

TEXTE ANGLAIS

CET - 9M
C.P. - P.L. 122
Terres du
domaine de l'État

COMMENTS OF THE GRAND COUNCIL OF THE CREES (EYYOU ISTCHEE)/

CREE REGIONAL AUTHORITY

ON BILL 122

An Act to amend the Act respecting the lands in the domain of the State and other legislative provisions

The present document contains the comments of the Grand Council of the Crees (Eeyou Istchee)/ Cree Regional Authority (hereinafter "GCC(EI) / CRA") on Bill 122, *An Act to amend the Act respecting the lands in the domain of the State and other legislative provisions* (« Bill 122 »).

The questions relating to the management and the elaboration of a land use plan for the territory contemplated by the James Bay and Northern Quebec Agreement are a major concern for the Quebec Crees. While we were unable to submit our comments before the Parliamentary Commission during the public study of the Bill, we insist on sharing our concerns on the matter.

1. CHAPTER 1.1 PROVISIONS SPECIFIC TO NATIVE COMMUNITIES

Bill 122 introduces a provision permitting the Government to reach agreements with Native communities in order to achieve a better balance between the management of lands in the domain of the State with the food, ritual or social activities of the Native communities.

The GCC(EI) / CRA welcomes this initiative. However, it is submitted that the text of proposed section 1.1 is too restrictive with respect to the rights of Crees provided for, notably, in the James Bay and Northern Quebec Agreement.

Indeed, Section 24 of the *James Bay and Northern Quebec Agreement* specifically provides that the Crees' rights to harvest exercised over the Territory apply to harvesting activities for personal and community purposes as well as for commercial purposes related to the fur trade and commercial fisheries. These are substantive rights and treaty rights protected by section 35 of the *Constitution Act of 1982*. It goes without saying that the management of these lands as foreseen in the *Act respecting the lands in the domain of the State* has an impact on the Crees' activities, whether they are for food, ritual, social or commercial purposes.

The Supreme Court of Canada confirmed on many occasions (see *Haïda Nation v. B.-C. (Minister of Forestry)*, [2004] 3 SCC 511, *Tlingit First Nation of Taku River v. B.-C.*, [2004] 3 SCC 551 and *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, 2005 SCC 69) that a process of consultation and accommodation is the best way to ensure a balance between the interests and ambitions of Native communities and governments respecting the development of the Territory. The Court also found that the implementation of treaties is governed by the obligation to act honourably, which includes the obligation to consult and

accommodate and in certain cases the obligation to obtain the consent of the Aboriginal Nation or the Native people concerned.

Furthermore, the *Agreement concerning a new relationship between the Gouvernement du Québec and the Crees of Québec*, published by Order in council 507-2002, 2002, 21 O.G. II, 3205, and known as the *Paix des Braves*, contains at section 3.13 provisions concerning the development of a road network on the territory covered by Chapter 3. More particularly, sub-sections 3.13.1 c), 3.13.2 and 3.13.3 refer to matters aimed by the *Act respecting the lands in the domain of the State*.

Sub-section 3.13.3 concerns the implementation of a coordination table on access. This sub-section was amended by section 2 of the *Agreement to amend the Agreement concerning a new relationship between the Gouvernement du Québec and the Crees of Québec*, published by Order of council 897-2004, O.G., Part 2, October 6th 2004, 136e year, no. 40, 4299.

Two (2) reports were produced by this table, one dated July 22, 2003 and the other dated December 14, 2004. The latter makes reference to a draft agreement filed by the Cree members of the table, which relates, among other things, to various issues contemplated by Division II of Chapter III and Chapter IV of the *Act respecting the lands in the domain of the State* and the concept of *Plan Régional de Développement des Terres Publiques (PRDTP)*.

RECOMMENDATION

Consequently, the GCC(EI) / CRA recommends that section 1.2 be added to section 1.1, which could read as follows:

"1.1. To achieve a better balance between the management of the lands in the domain of the State and the rights of the Crees provided for in the James Bay and Northern Quebec Agreement the Government is authorized to enter into agreements with the Cree Regional Authority on any matter aimed by the present Act, including those set out in Division II of Chapter III or Chapter IV.

Subject to the provisions of the James Bay and Northern Quebec Agreement, the agreements have precedence over this Act and the regulations.

The agreements entered into under this section must be tabled in the National Assembly within 15 days of the date on which they are signed if the Assembly is sitting, or, if it is not sitting, within 15 days of resumption. They must also be published in the Gazette officielle du Québec."

The second sentence of the second paragraph of proposed section 1.1 provides that: "However, a community, undertaking or person governed by an agreement is exempted from the application of inconsistent provisions of this Act or the regulations only to the extent that the terms of the agreement are respected." The GCC(EI) / CRA fails to see the relevance of such a provision and therefore recommends that this paragraph be removed.

2. CONSULTATION WITH THE CREE REGIONAL AUTHORITY REGARDING THE LAND USE PLAN

Sub-paragraph 1 of section 24 of the actual *Act respecting lands in the domain of the State*, R.S.Q. c. T-8.1, provides that the Cree Regional Authority is consulted when a land use plan respects lands comprises the territory of the James Bay region as defined in the schedule of the *James Bay Region development and municipal organization Act*, R.S.Q., c. D-8.2, the said territory being defined as the territory contemplated by the JBNQA, from the 49th to north of the 55th parallels.

Sub-paragraph 2 of section 24 of the actual *Act respecting lands in the domain of the State* provides that the Cree Regional Authority must also be consulted when the land use plan concerns the territory covered by the *Act respecting Cree, Inuit and Naskapi Native Persons*, R.S.Q. c. A-33.1, when it concerns Cree trapping lands as determined pursuant to the *Act respecting hunting and fishing rights in the James Bay and New Quebec Territories*, R.S.Q. c. D-13.1.

Section 24 is part of Division III of Chapter II of the *Act respecting lands in the domain of the State*.

Section 6 of Bill 122 provides for the replacement of Division III of Chapter II by new provisions. To that effect, the proposed section 23 of the *Act* enumerates the organisms or associations. Surprisingly, the Cree Regional Authority is not mentioned. Section 23 refers instead to consultation with native communities or groups of native communities. In other words, Bill 122 will eliminate the legal obligations incumbent upon the Ministre des affaires municipales, du sport et du loisir and the Government of Quebec to obtain the advice of the Cree Regional Authority before the Government approves a land use plan.

The GCC(EI) / CRA profoundly disagrees with the proposed amendment to section 23 of Bill 122 and asks that amendments be made to include the Cree Regional Authority in the list of organisms and associations mentioned at said section.

RECOMMENDATION

The GCC(EI) / CRA recommends that section 6 of Bill 122 be amended to include the Cree Regional Authority in the list of organisms and associations mentioned at the proposed section 23.

The GCC(EI) / CRA has been informed that the Ministre des Ressources Naturelles et de la Faune intends to follow through on our demands and submit to the National Assembly a proposition to modify section 6 of Bill 122 in order to integrate the provisions of sub-paragraphs 1, 2 and 3 of section 24 of the current *Act*, which determine the organisms to be consulted for territories contemplated by the *James Bay and Northern Quebec Agreement* and the *Northeastern Quebec Agreement*. This change meets our demand and consequently, it is welcomed.

3. CONSULTATION PERIOD REGARDING LAND USE PLANS

Bill 122 substantially reduces the consultation period for organisms and associations involved.

The last paragraph of section 24 of the actual *Act respecting lands in the domain of the State* provides for the following:

"The land use plan may be submitted to the Government for approval after the expiry of 90 days from the date of transmission of a proposed plan to the Regional Authority, Regional Government or municipality concerned, unless the latter has advised the Minister that it intends to state its views or to propose amendments to the proposed plan; in the latter case, the plan cannot be submitted to the Government for approval until the expiry of 180 days from the date of transmission of the proposed plan or until the Regional Authority, Regional Government or municipality gives notice in writing of its approval of the proposed plan. "

Therefore, in the case of a land use plan concerning the territory contemplated by the JBNQA, the plan can only be submitted to the Government after a minimum delay of 90 days from the date of transmission to the Cree Regional Authority or the concerned municipality. However, if the concerned organisms have told the Minister of their intention to present observations or propose modifications, this minimum delay is raised to 180 days. This 180 day period can be reduced if the concerned organisms have agreed, in writing, with the proposed plan.

Sections 24 and 25 of Bill 122 modify the consultation periods. The 90-day and 180-day periods are replaced by a single 120-day period. Also, section 25.1 modifies the consultation period in the case of a modification or revision of the land use plan. The consultation period is therefore left to the discretion of the Minister, who will determine its length according to the importance of the proposed modification. However, it cannot be less than 45 days.

The GCC(EI) / CRA is of opinion that the 120-day period is too short to allow for an appropriate consultation. Indeed, the experience lived in 1989 and 1990 during the review of the first land use plans proposed by the Ministry has shown that the 180-day period was barely sufficient for an appropriate consultation in each of the Cree communities.

The importance of the subjects covered by the land use plan requires that the content of the consultation be of the highest level. In other words, the obligation to consult regarding the land use plans is at a high level in the continuum to which the Supreme Court refers, notably, in *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, 2005 SCC 69.

RECOMMENDATION

Consequently, the GCC(EI) / CRA recommends that the consultation period be maintained at, a minimum, 180 days.

The present comments and recommendations should not be interpreted in a way which affects, reduces or violates any right, privilege or interest of the Crees under the James Bay and Northern Quebec Agreement.

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