold production from the same ore bodies (while maintaining some copper production).

In the 1970's, these towns diversified, and became, in addition, local forest product centres. The cutting of pulp wood dates back to the 1950's, and expanded steadily as road and rail linked the Val d'Or region with Chibougamau. Federal-Provincial Agreements (ARDA III and subsequent Ententes auxiliaires, Canada-Québec) in the 1970's and early 1980's contributed significantly to the development of the infrastructure required for the expanding regional forest products industry.[ix] By the time the JBNQA was signed, most of the merchantable stock in the black spruce forest south of roughly the 51st parallel had been allocated to the forest products industry. Indeed, when the JBNQA came into force in late 1977, it was already apparent that the timber resource had been substantially over-allocated - but this was seen by the state as a necessary means of stabilising the economies of the municipalities of the region.[x]

There remained tourism and outfitting. The Ministère des Loisirs, de la Chasse et de la Pêche (MLCP) had two substantial reserves in the region - Mistassini and Assinica - which date back to the 1960's, and therefore predate the creation of the James Bay territory. In the case of Mistassini, MLCP ran four outfitting bases of its own - but they were losing money, so that by 1975, MLCP no longer wished to be involved directly in their operation. There were, in addition, a handful of outfitters who ran camps, mainly for sports fishermen. Outfitting was identified, at the time of negotiations, as a possible field for economic development in the territory. The Cree negotiators and the James Bay Development Corporation found themselves competing for access to what were seen as the prime sites (particularly along the highway to the La Grande development).[xi]

The circumstances surrounding the decision to develop the hydro-electric potential of La Grande River have been documented extensively elsewhere.[xii] There are two points, however, that are relevant to this discussion. First, until 1973, the 'James Bay hydro-electric project' was generally identified with the Nottaway-Broadback-Rupert (NBR) project. The design, at that time, involved the use of the Rupert River to site a string of powerhouses. The output from this plant was to be augmented by diverting the Nottaway River into the Broadback (using a canal at the north end of Lake Matami), and then diverting the enlarged Broadback river into the Rupert River through Lake Giffard. Even now, twenty years later, the siting and elevation of bridges, and the routing of roads and transmission lines, is based on an abstract definition of the NBR project. The project, of course, has not been built and - in 1995 - no longer appears in the current development plans of Hydro-Québec. However, for twenty years the NBR project has played a significant role in the forest products industry in the southern James Bay territory. It also influenced the location and site planning for three of the Cree communities (Mistissini, Waswanipi and Nemaska). In this sense, the NBR project has already exercised a significant regional economic and social impact.

The second point involves the construction schedule for the La Grande Complex. The completion of this project will probably take place within the next decade (depending on when, or whether, the Eastmain-1 project is built). This means that the project will be completed about thirty years after the Québec's government's decision to develop the hydro-electric potential of the territory (there is also a possibility of further development on the Eastmain diversion route, in addition to Eastmain-1). When the JBNQA was being negotiated (1974-1975), construction was at a very early stage, and limited to the building of roads and camps, and to the opening of the diversion tunnel at the site of the LG-2 powerhouse. Although the principal components of the Copmlex were defined in 1975, it is probably fair to say that very few of the participants in the negotiation of the JBNQA had a clear idea of full implications of this project.

The main conclusion I wish to draw from this very brief sketch is that most of the key decisions about the allocation and use of both renewable and non-renewable resources in the James Bay territory had already been taken by the time of the negotiation of the Agreement. When the details of public administration were worked out during negotiations, the natural resources of the territory were known and generally subject to pre-existing acquired rights. In the negotiation of the Agreement, the Québec government, and its agencies, were able to take into account - where necessary, in considerable detail - the distribution and allocation of hydro-electric, forest and mineral resources. The extension of the development frontier into the James Bay territory may be very recent - roughly 30 years or a single human generation - but the territory should not be regarded as a 'terra incognita' where the natural resource provisions of the JBNQA are concerned.

4. CREE SOCIETY AND ECONOMY

The 'James Bay Cree' have received much attention from anthropologists, whose work has a direct bearing on the issues of natural resources management discussed in this essay. The Cree attracted English-speaking anthropologists in Montréal in the 1960's, when a group at the Department of Anthropology at McGill under leadership of Norman Chance and, subsequently, Richard Salisbury, set out to examine the implications of development for Québec's native communities. After the announcement of the James Bay hydro-electric development in 1971, Richard Salisbury pursued this line of enquiry as head of the 'Anthropology for Development' group; he acted as a consultant to the James Bay Development Corporation, but he also advised the Cree.[xiii] Some of his students contributed to the documentation of quantitative aspects of the subsistence (hunting and gathering) economy, in the context of the litigation brought by the Cree against the hydro-electric development. It was also a period when anthropologists turned their attention to the expanding role of ecology as an intellectual discipline, and thus to the analysis of hunting from an ecological perspective (and, by logical extension, of the ecological perspective of hunters themselves). Feit's extensive study of Cree hunting (at Waswanipi) from such a perspective contributed substantially to the model of the territorial and social organisation of hunting which was adopted (and in turn transformed) by the James Bay and Northern Québec Agreement.[xiv] Income support for hunters - a distinctive feature of the Agreement - also reflects a contemporary assessment of the conditions needed to maintain the viability of a hunting society. Anthropology influenced both the selection of issues and the manner in which they were addressed.

The 'James Bay Cree' ('the Cree' in this essay), with a population approaching 12,000 at the close of 1993, represent about 10% of the population of the Algonquian linguistic and cultural group that carries this name, whose communities stretch from northern Alberta to the Atlantic sea-board of the

Labrador-Ungava peninsula. They hunted in an area that corresponds roughly to the watersheds that drain mainland Québec in the direction of James Bay and southeastern Hudson Bay. This area broadly corresponds to the river basins targeted by Hydro-Québec for development as the 'James Bay project'.

The Cree traded furs at posts located near the estuaries of the main rivers discharging to James Bay and S.E. Hudson Bay (Richmond Gulf, Little Whale, Great Whale, Chisasibi (Rivière La Grande), Old Factory, Eastmain and Rupert). Trading posts were also established from time to time on the main travel routes to central and southeastern Québec - Nichicun, Neoskweskau, Nemaska, Waswanipi, Mistissini, Oujébougoumau. Although some families remained close to the posts, the majority were fully nomadic until the early 1950's. The population was small - of the order of 1,500 - 2,500 - and the archival sources reveal that individual family groups have a long history of association with well-defined physiographic regions.[xv] Several of these trading posts have become fully-fledged native communities: Whapmagoostui (Gt. Whale), Chisasibi (Fort George), Wemindji (Old Factory and then Paint Hills), Eastmain, Waskaganish (Fort Rupert), Nemaska, Waswanipi, Mistissini and Oujébougoumau. Relocations took place as trading posts closed, and several communities (with a majority of the Cree population) have been moved or reestablished in the last twenty years (Chisasibi, moved to the mainland from Fort George Island; Wemindji - relocated to the sheltered mouth of the Maquatua from the Old Factory estuary; Nemaska, moved from Némiscau lake - a potential reservoir - to Champion Lake; Waswanipi,moved from the Old Post to a site beyond the (potential) Waswanipi reservoir; and Oujébougoumau - resettled away from the Chibougamau townsite. Life in permanent, settled, communities is a recent phenomenon.

The Cree population has grown rapidly since 1950. The registered Cree Indian population at the time of the signing of the Agreement was 6322; it has approximately doubled over a 20 year period. During the last five years, the regional growth rate has grown steadily from 2.1 to 2.8% per annum. About 92% of the

Cree population resides in the James Bay territory.[xvi] The Cree identify themselves as hunters, and many of their cultural symbols are drawn from the setting of the hunting camp. It is not easy, however, to define unambiguously the level of participation in hunting. Approximately 30% of Cree nuclear families are registered with the Income Security Programme for Hunting, Fishing and Trapping (a product of the Agreement, discussed below); these families spend most of their time in hunting camps, and draw most of their income from this Programme. Together, they currently report about 350,000 (adult) person-days spent in the bush. Beyond this group, there are those who spend 1-2 months a year in spring and fall hunting camps (for migratory waterfowl and moose), and those who, in addition, work in the home settlement in the week, and commute to a hunting camp at the weekends. Elaborate food distribution networks operate, and the distinction between the salaried civil servant, working in the community, and the hunter is by no means as clear as it may appear.

It should be noted that public administration has become a major, perhaps dominant, component of the Cree economy. I refer here primarily to the administration of community services, and to the staffing of the education and health services in the Cree communities. This development has considerable significance for the distribution of income in the Cree communities, as well as for the exercise of political authority. The seeds were present at the time of the negotiation of the Agreement; the subsequent growth of public administration is often seen as a consequence of the Agreement, although some care should be taken to consider the development that would have taken place in the absence of the Agreement.[xvii] There is also a tendency to see the Crees' regional-level political organisation (the Grand Council of the Crees (of Québec) as a product of the same circumstances which led to the Agreement; however, an equally strong regional organisation might well have arisen independently of the specific challenges posed by hydro-electric development.

Residence, during part of the year at least, in a home community means that decisions about transportation are a major

feature of the family economy. In the early 1970's, proficient fur trappers were supported, indirectly, by the protected fuel prices in the Canadian economy. Families could, albeit with some difficulty, afford to charter Otter or Beaver aircraft to their distant hunting territories. The local fur trade in Mistissini was particularly well organised from this perspective. Canadian oil prices converged with international market prices and the situation changed radically. Despite significant absolute increases in disposable income over the last twenty years, the relative cost of flying to one of the more distant hunting territories (i.e. as a percentage of the total income of the hunting group) has probably not changed very much. One of the consequences is that road transport is increasingly important, and the resources formerly used for air travel are now being directed to surface travel (trucks, skidoos, canoes and outboard motors) - a development of some importance for the regional retail trade in vehicles, motors and their repair and servicing. The road network has expanded considerably in twenty years - in addition to some 1,200 km of service road for the La Grande hydro-electric project, a network of roads built for forestry, mineral exploration and transmission line construction, probably three or four times this lengh, traverses the southern territory, between the 49th and 51st parallels of latitude. This situation puts considerable pressure on hunting territories accessible by road, particularly on those which are being actively logged from the road network (the situation in most of the hunting territories south of the parallel of latitude 51◦ 30'N).

There are about 300 Cree hunting territories - tracts of land ranging from a few 100 km^2 to a few thousand km^2 in area. The model in the Agreement is based on the premise that each territory has an 'nituuhuu aschii uuchimaau' - a senior hunter frequently referred to in English as 'tallyman'. There are about 1200 families registered with the Income Security Programme, and therefore requiring secure access to a territory and a hunting camp location. There are, in addition, a roughly equivalent number of hunters who spend shorter times in the bush and who have camps or access to the camps of other hunters. It follows that the

authority to control access to land is by no means trivial. The pressure, of course, varies across the region (and in relation to the road network), but the tallyman has, in principle at least, a measure of control over the livelihood of several - and in some cases more than ten - families. This situation, which for both demographic and economic reasons, is quite recent, serves to illustrate the practical significance of the treatment of the 'hunting territory' in the Agreement (and, by extension, anthropologists' interpretations of the origins and nature of the 'hunting territory' - itself a fertile subject of debate in the Canadian anthropological literature).

One of the contributions of the anthropologists was to document, at least approximately, the replacement value of the animal protein provided by hunting, and show that the value of the meat so harvested generally exceeded the traded value of the pelts obtained from trapping. This was the early 1970's; the subsequent decline in fur values has made it obvious that the economic return from hunting is to be gauged from the value of the meat and fish so obtained, and from transfer payment revenues under the Income Security Programme. Furs have become a marginal source of personal revenue for many hunters, although the market has recently strengthened significantly. Trapping is still a highly regarded skill and an important cultural symbol, and thes beaver is still an important source of both meat and fur.

At the time of the negotiation of the Agreement, there were few Cree employed in the region outside their home communities. In the 1940's and l950's, crews of Cree men (with women to run the camps) were brought from Waswanipi and Mistissini to work in logging camps in the summer near the Transcontinental railroad and along the road linking Abitibi with Chibougamau and Lac St-Jean. Some familes also moved, for similar reasons, to the La Sarre district, near the Ontario border. In the 1960's, some men worked in the mines at Chapais, and in the DIAND-operated commercial fishery at Matagami and Mistissini. Some employment in logging was also available. In the coastal communities, employment was generally limited to the construction of government

buildings and local housing. Administration of community services, though limited, also became a significant source of year-round employment at this time. In this context, the use of wildlife resources remained an essential element in the local economies.

When the Cree challenged the hydro-electric development of the James Bay territory in 1973, they did so on the basis of the available jurisprudence on aboriginal title in Canada. Their counsel argued that the content of aboriginal title could be likened to the concept of the 'usufruct' in Québec's civil code. The protection of usufructuary rights, however, requires demonstration that the holders of this right are continuing to exercise it (a failure to do so might result in forfeiting the right). Hence it was of great importance to the Cree to be able to argue effectively both continuing use of the land for subsistence and the importance of wildlife resources in their economy.[xviii]

Visions by Euro-Canadian society of the nature of aboriginal rights, and the necessary pre-conditions for the survival or development of aboriginal communities, have evolved somewhat over the intervening twenty years. At the time, however, the preoccupation of the Cree advisors with usufructuary rights, and the use of those rights, was evident. The edifice of the James Bay and Northern Québec Agreement was erected on what might considered a conservative, perhaps retrospective view of Cree society. The Agreement was designed to protect individuals in the exercise of their (existing) usufructuary rights. Litigation over hydro-electric development was settled by the Agreement, but there was a widespread concern that even a successful court challenge, ultimately, would result in no more than the confirmation of the usufructuary principle. Moreover, these usufruct-like rights were perceived as subject to arbitrary and unilateral abrogation by the Federal government - especially if they appeared to constitute an obstacle to the planned hydro-electric development.[xix]

In this rather fundamental sense, therefore, the objectives of the Cree negotiators were directed towards the preservation of an existing hunting economy. The Agreement, I would argue, was therefore not designed around the needs of an expanding and diversifying native society (Cree or Inuit), and it certainly did not address the problems of equity and participation in the subsequent development of natural resources in the James Bay territory. In retrospect, there is some irony in the fact that a number of the social scientists who worked with the Cree (and to some extent with the government) were schooled in the issues of adaptation to technical and industrial change, yet directed their efforts primarily to the preservation of the hunting society which they encountered a few years previously. Hindsight, however, easily distorts the kind of decisions faced by Cree leaders at the time. In the judicial and political context of the times, would it have been possible to adopt a substantially different view of Cree cultural and economic development?

This is not to say that the Cree negotiators were blind to the needs of an evolving hunting society. The prevailing view at the time, however, was that a mechanism was needed for articulating and giving effect to policy objectives which take in to account Cree interests, and for involving the Cree in elaborating those objectives. The mechanism chosen was that of the advisory committee, supplemented by appropriate incorporated associations. Section 28 of the Agreement ('Economic Development') illustrates the concepts involved here. Thus the Agreement relies to a considerable extent on the assumption that by bringing Cree representatives together with representatives of departmental bureaucracies with responsibilities in the territory, it would be possible for the parties to define jointly their objectives, and through such participation in public administration, jointly implement those objectives. The interface with the bureaucracy, in this perspective, would make up for the inherent obstacles to influencing public policy faced by a small and economically marginal population. This fundamental principle - that change in the working of government can be accomplished through the workings of an advisory committee - runs through the

Agreement, and lies behind the attempts in it to grasp some of the contemporary issues in the management of natural resources. We shall have occasion to return to this idea.

5. THE ROLE OF THE AGREEMENT IN PRINCIPLE.

The opening move in the negotiation of the JBNQA was an offer of settlement from Premier Bourassa, which was presented to Cree representatives on November 29, 1973. It was made public by Québec on January 25th, 1974, to prompt a response from the Crees. (The press communiqué later became part of the Agreement-in-Principle). On November 15, 1973, Justice Malouf of Québec's Superior Court had awarded an interlocutory injunction, in favour of the Cree and Inuit, to suspend further work on the La Grande Complex pending a ruling by the courts on the merits of the argument for a permanent injunction. The suspension of construction ordered by Justice Malouf was in turn suspended on November 22, 1973 by Québec's Court of Appeal, so that the interlocutory injunction would not take effect while under appeal. This unusual step swiftly removed any leverage the Cree might have obtained from the Superior Court judgement. The Supreme Court, on December 21, then refused to hear the native litigants' appeal that the Court of Appeal ruling on the suspension of the interlocutory injunction be overturned. The sequence of court rulings had a profound influence on the substance of the JBNQA, which is often overlooked. Justice Malouf's judgement helped, but the Cree and Inuit began negotiations at a considerable disadvantage. (One year later, at the commencement of the negotiations that led to the final agreement, the Court of Appeal released its devastating ruling on the appeal from Malouf's initial judgement; this judgement denied the existence of any territorial rights that the Cree or Inuit could invoke against the hydro-electric project. It is this judgement that remains in effect today, since the appeal to the Supreme Court was set aside as a condition of the JBNQA.)

The judicial and constitutional context was profoundly different from that of the more recent settlements of claims involving aboriginal title in Canada. The weakness of the Agreement, from an aboriginal perspective, need to be understood in the context of these very unfavourable court rulings.

The offer of settlement was apparently influenced by the testimony introduced by the Cree and Inuit during the hearings in Québec's Superior Court, as well as by the advice sought by the James Bay Development Corporation (SDBJ in this text, following the name of the corporation in French) on the cultural impacts of technological change. At the same time, the presentation of the offer was used by the James Bay Energy Corporation (SEBJ) to present a revised design for the La Grande Complex, the elements of which were justified by reference to the positions taken by the Cree witnesses during the hearings. Essentially, the design changes hinged on the decision to develop the Great Whale River as a separate hydro-electric project, and to replace the flow from the upper Great Whale basin by the diversion of the Eastmain River. The offer also reflects Québec's decision to abandon marine transportation and use an all-Québec road transportation link for the construction of the La Grande project.

The offer provides some insight into the assumptions then made about the future of Cree society and its economic relationship with Québec. The government of Québec proposed reserves (under the Indian Act should the Cree so choose) for the Cree communities (along the traditional lines of the 'one square mile per family of five' applied earlier in Canada in areas opened up for agricultural settlement).

The offer proposed a guaranteed minimum income programme for full-time hunters, which became today's Income Security Programme. Québec indicated that it would support the development of the trapping industry, and encourage native participation in the development of the tourist industry. Participation in government was to be achieved by representation on the Council of the James Bay Municipality (an idea subsequently withdrawn) and through representation on an Expert Committee on the Environment (a joint SEBJ-SDBJ entity devised for the coordination of their environmental studies for the La Grande project). Compensation was to be based on a cash disbursement of $40 million over 10 years, and a payment of royalties on future development (broadly defined) with a ceiling of $60 million. The royalty

payment was subsequently renegotiated, at Québec's request, and became part of the montary settlement. Although the offer makes reference to Canada's jurisdiction, it should be understood that it was a Provincial and not a Federal initiative.

The Agreement-in-Principle was concluded on November 15, 1974, after a year of intermittent talks.[xx] The Cree negotiators were unable to introduce any changes to the design of the La Grande hydro-electric project, with one significant exception - the location of LG-1. This powerhouse, planned to occupy the first rapids on the La Grande River, at km 37, was moved up-river to km 86. When the final agreement - the JBNQA - took effect, the Cree were under immediate pressure to re-open this aspect of the design, so that preparatory work at LG-1 could take place during the filling of the LG-2 reservoir in 1979. Thus LG-1 was built at km 37, as originally planned. The way was thus prepared for the 'sur-équipement' of the La Grande Complex, and the community on Fort George Island was relocated to the south bank of the river, some 10 km inland. ('Sur-équipement' refers to the addition of turbines to convert a powerhouse to a lower load factor, typically 60% as opposed to the 80% when the La Grande Complex was originally designed. The 60% load factor makes it possible to respond more closely to the pattern of Québec electrical energy demand, i.e. satisfy peaking requirements, but has significant ecological implications, especially in winter.)

The Cree negotiators sought a land and resource base adequate for the future needs of their communities. The original offer of lands amounted to 2,000 square miles (5,180 km^2) and was intended for a population of roughly 10,000 (6,000 Cree and 4,000 Inuit) - more-or-less the earlier treaty formula of one square mile for a family of five. The Cree were given the option of lands administered as reserves under the Indian Act, which they adopted.[xxi] The allocation formula proved immutable, however, and their entitlement remained as Québec had proposed it - 1,274 sq. miles (3,300 km^2). This area, known as Category I A land, was supplemented with land which remains in Provincial ownership, but held by Cree land holding corporations under tenure provisions

not unlike those of the Indian Act reserves. With the addition of these I B lands, the Cree entitlement was maintained at 2,000 sq. miles (together with a 20 sq. mile supplement for Eastmain, in acknowledgement of the additional impacts occasioned by the development of the Eastmain River; approximately 60 sq. miles of I B lands were added for the non-status Cree population).

These land areas still represented a tiny fraction - of the order of 1% - of the land area used by the Crees. The issue was resolved by the creation of an additional category of land - land in which the Cree and Inuit would have exclusive hunting, fishing and trapping rights. In all other respects, however, these lands were considered to be available for development, and they were subject to replacement if required for purposes that would prevail over their use for subsistence harvesting. These lands, known as Category II, amounted to 25,030 sq. miles (ca. 65,000 km^2) in the case of the Cree (the odd 30 sq. miles being a supplementary allocation for Eastmain). The Inuit allocation of Category II lands was set at 35,000 sq. miles and included an allocation for the Whapmagoostui Crees (N. of the 55th parallel - the James Bay municipal limit). A small allocation of both Category I and II lands was also made for an Inuit group in the Cree community of Fort George (Chisasibi). Despite the restrictions on Cree and Inuit control over these lands, these allocations seem to have been a source of genuine resentment among the officials of the Ministère des Terres et Forêts, which probably contributed to a hardening of positions on land selection during subsequent negotiations.[xxii]

The Agreement-in-Principle expanded compensation to the Cree and Inuit to $150 million, and identified a Federal contribution of $32.75 million, which was understood to be based on the relative size of the area between the height of land in the south and the Eastmain river (i.e. the area added to Québec by the first of the boundary extension acts (1898). One half of the total compensation was considered a royalty, to be calculated on the basis of installed hydro-electric capacity in the James Bay Territory. The Cree and Inuit were also to be entitled to a 25%

royalty share in Provincial duties flowing from other forms of development (including mining and forestry), although, as explained above, this provision was later converted to a monetary payment.[xxiii]

The income support and economic development initiatives referred to in the original offer were retained in the Agreement-in-Principle, but not further elaborated. It also contained few details about Cree participation in government, other than that the Cree would have 'some powers' over Category II lands, and Band Councils some responsibilities beyond those provided in the Indian Act. Brief reference was also made to continuing negotiations in matters relating to education, health and the formation of Cree police units under Provincial law. These negotiations, it should be added, took place at a time when both National and Provincial native organisations (the National Indian Brotherhood and the Indians of Québec Association) sought direct participation in the administration of justice, education and health services. It was an opportunity for Québec to extend to northern Québec its newly-created institutions for citizen participation in these services, and for Canada to promote - or at least acquiesce in - the integration of Cree communities into the Provincial net of government services. For Canada, it was an opportunity to implement, indirectly, a number of the objectives of the so-called 'White Paper Policy' of 1969[xxiv] which had proved so difficult to impose directly.

The provisions relating to wildlife management and environmental protection are not contained in the body of the Agreement-in-Principle, but in a schedule which follows the press communiqué setting out Premier Bourassa's original offer of settlement ('General Principles respecting a hunting, fishing and trapping regime').

The objectives of this schedule were to define the harvesting (i.e. hunting, fishing and trapping) rights of the Cree and Inuit, and (from a Cree perspective) to limit their territorial restriction in the face of an expanding development frontier.

The Federal-Provincial-Cree-Inuit (and, later,) Naskapi) Co-ordinating Committee for Hunting, Fishing and Trapping took shape in this schedule. In addition to defining the right to harvest so as to limit territorial restriction by future development (i.e. 'where physically possible', which meant where hunting would not interfere with the safety of workers), this schedule also defined criteria for ensuring priority for subsistence (i.e. native) use of wildlife resources. The concept of the 'guaranteed level of harvest' is articulated here. Roughly stated, the principle holds that the Cree and Inuit will continue to have access to levels of wildlife resource harvesting at the time of the settlement (in practice, 1972-1979 for the Cree), provided of course that the resources themselves are available (i.e. subject to a principle of conservation). If a harvestable surplus is available, the principle holds, that surplus will be allocated between native and non-native users in such a way as to ensure access to non-native resource users but to give priority to native resource users. These provisions are strengthened somewhat by the definition of a class of wildlife species reserved for native use (i.e. for which there was no recognizable non-native interest at the time). The schedule also provided that native use of wildlife would involve a minimum of state regulation (i.e. control would rely mainly on internal customary law). These provisions form the core of the co-management regime for the use of wildlife resources.

Finally, this Schedule contains a provision (no. 15), (with a cross-reference at article 12 of the Agreement-in-Principle) which subjects future development to environmental and social impact assessment and to regulations intended to take into account the impacts on native people and on wildlife resource, of future development. The year is 1974, and the Federal assessment procedure (today's Federal Environmental Assessment and Review Procedure - EARP) was in its infancy; there was limited experience of impact assessment, even under the National Environmental Policy Act (NEPA) in the United States. The concept of regulations referred to above derives from contemporary interest in the use in the Northwest Territories of regional-level regulatory policies to control the impacts of development (oil and gas exploration).

Native people were to be involved in decision-making in respect to environmental and social impact studies, and in decisions arising in the implementation of land use regulations.

The involvement of the Cree (and Inuit) in the decisions relating to the use of natural resources - as reflected in the environmental impact assessment procedure created by the JBNQA - arises initially as an afterthought in a schedule to the original Agreement-in-Principle, the primary objective of which is to clarify the interpretation of the rights of native people as subsistence resource users. Environmental impact assessment, and the use of regulatory policies, were inserted as a device for ensuring the protection of the subsistence resource base. It is a limited opening, intimately tied to the assumptions about the content of aboriginal title that had been used in the hearings in Québec's superior court on the La Grande hydro-electric development. At this stage in negotiations, however, there is no question of delegating authority for management of wildlife resources (or for the approval of individual development projects) to native organisations. The main text of the Agreement-in-Principle says very little about the presence of the Crees as a regional society, and conveys the impression of a people already confined to the boundaries of what have come to be known as Category I lands.

6. THE FINAL AGREEMENT: ASPECTS OF NEGOTIATIONS

The JBNQA, with its subsequent amending agreements, is now a document of nearly 700 pages and some complexity.[xxv] It would be inappropriate to try to probe in detail here the negotiation of this text. Some aspects of the negotiating process are, however, relevant to this analysis of implementation. The Agreement-in-Principle remains a useful guide. The major policy initiatives are contained here, and much of the text we refer to here by the acronym JBNQA consists of the detailed elaboration of the ideas contained in it.

Following the conclusion of the Agreement-in-Principle in November of 1974, the parties reconvened to set out the terms of a final settlement. A central negotiating table was created in early 1975, at which all the parties to the settlement were present - Cree, Inuit, Québec, Hydro-Québec, SEBJ, SDBJ and Canada. This group met at intervals of about a month to discuss issues judged central to the success of the negotiations, but also to settle on a case-by-case basis sources of friction between the negotiating parties. Key decisions were generally made by a smaller group, consisting of the senior Cree and Inuit negotiators, their legal advisors, John Ciaccia (Premier Bourassa's representative) and a person from SEBJ's senior management (Armand Couture, then vice-president of Lavalin, and subsequently President and Director of Operations of Hydro-Québec).

Much of the detailed work of designing administrative régimes was entrusted to sub-committees. These sub-committees had considerably more demanding schedules and deadlines. Much of the substantive work was concentrated in the three months preceding the signature of the agreement in November, 1975. The sub-committees frequently met at weekly intervals, and smaller groups more often still. In matters relating to health and education, specialists from the corresponding Québec government departments assumed a prominent role. However, in areas involving lands and natural resources, representatives from Hydro-Québec, SEBJ and SDBJ were involved at each stage of the discussions.

The delimitation of the different land categories is revealing in this latter respect. It is sometimes assumed that the Cree communities were able to select lands in the different categories described in the Agreement, and that the contemporary map of northwestern Québec reflects a bipartite consensus. In practice, Québec was able to impose criteria for land selection which largely predetermined the boundaries of both Category I A, I B and Category II lands. First, the selection of Category I lands was made subject to the principle of a 'three-chain reserve' along all major waterbodies. Thus (except in the immediate vicinity of established villages), lands could not be selected within 200 feet of the shores of lakes, rivers and the James Bay coast. Second, Category I A and I B lands had to form a single block, based on the location of the community (in I A lands). I B lands had to be contiguous with I A lands, and the lands so designated could not straddle major rivers or provincial highways (although there are some unavoidable exceptions). Category II lands were also to be allotted in single blocks, adjacent to I A and I B lands. In general, only half of the coastline could be defined as Category I and Category II (later revised to 55%). Lands had to be selected to the west of the highway linking the La Grande construction site to southern Québec, and, for the inland communities, in blocks extending to the north of the community, avoiding areas of known mineralisation or recreational interest (including the major lakes in the area).

These criteria, coupled with the principle of allocation of lands in direct proportion to the population of each community at the time of settlement, determine for the most part the geographical distribution of the land categories as they now appear on the maps of Québec. The Cree negotiators were confronted with a team from the Direction de la Protection de l'Intégrité du Territoire québécois (within the Ministère des Terres et Forêts) whose mandate was to limit the impact on Québec's 'territorial integrity' of the land allocations proposed in the Agreement-in-Principle. The Cree negotiators were not free to select lands on the basis of productivity or the nature of the

ecosystem, or on the basis of use. The lands designated were furthermore subject to a range of servitude provisions to take into account future hydro-electric, forestry and mining development. Québec had made its position clear at the outset that lands, I or II, could not be selected on the basis of purported value for future community economic development. Some limited adjustments were made - in the case of communities located on the shores of estuaries, the Cree were able, for example, to choose a block of I B lands on the opposite shore ('I B Special'), limited to a maximum area of 65 km^2. These lands, however, were made subject to a modified land tenure which gave the Québec government and its agencies unrestricted access and the freedom to establish servitudes for development purposes. The Cree were under considerable pressure to complete the process of land selection before the signing of the JBNQA. In practice, this meant accepting the (French language) territorial descriptions prepared by the Ministère des Terres et Forêts; no cartographic support was incorporated into the Agreement.

It is not surprising, therefore, that the land selection process appeared to the Cree communities as a bizarre and unreal exercise, with very little foundation in the experience of the Cree hunters and of very uncertain relevance to them in the future. Indeed, the different land categories which appear on the map of northern Québec appear to have no relevance at all to the contemporary territorial organisation of Cree hunting.

The impacts on Québec's territorial integrity could, and would, be addressed not only by control of the land selection procedure but by determining the substance of the tenure provisions for each category of land. The land regimes in the Agreement reflect the importance attached by the Québec government to removing obstacles to hydro-electricity, mining and forestry, as well as to the physical presence of the Provincial government. They serve as a counterweight, in some ways, to the definition of harvesting rights contained in the schedule to the Agreement-in-Principle. The essence of the negotiating strategy is to contain or counteract the possibilities for the Cree to use harvesting rights as a means

of influencing the course of development. There are a number of techniques: rights to modify water levels and river flows, land replacement, use of the doctrine of public access, the principle of 'the right to develop' and, ultimately, the burden of proof that Cree subsistence harvests or tenure systems are being adversely affected.

Hydro-Québec and La Société d'Énergie de la Baie James (SEBJ) were attentive to their own needs. They were successful, for example, in incorporating into the text of the Agreement provisions which would exempt future hydro-electric projects from social impact assessment. Such projects would be 'subject to the environmental régime only in respect to ecological impacts and ... sociological factors or impacts shall not be grounds for the Crees and/or Inuit to oppose or prevent such projects' (8.1.3). The Agreement is silent, however, on the distinction between 'ecological' and 'sociological' impacts, and there is no attempt at reconciliation with the provisions of the Agreement relating to the protection of harvesting rights. In addition, the Complexe La Grande described in the Agreement (then at an early stage of construction) was exempted from both the environmental and social impact assessment procedure in the Agreement. This exemption applied both to generating plant and to energy transmission facilities.

The treatment of hydro-electricity in the JBNQA clearly reflects the emerging corporate environmental policy of SEBJ at the time. Responsibility for environmental studies would be internalised and would remain at its discretion. Impacts, it is argued, cannot be predicted in advance but can be mitigated or corrected when necessary. A fund with $30 million working capital, and a joint Cree-SEBJ remedial works corporation (SOTRAC), managed by SEBJ, were created for this purpose. The capital was derived from a provision in the Agreement-in-Principle on the subject of flow maintenance in the Eastmain River. The Agreement-in-Principle provided for a task force to assess the merits of maintaining 10% residual flow for two months of the year (roughly 2% of the total annual flow at the point of

diversion), or of using the capitalised value of the flow to fund a remedial measures programme. The duly-appointed task force recommended in favour of the remedial measures fund. Policies for reservoir clearing became the prerogative of SEBJ - an important consideration in view of the circumstance that each 1% of clearing of the proposed reservoir area would have represented an investment of about $150 million. Clearing was, in effect, largely limited to the 'multi-purpose' vegetation removal operations near the powerhouses, which was required for the security of the intakes and the aesthetic qualities of the powerhouse sites. Finally, the JBNQA enabled SEBJ to define in more detail the project it wished to build.

The representatives of the Government of Québec concentrated on the mining and forest products industries. Mineralized areas had been studied extensively in the James Bay territory, and areas of known potential were already under claims or leases. These were protected in accordance with the principle of respect for acquired rights. One such holder of mineral rights was the James Bay Development Corporation. It had inherited lands withdrawn from mineral exploration for the purposes of hydro-electric development (including the Great Whale, La Grande and Nottaway-Broadback-Rupert hydro-electric projects). These areas covered roughly a third of the territory (about 100,000 km^2) and fully two-thirds of the areas selected as Category I A lands. Thus, SDBJ acquired the mineral rights under most of the Cree communities (the tranfers of Category I lands did not, in any case, involve subsurface rights).

Forestry was a more complicated case. Québec successfully excluded the Cree from direct economic participation in the forest products industry, and exempted forestry operations from impact assessment. The grounds for this exemption lay in the development of a system of forest management plans; forestry operations included in such plans were to be exempt from further assessment. This stratagy raises the issue of whether the plans themselves were supposed to take into account the guiding principles of the environmental protection regime (a set of principles contained

in the Agreement - at section 22.2.2 - intended to define the underlying objectives of protecting Cree society and its economy). New mills for forest products were subject to assessment, but a wave of licensing of new mill capacity, and of timber supply guarantees for these new mills, meant that very little further development in this sector could be expected once the JBNQA came into effect. Primary road infrastructure for forestry was subject to assessment, although related forestry operations were exempt. A residual measure, that projects involving changes in land use affecting an area of 65 km^2 or more would be subject to impact assessment, proved subsequently to be inapplicable to forestry operations. Québec further insisted upon a provision whereby forestry operations could take place in Category II lands without giving grounds for replacement- hence the periodically misunderstood reference in Section 5 of the JBNQA (Land Régime) to the 'compatibility' of forestry operations with hunting, fishing and trapping activities.

A range of municipal-level developments (sewer systems, solid waste management schemes, large borrow pits, as well as community relocations) were subjected to impact assessment, with the paradoxical consequence that, on paper at least, the impact assessment procedure created by the JBNQA applied more often to local (i.e. Cree) community development projects than to projects outside the Cree communities. In contrast, the assessment procedure did not apply, as a general rule, to projects within existing non-native municipalities in the region. Moreover, projects within Cree Category I lands involving the granting of servitudes (highways, transmission line rights of way, shoreline protection) were excluded from the jurisdiction of the local government authorities.

Québec explored several other ways of avoiding a situation in which the Cree might indirectly acquire a degree of control over natural resources development through the technique of environmental and social impact assessment. First, the impact assessment procedure remained strictly advisory in nature; the decision-making authority, whatever might have been said in the

Agreement-in-Principle, remained with the Québec government. Second, the committees appointed to review projects (whether under Provincial or Federal jurisdiction) were so constituted that no Cree person could assume chairmanship, and so that the Cree party would always be in a minority (2 vs 3). An exception should be noted here for the committee responsible for the technical task of writing directives for assessment; this Federal-Provincial-Cree group had a rotating chairmanship. Restrictions involving delays for rendering decisions (45 days for the review of impact statements) and a provision which, until recently, prevented the use of public hearings served as further constraints. The Cree party was to be responsible for the remuneration of its representatives, and, in lieu of a provision for the secretariat services, Québec would provide, at its discretion, the resources needed for operation of the assessment procedure.

The mechanism for developing regulatory policy to respond to the impacts of development on native people became the James Bay Advisory Committee on the Environment. As originally constituted, it was to serve as a forum for government departments with responsibilities in northern Québec (both Federal and Provincial) to work with Cree representatives on matters relating to environmental policy development. It was also given the responsibility for periodic review of the implementation of impact assessment under the provisions of the Agreement, as well as for the review of forest management plans. The Advisory Committee was tri-partite, with a rotating chairmanship. On paper, this committee had a wide-ranging mandate - a mandate which appears at first sight to go well beyond the restrictive provisions of the JBNQA in other areas.

The provisions relating to wildlife management follow quite closely from the schedule in the Agreement-in-Principle, discussed above. This is one case where the Cree and Inuit joined forces (in the case of environmental protection, these two parties went their separate ways in the summer of 1975). Studies to establish 'present levels of harvesting' for both the Cree and

Inuit were initiated in 1975, and the negotiating process, in general, involved working through the administrative consequences of the schedule in the Agreement-in-Principle. There was some skirmishing on the matter of recreational facilities for construction workers, but the fact that a major portion of the James Bay Territory was closed to public access during the construction of the first phase of the La Grande project (i.e. the period from 1975 to 1984) greatly simplified matters. Negotiations to set up the Income Security Programme for Cree hunters and trappers also went smoothly, apparently in response to Québec's willingness to establish an experimental guaranteed minimum income programme. I think it is also fair to point out, however, that the negotiators for Québec and its agencies tended to view Cree hunting as an anachronism, although concern was also expressed about the impact of an expanding Cree population on wildlife.

The negotiation of the JBNQA was a complex process, and there are many issues that are not adequately addressed in this essay. The key point I wish to make here, however, is that provisions relating to environmental protection and to native participation in wildlife management must be read alongside other sections of the Agreement dealing with hydro-electricity (Section 8), and with the availability of lands and natural resources for 'future development' (Sections 4 and 5 in the case of the James Bay Crees). The provisions of the Agreement relating to environmental protection and to wildlife management are subject to the 'right to develop' articulated as a guiding principle in the environmental protection regime (Section 24). The use of impact assessment, or other land use measures, and the implementation of the measures directed at the protection of a resource base for subsistence economies, must be interpreted in the light of this 'right to develop'.

7. IMPLEMENTATION

In this section, I will discuss and illustrate some of the practical difficulties encountered by the James Bay Crees in the course of the implementation of the JBNQA. I will concentrate on provisions relevant to the management of natural resources; this in turn will provide the background for an examination of the ways in which Québec's policies towards the administration of public lands and the management of natural resources in northern Québec have evolved during the last twenty years.

The first point that should be made is that implementation did not commence overnight. The Agreement, signed on November 11, 1975, provided for the enactment of Federal and Provincial legislation which would give force and effect to the Agreement.[xxvi] Without such legislation, the Agreement would, in effect, become void two years after its signature. Québec proceeded in 1976 to adopt enabling legislation, but Canada postponed corresponding legislation (i.e. accepting the surrender of aboriginal title) until the limit of this two year period set in the Agreement itself. It has never been entirely clear to the Crees why Canada delayed the enabling legislation, but the intense lobbying that proved necessary for its enactment left a lasting impression on the Cree leadership.

The coming into force of the Agreement prepared the way for a series of changes to the description of the La Grande project. The move of the LG-1 powerhouse to the originally proposed location has already been mentioned. It was accompanied, or followed by the 'sur-équipement' (change of load factor, as previously explained, from approximately 0.80 to 0.60 at LG-3 and LG-4, and the addition of a second 2000 MW powerhouse at the LG-2 site), the modification of the Sakami diversion (liberating SEBJ from restrictions on flooding contained in the original project description), the 'sur-équipement' of LG-1, the construction of the Brisay powerhouse at the site of the control structure for the Caniapiscau reservoir, the construction of two powerhouses (LA-1 and LA-2) on the diversion route between the Caniapiscau

reservoir and LG-4, and finally the addition of the Eastmain-1 reservoir and powerhouse above the Eastmain diversion. Further additions are under study in the Eastmain basin, but they will not concern us here. I will not attempt to describe these changes in detail, but it may help to put matters in perspective if it is kept in mind that these changes added generating capacity to the La Grande project one-and-a-half times the capacity of the proposed Great Whale project.

This second phase of the La Grande Complex has had dramatic implications for the implementation of the Agreement. The restrictions on impact assessment for these projects, to which I referred above, obliged the James Bay Cree to come to terms with SEBJ, and latterly, with Hydro-Québec. In effect, the proponent proposed a series of bilateral settlements which provided a framework for dealing with the 'externalities' or indirect impacts of these projects. These developments served as a striking demonstration of the authority and economic influence of Hydro-Québec and SEBJ in the territory, which appeared to have become de facto arms of the Québec government in the territory. Hydro-Québec's mandate from Québec to manage the issue of environmental mercury contamination after flooding illustrates well the position of Québec on the quasi-governmental role of Hydro-Québec in the region.[xxvii]

Financing derived in one way or another from these bilateral settlements has played a major role in the provision of basic infrastructure for the Cree communities (access roads, electrical energy supply, water supply and wastewater disposal, solid waste management, wharves). Indeed, the company which managed the construction of the La Grande Complex (Lavalin) also directed community planning for most of the Cree communities through a subsidiary (Daniel Arbour), and much of the water supply and sewerage infrastructure was designed and built by companies also associated with the construction of the La Grande Complex. To the extent that both Hydro-Québec and SEBJ were able to persuade the Cree communities of the virtues of a policy of bilateral accommodation, impact assessment would inevitably acquire a

reputation for pro forma evaluation by a government authority (Québec's Minstère de l'Environnement, known as MENVIQ). At times, MENVIQ appeared subordinate to Hydro-Québec, and environmental authorizations frequently became part of the negotiating process.[xxviii]

The formal procedure for the assessment of environmental and social impacts, created by the JBNQA, appeared, in contrast, peculiarly inaccessible to the Crees themselves, both at a regional and at a community level. Impact statements were produced in French (a requirement of Québec's subsequent language legislation), and the correspondence and analyses relating to project reviews were also, for the same reason, prepared in French. There was no provision for public hearings, and the great majority of reviews took place in Québec City. The difficulties here are not just linguistic; they also involve the technical language of the impact statements themselves. Moreover, when time was taken to translate and discuss at a community level the content of impact statements, the lack of pertinent ecological information, and the superficial nature of the data actually presented, shed further doubt on the conceptual foundations of the impact assessment procedure. It was rather obvious that the typical proponent (e.g. of a small mine, or a section of forestry road, or even of a new regional airport) had very little understanding of Cree society, and operated with the most general level of understanding about wildlife ecology in the region. It was not a convincing exercise for the Cree communities, and the labyrinthine administrative procedures (dealt with in other papers for the Royal Commission) contributed to this overall impression of inaccessibility.

There are other barriers to Cree participation in impact assessment which should be kept in mind. The advisory committee concept relies on assumptions about decision making in public administration. One of those assumptions is that the participants around the table are equally equipped and equally disposed to try and seek consensus through open debate in the committee setting. This is a somewhat dubious assumption even in the more cultural homogeneous settings in which advisory committees

usually operate. The use of advisory committees also relies on the belief that the committees themselves have a receptive audience; and, accordingly, that their recommendations will carry some weight in policy formation (i.e. compared with other sources of influence outside or within the civil service).

In the cross-cultural setting of the advisory committee structures in the Agreement, these assumptions very easily break down. The Cree participants and the representatives of departmental bureaucracies arrive with very different bodies of knowledge and assumptions about decision-making and the role and functioning of committees. It is not at all clear that the round-the-table idea of decision making is congenial for the Cree participants; in this author's experience, individuals are empowered to speak to certain issues - to express certain collective points of view - on the basis of previous discussion among smaller groups. This authority does not necessarily mean that they can haggle or bargain, and so substantially change their perspective without going back to their constituencies. The bureaucrats may or may not have more room to manoeuvre, but they operate in domains set by statute, regulation and departmental directive - the content of which is often not at all apparent to the Cree participant. Moreover, it turns out that on key issues, the civil servants do not have decision-making authority at all. This resides at the level of the minister (or deputy minister) and may not easily be further delegated. This problem of the real location of authority has proved a fundamental stumbling block. Let us take the example of forestry roads, or roads for new developments. The Cree participants say (repeatedly) that the real impacts of new roads (both social and ecological) arise from uncontrolled access. They are told by the civil servants that roads built in the public domain are themselves public, and that the assessment procedure cannot lead to restrictions on access.[xxix] However, if access cannot be debated within the framework of social impact assessment, the procedure itself is obviously vulnerable to the criticism in the affected Cree communities that it cannot respond to the key issues (ecological or social) raised by the developments in question.

This leads in turn to the neglected matter of determining what kinds of decisions can be taken on the basis of impact assessment. When the Agreement was negotiated, there was no impact assessment procedure in place in Québec, and for that matter there was no Ministère de l'Environnement (MENVIQ) (the department was created in 1978, after the coming into force of the Agreement). At the time, environmental protection was a branch of the Department of Municipal Affairs in Québec. To the Cree signatories of the Agreement, it appeared that decisions on the basis of impact assessment would be based on the broad authority of the government (as is the case with the procedure in place in southern Québec). However, when Québec drafted enabling legislation for impact assessment in the territories covered by the JBNQA, the new department was assigned responsibility for its administration under the provisions of the new Environment Quality Act.

The Agreement spoke about both environmental and social impact assessment. In this evolving legal context, what was the practical meaning of social impact assessment? In practice, the new Ministère de l'Environnement took the position that it was empowered to make decisions in areas where it had statutory or regulatory authority to do so. And this did not include decisions of a social, economic or cultural character. Decisions taken in these areas could not be imposed on a reluctant or unsympathetic Department of Education, or Health and Social Services, or Public Security, with no participation or input into the assessment procedure. Even within the arguably environmental field, decisions could not be imposed on the government department responsible for wildlife management, the administration of public lands, or the management of forests. So it turned out that despite the broad concept of the 'environment' (particularly when translated into Cree), the Department of the Environment came to be seen as having very little authority to act. To many participants, it thus seemed that the procedure in the Agreement was severely compromised, in that the Québec government (represented by MENVIQ) remained committed to the position that it was unable to act in the areas of most direct concern to the Crees (impacts on wildlife, and impacts arising from increased access). This did not add to the credibility of the procedure.

So far we have emphasized the role of Québec's Ministère de l'Environnement. Where did the Federal government stand in the matter of environmental and social impact assessment? It is a party to the assessment procedure in the Agreement, and in fact its negotiators insisted at the time on the compatibility with the EARP procedures (as they then stood). The Cree negotiators understood, rightly or wrongly, that in Canadian law there were a number of subject headings ('matters') that fall under Federal jurisdiction; it was believed that it would be necessary to devise a mechanism of coordination to ensure that matters under Federal jurisdiction - fish habitat, estuarine and coastal ecosystems, breeding habitat for migratory waterfowl - would be addressed alongside matters normally held to be the responsibility of the Québec government. A reasonably comprehensive approach to impact assessment was assumed to require some measure of

Federal-Provincial coordination, and this was in fact the operating assumption during the negotiation of the assessment procedures.

However, there was a change of government between the signature of the signature and the coming into force of the Agreement. This election of the Parti québécois in 1976 had a marked impact on the possibilities for such Federal-Provincial coordination in matters of environmental policy. The view of the Federal Government once the Agreement took effect (shared by Québec) was that projects themselves are either Federal or Provincial in character, but not both. Thus ground-based radar guidance for intercontinental aircraft would be considered 'Federal' in character, but other developments involving the use of natural resources would be considered Provincial in character. The financial participation of the Federal government was not judged to be an appropriate guide, and many jointly-funded Federal-Provincial projects were so determined to fall under Provincial jurisdiction. Thus the application of the Federal assessment procedure came to be limited to municipal installations in the Cree Category I A lands (the administration, management and control of which had been transferred to Canada).

This interpretation of the provisions of the Agreement, on which the Cree were not consulted, came to be seen as an important constraint on both environmental and social impact assessment. One of the policy objectives of the litigation introduced by the Crees in connection with future hydro-electric development has been to define a role for the Federal government in impact assessment which more obviously reflects the constitutional division of powers in this country. At the time of writing this article, however, the Federal Court of Appeal (in a judgement on the Eastmain-1 project) has dismissed the argument of shared jurisdiction or responsibility in environmental matters. The Supreme Court has refused leave to appeal in this case.[xxx] It now appears unlikely that the Federal assessment procedure in the Agreement will be used, other than for municipal-level projects in Cree reserve lands and for projects initiated by Federal agencies operating under Federal law (such as civilian radar systems, or military establishments). An exception to this rule

was the integration of the Federal assessment procedure into the assessment (now suspended) of the Great Whale project; this, however, was also a product of litigation, and the Federal Government maintained that it would withdraw unless it was required by the courts to remain a party to the assessment procedure.

Environmental impact assessment is not the only field where implementation revealed fundamental differences of interpretation between the native and government signatories. We focus here on the management and use of natural resources, but it should be noted that serious differences of interpretation and of underlying objectives have also emerged in other areas, including education, health services and policing.

Consider the designation of different land categories and the establishment of the land regimes for the James Bay territory. The land-related provisions in the Agreement were negotiated in great haste (partly a consequence of Québec's insistence that land selection be completed in the form of territorial descriptions prior to the signature of the JBNQA). Despite assurances that numerous loose ends could be resolved jointly once the Agreement was in force, the Québec government quickly closed ranks. The Category I A and B lands were provisionally transferred on the basis of the territorial descriptions in the Agreement (in 1979 and 1980).

Boundaries have also been surveyed - a process which involved adjusting boundaries to take into account more precisely the amount of land allocated to each community (on the basis of the 1975 population).[xxxi] However, definitive transfers (to Canada in the case of I A lands and to Cree land holding corporations in the case of 1 B lands) have never taken place. This was to be done within roughly two years of the coming into force of the Agreement (1980), but very little progress has been made in the resolution of a number of outstanding boundary disputes. In the majority of Cree communities, there are major boundary disputes which serve as an obstacle to agreement on final transfers. One of the most contentious matters is Québec's insistence on a three-chain reserve in favour of the Crown along major water courses (i.e. the coast, lakes and rivers) adjacent to Category I lands. This

concept of a three chain (roughly 60 m) reserve was used by Québec to argue that lands could not be selected by the Cree communities adjacent to waterbodies. Today, however, it can no longer be argued that the '3-chain reserve' is a universal reserve of riparian rights in favour of the Crown. The reserve has been abolished, and survives only in the form of the 200 feet set backs which separate Category I lands from nearby lakes and rivers.

Failure to agree on the boundaries of Category I lands resulted as well in failure to agree on definitive boundaries of Category II lands. Maps of northern Québec, issued by the Québec government, convey the impression that the matter of boundaries is settled, but this is far from being the case. As a result, there are numerous technical obstacles in the way of deciding where any of the boundaries are located - one of the reasons why there is no identification on the ground of any of these boundaries. It should also be noted that Canada financed the surveys of I A boundaries but did not otherwise become involved in settling matters of boundary location, which were regarded as Québec's prerogative.

The administrative provisions relating to the different land regimes have never been given operational definition. There was no mechanism in the Agreement for bringing the Cree communities and the Québec government together to work through the practical implications of the land regimes, and Québec has not taken any initiative to resolve land regime matters through the James Bay Advisory Committee on the Environment. Québec appears to have taken the view that the Agreement (and its enabling legislation) are self-explanatory and that no further administrative action is necessary. This, I suspect, is true only to the extent that the Cree communities cease to be seen as a regional society, but rather as a cluster of enclaved collectivities on the geographical periphery of the James Bay territory.

One telling indicator of the significance of the Agreement is forestry. The James Bay territory (i.e. the territory included in the administrative regimes in the Agreement) accounts for about one-sixth of Québec's production of soft-wood lumber (about 5 million m^3/year). Harvesting at this rate means logging an area

of 400-600 km^2/year, depending on the terrain. This corresponds to a cumulative area of about 9,000 km^2 since the signature of the Agreement. It is probably fair to say that the provisions of the Agreement relating to environmental management and the use of wildlife resources have had no impact whatsoever on the conduct of forestry operations in the region. This does not mean that there has been an absence of analysis, representation, and debate; it simply means that the administrative provisions in the Agreement which might have been applied to forestry operations have so far proven ineffectual. Beyond the boundaries of Category I lands, the territory south of the Broadback River is designated by Québec as productive forest land, and has been so treated by the forest products industry.

Consider, in the context of what has been said above, the management and use of wildlife resources. One of the policy objectives in the Agreement was to encourage Cree participation in outfitting and more generally in economic development related to the recreational use of wildlife. Such an objective is indeed contained in Premier Bourassa's original offer of settlement. This objective was given expression (in part) as a 'right of first refusal' in favour of potential Cree outfitters. Briefly stated, the idea was that Cree communities would be given an opportunity to intervene and establish outfitting operations when applications were received by Québec for the opening of a new installation. First, it should be noted that the James Bay Development Corporation (a signatory of the Agreement) objected to such a measure of control by the Cree communities. It argued, in essence, that the Québec government retained the authority to decide what sites would be open to the exercise of this right. Litigation followed, and was eventually settled out-of-court. The parties agreed to a complex formula which in effect maintained the principle of the right of first refusal, but limited the number of cases (and the chronological sequence) in which it could be exercised.[xxxii] The overall effect has been one of paralysis. The outfitting industry has shrunk rather than developed. Québec's Ministère des Loisirs, de la Chasse et de la Pêche did transfer installations around Mistassini Lake to the Cree, but this measure had no relation to the right of first refusal. Québec was running the operations at a loss, and the policy decision to cease to

run these camps directly had already been taken by the time the Agreement was signed.

Whatever the Agreement may have said on this topic, the prospects for a regional outfitting industry were limited. Moreover, once the first phase of the La Grande Complex was complete, Québec moved quickly to open the James Bay territory to the general public, without any requirement to use outfitters (or other measures to promote outfitting). Thus, as earlier noted, a yearly influx of the order of 15-25,000 visitors began. Most of these visitors are equipped for camping, and have little need for outfitting facilities. In the last three years, Québec has licensed a recreational hunt for caribou in the region of the La Grande hydro-electric complex (a quota of 2000 animals for 1000 hunters). These initiatives on the part of Québec to open the James Bay territory for recreational hunting and fishing did not involve the Cree communities, and do not appear to offer much scope for economic development in this sector. It should also be noted that the decision to extend general public access to the territory as a whole was taken without the benefit of either environmental or social impact assessment under the provisions of the Agreement.

I conclude this section with a comment on the issue of allocating access to wildlife resources for subsistence and non-subsistence uses. Although there is a strong tradition of non-native hunting in the region for food, the the Agreement defines subsistence use of wildlife as a specific characterstic of the Cree and Inuit domestic economies, and provides that subsistence, so defined, should be given priority. A very substantial effort was devoted, in the 1970's, to the documentation of contemporary levels of use, by the Cree and Inuit, of different species of mammals and fish - the Native Harvesting Research Project.[xxxiii] The idea, as earlier stated, was that the levels so determined would provide a basis for future decisions about the allocation of wildlife resources.

In the Cree case, the research ended 14 years ago. The 'current levels of harvesting' so determined were the subject of debate for several years, and the numbers were treated with

some reserve by both the government and native participants in the study. Few steps have been taken in the direction of managing levels of harvest on the basis of these figures. For most of the species in question, the uncertainty about population levels, population dynamics in relation to habitat, and current or past levels of harvest are such that it would be difficult if not impossible to make allocation decisions on the basis of the native harvesting research data. An additional difficulty is that there appears to be no agreement about the spatial or temporal scale appropriate for the application of these guarantees. Is the appropriate geographical unit a community's entire hunting territory, or an individual hunting territory (trapline)? If resource depletion (if that can be shown) is confined to a specific lake system, or an area subject to forestry operations by a particular company, what is the appropriate action? As time passes, it becomes more and more difficult to provide operational answers to these questions. Cree society is evolving, but - with the exception of fur-bearing animals and, to some extent, moose - there is little in the way of systematic monitoring of the quantity and composition of the Cree subsistence harvest. There is some evidence that the populations of key resource species have changed substantially in the intervening years (caribou on the increase, now perhaps in decline; moose in decline in the southern part of the territory; a recent sharp drop in the Canada goose population migrating along the eastern coast of James Bay). The evidence is circumstantial, and in any case is not a product of any deliberate attempt to generate field data for the territory in question.

As time passes, it becomes less and less clear how the methodological framework for giving priority to subsistence use of wildlife resources could be implemented. Meanwhile, major changes in land use (reservoirs for hydro-electric development, forestry and public accessibility) have taken place. These changes are modifying habitat on a large scale (of the order of 10,000 km^2 each by the early 1990's in the case of reservoirs and logging operations) and have brought in a number of 'recreational' hunters and fishermen which is large in relation to the number of Cree hunters and their dependents. The question thus arises: Is the Agreement, in practice, an appropriate instrument even for the

relatively circumscribed objective of protecting subsistence harvests in Cree community economies?

8. NATURAL RESOURCES, PUBLIC POLICY AND THE AGREEMENT

The James Bay and Northern Québec Agreement needs to be understood in the historical and geographical context of Québec during the 1970's. The opening of the James Bay territory for hydro-electric development, often associated with the name of Premier Robert Bourassa, itself is a stage in the expansion of Hydro-Québec's generating stations into river systems progressively more remote from the major population centres. Outardes, Bersimis, Manicouagan, Churchill Falls preceded, and in some respects prepared the way for the opening of the James Bay territory. Bourassa himself was an important stimulus, but the groundwork had been prepared during the Lesage administration in the 1960's (when René Lévesque was Minister of Natural Resources). The creation of the James Bay Development Corporation and the James Bay Energy Corporation owe much, however, to Premier Bourassa's vision of a distinct administrative framework for the administration and use of natural resources in the territory.

This administrative superstructure has changed substantially during the last twenty years, but it left a clear imprint in the organisational framework of the Agreement. The James Bay Development Corporation did not evolve as the umbrella organisation for hoped-for expansion of the mining, forestry and tourism/recreation industries. Both the mining and forestry sectors evolved on separate paths only very loosely related to the original administrative structures of the James Bay Region Development Act. The Council of SDBJ now includes representatives from the 'enclaved' municipalities in the southern part of the territory. To some extent, it serves as a vehicle for the expression of the political interests of these non-native municipalities - and as a symbol of their presence in the James Bay territory to the north.

The James Bay Energy Corporation, an extremely influential presence between 1974 and 1984, has since become the construction arm (société de gérance) of Hydro-Québec, and still appears to exercise a measure of autonomy in managing the construction of new hydro-electric project.

Public policies in relation to natural resources evolved over the last two decades, but the Agreement did not. The consultative and advisory bodies created by the Agreement with responsibilities in the area of lands and natural resources, broadly defined, might have been expected to serve as an interface with the Québec (and to some extent, the Federal) government. In practice, however, successive changes in central government policy swept through the region with only minimal attention to the consultative mechanisms set in the Agreement. I will try to illustrate here what this has meant in practice.

I have already noted the removal in 1985 of the restrictions on public access to the road infrastructure for hydro-electric development. These restrictions had originally been imposed for reasons of public security in 1975. As the Cree were able to use the roads freely, the northern communities had become accustomed to a situation in which they effectively shared access to the territory with the labour force directly involved in work at the hydro-electric sites.

When the controls were removed, the northern communities rapidly found themselves in the situation faced by the Cree in the sectors opened to logging in the years following the signing of the Agreement. Québec had, in effect, moved away in the 1970's from policies which had made it possible to reserve access to selected areas. Major private forest concessions were revoked, and fishing preserves with exclusive rights of access were also cancelled.

The prevailing view, now expressed in Québec's public lands legislation[xxxiv], is that roads built on Crown lands are public, and accordingly, access to adjacent lands is also unrestricted. In southern Québec, in areas of higher population density, this clearly represents a potential problem for recreational fishing and hunting, and Québec moved (late 1970's) to permit local associations of fishermen or hunters to assume joint responsibility for managing fishing or hunting in defined areas, including the restriction of public access. Such changes would have required fundamental changes to the wildlife management

provisions in the Agreement, and were not implemented in the James Bay territory.

The absence of restrictions on public access, and the construction since 1975 of something like 4-5,000 km of more-or-less trafficable road, is a direct challenge to the Cree's own system of hunting territory-based land tenure. Control over the use of wildlife in a given territory was tied to some real ability to exercise authority in matters of access to land and the use of wildlife. Now, in the early 1990's, there are extensive tracts within the James Bay territory where such control is at best difficult to exercise, and at worst impossible.

Forest policy also underwent a thorough transformation after the Agreement was in place. Québec (when the Agreement was negotiated) licensed mills on the basis of their capacity, and committed itself (by Order-in-Council) to furnishing a specified annual volume of timber for each mill. The government retained the prerogative of determining where that supply was to be obtained, and in practice the supply areas were established through bilateral agreements on programmes of construction of the roads needed to haul timber. Under this system, Québec retained responsibility for silviculture (planting and seeding) and administered, with some flexibility, directives aimed at protecting watercourses and river and lake shorelines. There were no regulations, as such, aimed at the environmental control over forest operations.

This policy of the 1970's resulted, rather rapidly, in an apparent problem of over-allocation and demonstrably poor restocking, in the James Bay territory and elsewhere. The first series of forest management plans, prepared between 1978 and 1980, revealed that despite a rather fragmentary forest inventory, the problems of allocation and regeneration were real and would require some form of resolution. In the interests, it seems, of stabilizing the economic base of the northern forestry and mining towns, the level of output was maintained into the early 1980's.

Québec then moved to introduce a tenure regime not unlike the system of timber management agreements in Ontario (known as

CAAF's in Québec).[xxxv] Under this arrangement, companies with licensed mill capacity are assigned a defined area from which they can take a pre-determined annual allowable cut. The government determines the level of harvest on the basis of available forest inventory and standardized assumptions about the relationship between silvicultural investment and the harvestable crop after a given time period. The company is responsible for maintaining the productivity of forestry lands, but does so using a uniform code which provides the financial link between management and permitted harvest. Under this new system, forest management practices (including environmental protection measures) are prescribed by regulation. Québec's intention was to create a 'level playing field' for the forestry companies, notwithstanding a certain diversity in the nature of the forest itself.

Repeated efforts were made by the Crees (directly as well as through the advisory mechanisms) to advocate measures appropriate for the James Bay territory (relating to winter habitat for moose, protection of hunting camps, scheduling of logging operations), but to no avail. Forest management is now tightly regulated, and the companies themselves have limited room to manoeuvre. There is no obvious recourse for the Cree hunter or Cree community; the state will tend to say that the subject should be pursued with the company, but the company itself is constrained by the regulatory framework, which provides little scope for bilateral accommodation with the Crees. It is a grim situation for the individuals directly concerned. Over time, it has become apparent to the Cree communities in the southern part of the territory that the Agreement does not provide them with a remedy for dealing with the impacts of forestry operations. Instead, the Agreement seems to have created substantial institutional obstacles to the search for accommodation between the the communities and the industries involved in the expanding development of natural resources.

The extent of the problem is well illustrated in the 'land use plans' prepared by the Ministère de l'Energie et des Ressources. These plans are intended to define those areas reserved for logging operations, and elsewhere in Québec, they form part of a 'schéma d'aménagement' (loosely translated as 'development

plan'), which is in turn the responsibility of a Regional Municipal County (MRC). The MRC's were created by the Parti Québécois government as a means of giving municipalities a direct role in what might be termed town and country planning. The James Bay Municipality was specifically excluded from these reforms, however, and no such planning mechanism is available for the James Bay territory. The land use plan is there, nevertheless, and it serves to illustrate the point that, with the exception of the Cree Category I lands, the territory is reserved for forestry and for hydro-electricity. A few recreational sites are identified, but these documents illustrate clearly the extent to which the state regards the Cree communities as enclaves within Category I lands, rather than as a regional society. In theory, according to the Forest Act, the land use plans were to be the framework for the negotiation of the boundaries of the individual CAAF's; in the James Bay territory, however, the CAAF's were first concluded, and the land use plan emerged later.

In matters of environmental policy, the James Bay territory is similarly isolated. The environmental protection provisions of the original Agreement (for the James Bay territory and the Inuit area further north) form a separate section of Québec's Environment Quality Act. The provisions relating to impact assessment are administered from the central headquarters of MENVIQ in Québec city. Québec now has a network of regional offices, two of which share responsibility for northern Québec. In practice, this has meant that during the last ten years, there has been no permanent presence of MENVIQ in the territory covered by the Agreement. There are occasional site visits to individual projects by staff from regional offices, but the linkages with the central operation are occasional. The fusion in 1994 of the two government departments responsible for the environment and for wildlife may, in the future, change this situation.

There are, in effect, two distinct and generally uncoordinated administrative regimes for environmental protection at work in the north, one flowing from the Agreement, and administered from Québec City; and the other flowing from Part I of the Environment Quality Act and administered by regional offices in Rouyn-Noranda and Chicoutimi. In neither case, however,

is there any permanent staff located anywhere in the territory covered by the James Bay and Northern Québec Agreement.

It should also be noted that Québec's environmental legislation has evolved steadily during the last fifteen years, partly in response to the experience acquired during those years. The provisions in the Agreement, however, have thus far been treated as essentially immutable, simply because they originate in the text of the Agreement. Thus, a variety of quite detailed administrative provisions (for such items as numbers of meetings, voting procedures, secretariat responsibilities) have come to be seen as timeless and fixed provisions of the Agreement. It should not come as a surprise, then, to find that the environmental provisions of the Agreement are gradually acquiring an anachronistic flavour, and a degree of rigidity that certainly was not intended at the time of negotiations.

The James Bay Advisory Committee on the Environment was created initially to provide a mechanism for periodic policy review. It was to bring together the Cree and the government departments (federal and provincial) working in the James Bay territory and provide a forum for regular review of policy issues of mutual interest. It was also intended, originally, as a device for monitoring impact assessment and making recommendations, where necessary, on procedural or substantive changes. Such a mechanism, can operate only if all the parties agree upon broad objectives. As a general rule, however, both MENVIQ and Environment Canada (who share responsibility for administrative support) have declined in recent years to appoint members from within the civil service or who have direct familiarity with or responsibility for environmental policies in northern Québec.[xxxvi] Government departments with responsibilities for lands, forests, wildlife, municipal affairs and public health are similarly unrepresented. Without informed representation, and without a research staff or research budget, the Committee's scope is clearly limited. The experience of the Advisory Committee illustrates rather well the observation that the success of such consultative bodies depends in considerable measure on the willingness and interest of the responsible governments in making effective and regular use of these bodies. If advice is not sought, if the members are

not appointed for their northern expertise, it is unlikely that the bodies will retain credibility.

It is in this sense that implementation is such an important guide as to the real intention of the negotiating parties. Advisory structures can be devised, mandates developed, and operating guidelines formulated. But, without commitment to make effective use of advisory committees in the development and application of policies towards natural resources, the structures cease to have any obvious function. Implementation is the key; and I believe that the evolution of public policy in the James Bay territory with respect to lands management, access, forestry, environmental protection and wildlife provides rather ample evidence that the structures originally intended to facilitate Cree participation in public administration, can very easily lose their meaning.

9. CONCLUSIONS.

How, in the light of the arguments here presented, should the Agreement be assessed? From the perspective of the Crees, it is not difficult to understand that there is a widespread sense of frustration. This frustration, it should be added, goes well beyond the domain of natural resources and the nature of the involvement of the Crees in their administration and use. The economies of the Cree communities have grown considerably more complex, and this complexity involves very striking fiscal dependency on the Federal and Provincial governments. In many ways, Cree society finds itself in an increasingly marginal, enclaved position in northwestern Québec, increasingly dependent, and increasingly disturbed by socially and culturally limited prospects for the future. But these are larger matters, beyond the scope of this essay.

In the administration of public lands and natural resources (wildlife, forests, hydro-electric resources, minerals), it has become apparent that the mechanisms in the Agreement have done very little to expand the economic and social prospects for the Cree communities. To many, the evidence is mounting that the consultative mechanisms are impractical as a means of influencing government policy; instead, they can serve too readily as a pretext for inaction or containment.

From Québec's perspective, the situation appears more ambiguous. The policies of containment pursued in the 1970's have been successful, in the technical sense that the central control of hydro-electric development, forestry and mining has undoubtedly been facilitated by the Agreement.

The James Bay territory now accounts for more than 50% of the installed electrical energy generating capacity in Québec, and now plays a significant role in the forest products industry. The forestry sector (which accounts for about 10% of Québec's GNP) now receives about one-sixth of its supply of its timber from northern Québec (more if the southern zone between the height of land and the 49th parallel of latitude is included). Mining and mineral processing have declined in relative importance in

Québec's economy, but the James Bay territory continues to be a major source of revenues from gold, copper and zinc production. The James Bay territory, now opened to the public, has effectively become Québec's new natural resources frontier.

That the Cree communities are only peripherally involved in these major sectors of the regional economy may, from a government perspective, not be problematic in the short term. In the longer term, however, the situation may be very different. The larger communities, such as Chisasibi and Mistissini, face a difficult future. Limited prospects for economic diversification beyond the public sector, and limited prospects for further expansion of subsistence harvesting, raise the intractable issue of the future employment of the growing fraction of the population that cannot readily be absorbed either into the (externally supported) public sector or into subsistence food production. Is it in the longer range interest of Québec to allow native communities on the geographical periphery to become increasingly marginal in this manner?

We have noted significant linguistic, cultural and technical barriers to participation in the advisory committee structures created in the fields of wildlife management, natural resources administration and environmental protection. Even if these barriers were to be overcome, the question would still remain - whose interests are ultimately being served by these consultative bodies?

The response has frequently been to conclude that more direct political representation is a more reliable and productive course, but communications between the Cree and the Québec government have been limited and not particularly warm during the last decade. One of the outcomes, however, has been the emergence of the Grand Council of the Crees as a strong and visible political structure; and the relative decline of the Cree Regional Authority (the body charged with the responsibility, among other things, of ensuring effective participation in the consultative mechanisms created by the Agreement in the area of natural resources administration). Increasing reliance on the media as a vehicle for the expression

of societal concerns in recent years, I suspect, also reflects this overall experience.

The parties to the Agreement had fundamentally different objectives in mind, and it is not at all clear that they were compatible. Indeed, this diversity of objectives was already apparent in the text of the Agreement. Moreover, the Agreement did not provide for any dispute-resolution mechanism to deal with divergent views about the objects of the Agreement.

The perhaps inevitable response is litigation. The regional Cree entities have initiated legal action in a disturbingly wide range of cases aimed, broadly speaking, at the implementation of the Agreement. Litigation, however, is costly, time consuming and uncertain as to outcome. Moreover, litigation tends to preclude other means of dispute resolution. Increasing divergence between the parties to the Agreement further reinforces the already widely held view that the resolution of conflicting interpretations must be sought through the courts.

A striking symptom of the malaise surrounding the implementation of the Agreement is the cost (both human and financial) of continuing recourse to litigation as the primary means of dispute resolution. The use of the courts is accompanied by a degree of resignation to a future in which recourse to legal (and other) expert advice becomes routine - even if that routine is hotly contested. This, in turn, contributes to a progressive transformation of the role of 'experts' (in law, as in other areas of public life). The relationship between consultant and client takes on a particular importance, and in turn shapes the way in which problems are defined and solutions sought.

It would be misleading to suggest that the problems of implementation I have sketched in this essay could be resolved simply by focusing on the operation of the consultative bodies created by the Agreement. There is room for improvement, no doubt, but it is the nature of Cree participation in the public administration of natural resources (indeed, in the natural resource-based economy) that needs to be examined. Participation in policy development requires a certain measure of symmetry

between the parties. But the relationships of power, authority and experience are highly asymmetric. It is unlikely that the situation discussed here will change without a broadly-based reassessment by the Québec government of the relationship which it wishes to have with its northern native communities in the future.

10. POSTSCRIPT - SOME RECOMMENDATIONS

At the workshop where this report was presented, there was some discussion about the steps that might have been taken to avoid the problems of implementation described in this essay. I have included, therefore, a brief survey of the measures that were discussed. Some of these measures could still usefully be applied to the implementation of the James Bay and Northern Québec Agreement.

1. Consequential/enabling legislation. Québec adopted separate legislation (i.e. in addition to the law approving and giving effect to the Agreement) for each of the main subject areas covered by the Agreement. A total of seventeen such bills were passed, covering such components as wildlife management, public land administration, environmental protection, health, education, remedial works for the La Grande project, and the creation of local and regional government bodies (Cree and Inuit). The status of the legislative texts in relation to the text of the Agreement is a source of some ambiguity, but the government of Québec evidently took the position that explicit legislation was required to give effect to the provisions of the Agreement.

The government of Canada took the opposite position. Instead, the legislation accepting the surrender (and giving 'force and effect' to the Agreement) was deemed to be sufficient. This means that in areas of joint management (e.g. wildlife, environment), the text of the Agreement has to be used alongside Québec's enabling legislation. Some of the confusion about the interpretation of the intent of the Agreement results from the fact that the parties use different texts for this purpose (lack of consistency between French and English texts is an additional problem).[xxxvii]

If Canada had proposed legislation to Parliament to give effect to the wildlife management and environmental protection provisions of the Agreement (which the Cree understood to

be the intention of Canada at the time of negotiations), this would have provided the parties with an opportunity to resolve many of the ambiguities and points of dispute arising from the text of the Agreement itself.

2. Dispute resolution. The Agreement did not provide for a mechanism for dispute resolution. With the passage of time, and as the parties have moved further apart, it becomes more difficult to see what would now be considered acceptable to the parties. The experience of the Cree strongly suggests that dispute resolution mechanisms need to be dealt with in the initial agreement between the parties to a land claims settlement.

3. Periodic evaluation. The experience documented here also suggests the need for a mechanism for periodic evaluation of different aspects of implementation, and for reporting back to the signatories. Again, such evaluation would presumably need to be undertaken by a body representing each of the signatories, and acceptable to them. The mechanism should have been included in the original agreement to avoid or minimise subsequent disputes about impartiality.

4. Implementation funding. Implementation takes place on a number of different time scales, and often requires additional resources (financial and technical). This was not identified as a central issue at the time of the negotiation of the Agreement, but over the years the absence of an appropriately supported institution to oversee, and support, implementation has come to be seen as a major shortcoming of the Agreement.

5. The need for a common data base. A conclusion which this author believes is often neglected is the dependence of effective implementation on an adequate information base. Evaluating mechanisms, and dispute resolution both rely on adequate and reliable data, and the adaptation of the agreement itself to changing circumstances similarly depends on the quality of the information available.

The wildlife management régime required continuing investment in the collection of data both about wildlife resources and their use by the Cree and Inuit and other user groups. Similarly, environmental and social impact assessment depends ultimately on the availability of a generally accepted data base, if only because it is unrealistic to expect individual proponents of projects to be in a position to generate primary ecological and socio-cultural data themselves.

Reference has also been made to the income security programme for Cree hunters. This has generally been seen as a successful initiative, but necessarily has significant restructuring effects on the economics of hunting, and its relation to other aspects of the Cree community economies. Effective adaptation of such a programme to changing community needs also requires the means to track in suitable detail the evolution of local and regional aspects of the Cree economy. Similar observations can be made in the fields of education, health and social services.

The absence of institutional arrangements for such data gathering is, in the author's view, a significant obstacle to implementation.

Finally, the extensive reliance of the Agreement on multiple tiers of committees (by no means limited to the advisory bodies described here) imposes heavy personal and institutional demands on Cree society. These demands are often overlooked, and themselves merit documentation and periodic evaluation.

Initiatives such as these might still be helpful in addressing the troubling circumstances of the James Bay and Northern Québec Agreement. They should be considered by other groups entering upon the implementation of other settlements, or in the process of negotiating such agreements.

Endnotes

i. An Act respecting the delimitation of the northwestern, northern and north-eastern boundaries of the Province of Québec. S.Q. 1898 cap. VI; S.C 1898, c.3. Québec Boundaries Extension Act, 1912, S.C. c.45.

ii. James Bay Region Development Act. S.Q. 1971, c. 34. 'The Territory of the James Bay region shall comprise the territory bounded to the west by the west boundary of the Province of Québec, to the south by the parallel of latitude 49° 00' North, to the east by the electoral districts of Roberval, Dubuc and Saguenay and by the extension northerly of the west boundary of the district of Saguenay and to the north by the parallel of latitude 55° 00' North.'

iii. 'For the purposes of this part (i.e. Municipality), the board of directors of the (James Bay Development) Corporation shall be substituted for the muncipal council and shall have all the rights, exercise the powers and be subject to the obligations of the municipal council in the exercise of its powers as such. The board of directors may, by order, delegate its powers to other persons.' (Art. 36, James Bay Region Development Act.)

iv. I.E. LaRusic, personal communication, based on the list of beneficiaries of the James Bay and Northern Québec Agreement.

v. Nobert, M, L. Roy, S. Beaudet et D. Vandal (1991). La fréquentation récréo-touristique des routes de la Baie James à des fins de chasse et de pêche récréatives. Ressources et Aménagement du territoire, vice-présidence Environnement, Hydro-Québec.

vi. Québec's Forest Resources and Industry. Statistical information - 1990 edition. (1991). This document contains regional forest products data using 'Northern Québec' (i.e. N. of the 49th parallel) as a separate category.

vii. Vallières, Marc. Des Mines et Des Hommes. Histoire de l'industrie minérale québécoise. (1989). A useful guide to the evolution of the mining towns and the mining industry in northwestern Québec. There is, to my knowledge, no comparable synthesis of historical developments in the forest products industry.

viii. Lebel sur Quévillon (pop. ca. 5,000) was built to serve Domtar's kraft mill, with a capacity to handle 1.5 x 10^6 m^3 per year. Domtar received for this purpose a concession of 16,000 km^2 which (after revocation) later became Crown forest management unit no. 87.

ix. See Clermont Dugas, Les Régions Périphériques, Les Presses de l'Université du Québec, 1983 pp. 93-99.

x. Stratégie régionale nord-ouest: Proposition de stratégie régionale en regard des engagements que le ministère des Terres et Forêts a envers les industriels du

Nord-ouest. Manuscript. March, 1979, Ministère des Terres et Forêts.

xi. The information in this paragraph is drawn from notes taken by the author during meetings of the hunting, fishing and trapping sub-committee (HFTSC) created during the negotiation of the JBNQA in 1974 and 1975.

xii. See, for example, from contrasting perspectives: Boyce Richardson, Strangers Devour the Land, Douglas and McIntyre (1991), and: Roger Lacasse, Baie James - une Épopée, Éditions Libre Expression (1983).

xiii. Salisbury's report for the JBDC is entitled 'Development and James Bay: Social implications of the proposals for the hydro-electric scheme.' (June, 1972); the work of his students is summarized in Salisbury, R. F., A Homeland for the Cree, McGill-Queen's, 1986.

xiv. Feit, H. Waswanipi Realities and Adaptations: Resource Management and Cognitive Structures. Ph. D. dissert. McGill University, Montréal (1978).

xv. Toby Morantz, pers. comm. and D. Francis and T. Morantz 'Partners in Furs: A History of the Fur Trade in Eastern James Bay, 1600-1870.' McGill-Queen's (1983).

xvi. I.E. LaRusic (pers. comm.). Based on statistics used by the Income Security Programme for Cree hunters and trappers.

xvii. The regional Cree public sector accounts for approximately 800 full-time positions (predominantly community administration, education and health services). This public sector accounts for ca. 20% of the resident population aged 20-64, and for about 45% of total personal income. Source: Socio-economic profile of the Cree communities in Northern Québec, 1989. GCCQ/CRA (1990).

xviii. For the significance of the concept of the usufruct, see the judgement of Malouf. A. , J., *Kanatewat et al. vs. The James Bay Development Corporation et al.* (1974. Cour supérieure du Québec. RP 38.

xix. See, in this respect, the judgement of the Court of Appeal in *James Bay Development Corporation et al. vs. Kanatewat et al.*(1975) CA 166.

xx. Entente de Principe, 15 November, 1974; between: The Grand Council of the Crees (of Québec) and the Northern Québec Inuit Association; and le Gouvernement du Québec, la Société d'Énergie de la Baie James, la Société de Développement de la Baie James and La Commission hydroélectrique de Québec; and the Government of Canada.

xxi. Had the Cree accepted lands under Provincial jurisdiction, the total allocation would have risen to 3,000 sq. miles (7,770 km^2) - about 2.2% of the combined area of the Cree hunting territories.

xxii. Observations based on the author's participation in the sub-committee (1975) responsible for land selection. Officials from the Ministère des Terres et Forêts

were not directly involved in the original negotiations regarding land categories and quotas in 1974.

xxiii. Early in 1975, Québec, at the request of the Minister of Finance, sought changes to the royalty provision. The explanation provided at the time was that a regionally-based royalty, on a range of different types of development activity, would prove difficult and costly to administer.

xxiv. Statement of the Government of Canada on Indian Policy, 1969.

xxv. The full reference (including subsequent amending agreements) is: The James Bay and Northern Québec Agreement and Complementary Agreements, (1991) Government of Québec. Many of the observations that follow are based on the author's experience as a participant in talks relating to wildlife, environmental protection, land tenure and land selection, and on certain technical matters relating to the La Grande project.

xxvi. The James Bay and Northern Québec Native Claims Settlement Act, 25-26 Eliz. II c.32; Loi approuvant la Convention de la Baie James et du Nord québécois, LRQ, c. C-67.

xxvii. C.Q. - H.-Q. Mercury Agreement (1986). Notwithstanding the title (Crees of Québec/Hydro-Québec), Québec was a party to and signatory of this agreement.

xxviii . The documents produced by Hydro-Québec and SEBJ for purposes of environmental authorisation are known as 'draft design reports' (not as impact statements) and are also prepared under the authority of the Hydro-Québec as a precondition for government approval of project financing. The descriptive approach used in these reports generally follows the environmental policy statement in Section 8 of the JBNQA.

xxix. The authority generally used is art. 33 of the Forest Act (R.S.Q. c. F-4.1): 'Any person may use a forest road providing he respects the norms prescribed by regulation of the Government in that respect. Notwithstanding (the previous sentence), the Minister may, for reasons of public interest, limit or prohibit access to a forest road.'

xxx. The James Bay Crees have initiated litigation (in both Federal and Provincial Courts) to subject the La Forge-1 and Eastmain-1 projects to environmental and social impact assessment pursuant to Section 22 of the Agreement. They have also sought to have the Federal assessment procedure (i.e. EARP) applied to the Great Whale, LA-1 and EM-1 projects. An action in injunction has also been taken against the Great Whale project.

xxxi. The provisional boundaries in the text of the Agreement are only approximate as to the area of the entitlement for each community. It is these boundaries that still have legal effect, however. Thus, the boundaries which were surveyed at considerable public expense between 19878 and 1980 do not, in fact, correspond to

the contemporary legal definitions of the boundaries of either IA or IB lands.

xxxii. Complementary Agreement no. 10 (April 18, 1989) to the JBNQA sets out the resulting provisions for the application of the right of first refusal.

xxxiii. The results of the seven-year investigation are reported in 'The Wealth of the Land: Wildlife harvests by the James Bay Cree, 1972-73 to 1978-79., released by the James Bay and Northern Québec Native Harvesting Research Committee. (1982).

xxxiv. Act respecting the Lands in the Public Domain (R.S.Q. c. T-8.1).

xxxv. Contrat d'approvisionnement et d'aménagement forestier (timber supply and management contract).

xxxvi. The Québec government has also implemented a general policy whereby persons named to advisory committees are not remunerated for time spent in committee activities. This policy has served as a further constraint on the kind of analysis that the James Bay Advisory Committee on the Environment can undertake.

xxxvii. The Cree-Naskapi Act (of Québec) (1984) is an exception to this rule. Québec required provisions for public servitudes (amongst other things) which were incompatible with the Indian Act, and therefore required special legislation. This provided the Cree (as well as Canada and the Naskapi) with an opportunity to develop a statute which would have the effect of replacing the Indian Act for most purposes where the James Bay Cree and Naskapi are concerned.