

## Aboriginal Law - Recent agreements between the Government of Quebec and Aboriginal People

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**September 2012** — An important agreement between the Government of Quebec and the Crees was signed over the course of the summer regarding the governance of the James Bay Territory.

### AGREEMENT ON GOVERNANCE IN THE EYYOU ISTCHEE JAMES BAY TERRITORY BETWEEN THE CREES AND THE GOVERNMENT DU QUEBEC

- The *Agreement on governance in the Eeyou Istchee James Bay Territory* was signed on July 24, 2012 in Quebec City between the Grand Council of the Crees, the Cree Regional Authority and the Government of Quebec. The Agreement is the culmination of a process established by the parties in a Framework Agreement made public on May 27, 2011;
- The Agreement aims to grant wider governance powers, including over lands and natural resources, to the Crees on the James Bay territory – that is south of 55th parallel, Category II lands of the Crees of Whapmagoostui, and the trapline territories of the Crees of Mistissini and Whapmagoostui;
- The James Bay territory is already governed in part by the Crees under the *James Bay and Northern Quebec Agreement*, which is a formal treaty between the Crown – federal and provincial, the Crees and the Inuit, and which grants the Crees and Inuit political autonomy, management authorities, hunting, fishing and trapping rights and financial compensations;
- Under the *James Bay Agreement*, the James Bay territory is divided in three land categories – I, II and III. Category I lands are allocated to and administered by the Aboriginal communities for their exclusive use. Category II lands are public lands over which Aboriginals have exclusive hunting, trapping and fishing rights. Category III lands are public lands which are subject to Aboriginal special privileges, such as the right to hunt, trap and fish at all times of the year. The Provincial Crown, Hydro-Québec, and any person duly authorized by them – including mining companies, have the right to develop Category III lands;
- The new Agreement grants wider autonomy and responsibilities to the Crees with regards to governance on Category II lands, and wider participation of the Crees with regards to the governance on Category III lands, which form the vast majority of lands on the James Bay territory;
- Category II lands will become solely governed for municipal and supra-municipal purposes by the Cree Regional Authority, which will be eventually re-named the “Cree Nation government”;
- The Municipality of James Bay, which is formed of Jamesian – non-Aboriginal residents, currently governs Category III lands for municipal purposes. Under the Agreement, a new regional government would be created – the “Regional Government of Eeyou Istchee – James

Bay”, which will include Crees and Jamesian representatives in equal numbers for a period of ten years. The new Regional Government will replace the current Municipality of James Bay. After ten years, the representation of Crees and Jamesians will be based on resident population in accordance to a formula to be agreed upon;

- The new Regional Government will exercise the jurisdiction, powers and functions currently vested with the Municipality of James Bay on Category III lands;
- The new Regional Government will further exercise supra-municipal powers, including those of regional county municipalities over the planning of land use and development in the territory, management of water-courses and lakes and planning of waste disposal. Land use and development plans of the new Regional Government will need to comply with governmental orientations with regard to Category III lands;
- The Regional Government will exercise the functions of a “regional land and natural resource commission” in respect of Category III lands. The powers and mission of such commissions are to determine the potential for land and natural resource development by drawing up regional plans with the Ministry of Natural Resources and Wildlife for integrated land and natural resource development (“PRDIRT”). Such plans may include regional objectives with regard to energy and mines;
- Essentially, under the Agreement, the structure of the new Regional Government will allow the Crees to participate in the establishment of regional guidelines with regards to the conservation and development of lands and natural resources on the James Bay territory, and to provide advice to the Ministry of Natural Resources and Wildlife in that regard;
- With regard to mining specifically on Category III lands, the Agreement provides that the Government of Quebec undertakes to notify the new Regional Government of the grant of new mining claims. The Government further undertakes to inform those applying for claims on Category III lands of the relevant provisions of the *James Bay Agreement*;
- Under the Agreement, third party interests in the James Bay territory, such as permits, leases and mining claims are preserved;
- Governmental authorizations and permits for mining activities will remain issued by the Quebec and federal Governments, subject to applicable consultations with relevant Aboriginal authorities and application of the environmental and social assessment process established under the *James Bay Agreement* and applicable legislation;
- The implementation of the Agreement will necessitate the adoption of new legislation and amendments to several existing pieces of legislation and regulation, which the Quebec Government undertook to table without delay.
- The provisions of the legislation implementing the Agreement will need to be closely scrutinized. Currently, staking or designation of claims, exploration and development of mining projects are excluded from the municipal land use and planning regime;

## OTHER AGREEMENTS TO FOLLOW CLOSELY

- On August 31, 2012, the Government of Quebec announced that it had agreed to a Framework Agreement with the Atikamekw to strengthen their political, economic and social relations;
- The Framework Agreement concern the territories of the Manawan Community, North of Lanaudière Region, of the Opitciwan Community, three hundred kilometres West of Roberval, and of the Wemotaci Community, on the banks of the Saint-Maurice River;
- The Framework Agreement is a roadmap for the negotiation of a formal agreement between the Crown and the Atikamekw. The Framework Agreement covers issues related to the participation of Atikamekws in decisions concerning their territories, access to natural resources and economic benefits related to their exploitation;
- Before being signed and reach a more formal level, the Framework Agreement will have to be submitted to and approved by the members of the concerned Atikamekw Communities, which should be done in a near future.

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