



Comité consultatif pour l'environnement de la Baie James  
James Bay Advisory Committee on the Environment  
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## **Progress Report**

# **PRELIMINARY RECOMMENDATIONS AND INITIATIVES CONCERNING THE PUBLIC PARTICIPATION PROCESS FOR THE JAMES BAY TERRITORY**

Adopted by the James Bay Advisory Committee  
on the Environment

September 2012

## ***Table of Contents***

Introduction.....	2
Mandate of the Subcommittee on Public Consultation .....	2
Nature of this Progress Report .....	3
Context.....	4
Research Initiatives .....	7
A) Case Study: The Matoush Advanced Uranium Exploration Project.....	8
B) Comparative Review of Public Participation Systems.....	11
C) INRS-DIALOG Research .....	13
Preliminary Conclusions & Recommendations .....	14
Appendix I      Composition of the Subcommittee on Public Consultation.....	16
Appendix II     Guiding Indicators and Criteria for Research Initiatives.....	17
Appendix III    Activities related to the Matoush Advanced Uranium Exploration Project Case Study – Federal procedure .....	18
Appendix IV     Eastmain 1A and Rupert River Diversion Hydroelectric Project .....	20

## ***Introduction***

The James Bay Advisory Committee on the Environment (JBACE) has the mandate to review and oversee the administration of the environmental and social protection regime established in Section 22 of the James Bay and Northern Quebec Agreement (JBNQA), including the environmental and social impact assessment and review procedure.

The JBACE first verbalised the need to bring attention to the issue of public participation or consultation during environmental assessments in its 2005-2007 Strategic Plan. From 2007 to 2009, the JBACE initiated a research project in conjunction with the Université de Montréal to assess how in line the current process is with recognized international best practice principles of public participation, without losing sight of the guiding principles of Section 22 of the JBNQA. It is in this perspective that the JBACE established the Subcommittee on Public Consultation (Subcommittee, hereafter), in December 2009.

Expertise in public consultation regimes in northern regions is limited, and the James Bay region is no exception. For this reason, the JBACE invited experienced environmental impact assessment practitioners in order to formulate and enrich the reflections of the Subcommittee. In addition to members of the JBACE, the Subcommittee is composed of professionals from various government departments and the Cree Regional Authority (CRA) and members of the Evaluating Committee (COMEV) and the review bodies established pursuant to Section 22 (COMEX & COFEX-South). Several university researchers have also contributed to the Subcommittee (see [Appendix I](#)).

## ***Mandate of the Subcommittee on Public Consultation***

The mandate of the Subcommittee is to produce recommendations for the JBACE to improve the public participation process, potentially leading to the development of ‘best practice’ and general guidance materials for public participation during the environmental and social impact assessment and review of development projects in the James Bay Territory under the Section 22 (JBNQA) procedure. These may apply for the federal and provincial review process outlined in this section.

## ***Nature of this Progress Report***

This progress report highlights the ongoing research of the Subcommittee on Public Consultation. As a complete treatment of the research initiatives is still pending, the information provided in this report does not necessarily touch on all of the research initiatives or criteria undertaken to date.

This preliminary report, offers recommendations that propose tangible short to midterm solutions or courses of action that may be implemented quickly. These recommendations and courses of action may well correspond with those expressed by the Provincial Administrator (Deputy Minister of the Ministry of Sustainable Development, Environment and Parks) in correspondence with the JBACE. Additional longer term or larger scale recommendations or potential actions may still be developed over time.

### **Terminology**

#### **1. Informing the public<sup>1</sup>**

To provide the public with balanced and objective information to assist them in understanding the problem, issues, alternatives, opportunities and/or solutions.

#### **2. Public consultation<sup>2</sup>**

Process in which the public is provided with information and their response is actively sought.

#### **3. Public hearing<sup>3</sup>**

An institutional method for public involvement to promote information exchange and interaction used within a statutory decision-making process and usually conducted in a quasi- (or actual) judicial manner.

#### **4. Public participation<sup>4</sup>**

A generic term for all types of activities designed to include the public in the decision-making process, prior to and after a decision, and in which the role of the public is direct and acknowledged.

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<sup>1</sup> International Association for Public Participation (IAP2), 2011. *Spectrum of Public Participation*. Online: [www.iap2.org/associations/4748/files/IAP2%20Spectrum\\_vertical.pdf](http://www.iap2.org/associations/4748/files/IAP2%20Spectrum_vertical.pdf), last accessed August 22<sup>nd</sup> 2012.

<sup>2</sup> International Association for Impact Assessment (IAIA), 2012. *Multilingual Glossary of Impact Assessment*. Online: <http://web2.concordia.ca/iaia/index.php?f=all>, last accessed August 22<sup>nd</sup> 2012.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

## Context

Public consultation and participation is a key component in the environmental assessment and review process for development projects. It is crucial to raising greater awareness of project-related issues and impacts, developing agreements and approaches to maximize benefits, and identifying innovative solutions to reduce negative impacts. A systematic and transparent process of ensuring public participation and access to information within the context of the assessment or review of development projects can stimulate a dialogue between stakeholders, foster informed decisions, improve project design, and ultimately strengthen the assessment or review procedure. Public participation, with a clear connection to the assessment and decision-making processes, is important in promoting a concerted vision of development.<sup>5</sup>

Section 22 of the James Bay and Northern Québec Agreement (JBNQA) outlines a unique environmental and social protection regime that provides for:

1. An environmental and social impact assessment and review procedure designed to minimize the environmental and social impact of development when negative on the Native people and the James Bay Territory (hereafter ‘Territory’). At the review phase, a provincial committee (COMEX) or a federal committee (COFEX-South) reviews the impact studies according to the relevant jurisdiction.
2. A special status for the Cree people over and above that provided for in procedures involving the general public through consultation or representative mechanisms wherever such is necessary and in all aspects of the assessment and review procedure. This special status of involvement is a fundamental element of the environmental and social protection regime outlined in Section 22.<sup>6</sup>

The Cree are thus entitled to participate, and are represented in all facets of the Section 22 procedure, through consultation or representation on the procedure’s evaluating and review bodies.<sup>7</sup> This special status of Cree involvement is one of the most notable differences relating to the process of Aboriginal consultation applicable in southern Québec, when decisions are made in accordance with Chapter 1 of Québec’s *Environment Quality Act* (RSQ Ch. Q-2).

Another significant difference lies in how public consultations or hearings are triggered and in how they are conducted.

During the assessment and review of projects per the Section 22 procedure, the evaluating and review bodies (COMEV, COMEX and COFEX-South), exercise discretion and flexibility in determining the need, scope and depth of public consultation in relation to the scale and nature of the proposed development project. Generally, there are two moments during the Section 22 procedure when public consultations or hearings may be held:

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<sup>5</sup> These principles are advocated by IAIA. See, *Principles of Environmental Impact Assessment Best Practices*, 1999. Online: [http://www.iaia.org/publicdocuments/special-publications/Principles%20of%20IA\\_web.pdf](http://www.iaia.org/publicdocuments/special-publications/Principles%20of%20IA_web.pdf), last accessed January 18<sup>th</sup> 2012.

<sup>6</sup> See par. 22.2.2c of the JBNQA.

<sup>7</sup> Cree representatives sit on the Evaluating Committee (COMEV), the Provincial Review Committee (COMEX) and the Federal Review Panel (COFEX-South).

1. When the Evaluating Committee (COMEV) assesses the project, before making recommendations to the administrator on the extent of impact assessment and review to be undertaken; and,
2. When the Provincial Review Committee (COMEX), or the Federal Review Panel (COFEX-South), studies the environmental and social impact statement, before making a recommendation to the administrator concerned.<sup>8</sup>

Public consultations are indeed possible over the course of the Section 22 procedure but are, in practice, normally only held during the review phase.

If the review bodies deem that a given project warrants one or more public consultations, the protocols for the requisite public consultations are then devised on a project-by-project basis. Pre-arranged descriptive reference material and operating guidelines for these consultations are thus not immediately available to the public once triggered during the review of development projects under the Section 22 procedure.<sup>9</sup> However, the high degree of flexibility of the Section 22 procedure may offer a facilitating means of respecting the Cree special status of involvement, through applicable consultations that are scheduled and adapted according to project-specific attributes.

Recent experiences with public consultations have proved encouraging. Public consultations during the review of significant development projects are now commonplace under the Section 22 review procedure. Some very recent examples include the public consultations that were conducted for the [Matoush Advanced Uranium Exploration Project](#), and the [Route 167 North Extension Project in the direction of the Otish Mountains](#).<sup>10</sup>

The [Eastmain 1A and Rupert River Diversion Hydroelectric Project](#) offered an exceptional instance in which public consultations were indeed held during both the evaluation and review phases of the Section 22 procedure. The project also continues to be the object of an ongoing public information, consultation and participation program relating to the monitoring and follow-up of the mitigation measures developed over the course of the review process for the project. A brief note on the project is available in [Appendix IV](#).

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<sup>8</sup> Once the impact statement for a project has been submitted to the review body, interested Cree communities may, through their local or regional government, make representations, verbally or in writing, to the review body within 30 days. Such representations may include representations from interested individuals if authorized by the local government (paragraph 22.6.12).

<sup>9</sup> This statement refers to detailed information regarding specific consultations and not to the general descriptive information regarding the Section 22 environmental assessment and review procedure, currently available on the Ministry of Sustainable Development, Environment and Parks' website.

<sup>10</sup> Detailed information regarding the public participatory activities is unfortunately not available for the Matoush Advanced Exploration Project, or for the Route 167 North Extension Project, on the Ministry of Sustainable Development, Environment and Parks' website but is available on the Canadian Environmental Assessment Agency's online registry.

Although positive, the ad hoc nature of the consultations held in relation to these projects impart several issues that remain problematic:

- Detailed information regarding the projects, hearings, or consultations remains difficult to access and, in some cases, has not been made public;
- Insofar as the consultation protocols must remain flexible and adaptable in light of the specific project in question, the protocols for these ad hoc consultations are not necessarily consistent or comparable across projects;
- It remains difficult to holistically document and evaluate the overall progress, success and efficiency of these consultations once completed;
- Best practices or protocols cannot be easily discerned or documented from such ad hoc initiatives.

In terms of southern Québec, the Minister of Sustainable Development, Environment and Parks may decide to mandate the *Bureau d'audiences publiques sur l'environnement* (BAPE) to hold public consultations.<sup>11</sup> The BAPE is dedicated to ensuring and coordinating public information and consultation on designated projects subject to the impact assessment process or any other question related to the quality of the environment as submitted to it by the Minister.<sup>12</sup> Formal BAPE public hearings operate under a strict set of guidelines that ensure an independent, transparent, and structured forum for the collection of public comments and concerns. This differs from the situation in the Territory. Here, the review bodies operate and undertake the public consultations for projects subject to the Section 22 review procedure, but in the absence of any fixed guidelines.

The flexibility and adaptability of the consultation process applicable to the Section 22 procedure may offer a potential means of respecting this unique status of involvement. However, room for updating and improving the consultation protocols for project assessments and reviews conducted under the procedure remains, particularly in terms of transparency and public access to information.

It is thus the intention of the JBACE to work towards tabling ameliorative recommendations regarding public participation and consultation in assessments and reviews conducted under Section 22, without affecting the flexibility and adaptability of the existent regime.<sup>13</sup>

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<sup>11</sup> An important distinction must be made:

Public information periods, carried out by the BAPE, apply for all development projects subject to environmental assessment and review in southern Québec. However, Québec citizens may request of the Minister the mandating of formal public hearings. If the Minister concurs with the citizen's request, he may then mandate the BAPE to conduct formal public hearings relating to the project's review.

<sup>12</sup> Per Section II.1 - Articles 6.1 and 6.3 of Québec's Environmental Quality Act.

<sup>13</sup> 'Flexibility' refers to the discretion of the review bodies when adapting public information, consultation or other participatory activities in the context of assessment and reviews under the Section 22 procedure, in light of the nature and scope of the project, cultural contexts, traditions, perspectives, values, language, timing, etc.

## **Research Initiatives**

Since its inception, the Subcommittee on Public Consultation has worked on three research initiatives:

- A. An assessment and case study of the Matoush Advanced Uranium Exploration Project.
- B. A comparative review of the participatory processes under the *Canadian Environmental Assessment Act* (CEA Act), in the Mackenzie Valley, the Yukon and Nunavut.
- C. Research by INRS-DIALOG affiliated members<sup>14</sup> on the socio-cultural aspects of First Nation participation in the assessment of large projects under the CEA Act.

These research initiatives are aimed at examining the current participation process in the light of six internationally recognized key indicators of meaningful public participation<sup>15</sup> and then making recommendations based on these best practice indicators. These are:

- A) Transparency and Access to information;
- B) Awareness;
- C) Credibility;
- D) Predictability / ‘Foreseeability’;
- E) Legal standing and the roles and responsibilities of the pertinent actors;
- F) Socio-cultural adaptability.

See [Appendix II](#) for a complete list of the six indicators and related criteria.

### **Important note to the reader:**

Although summarily described, the Subcommittee chose not to immediately include an in-depth comparative analysis of the public consultation procedure applicable in the context of assessments and reviews in southern Québec. This decision was taken due to the high degree of familiarity with the procedure applicable to southern Québec and the need to focus the Subcommittee’s limited resources on lesser-known regimes. It was also taken in light of the marked differences relating to Aboriginal consultation between southern Québec’s regime and that prescribed in Section 22 of the JBNQA (see the ‘[Context](#)’ section of this report).

In light of an eventual integration of information on the public consultation procedure applicable to southern Québec, the Subcommittee benefited from a presentation by a representative of the BAPE in January 2011. This presentation highlighted the BAPE’s administrative mandate (related to informing the public), as well as the BAPE’s formal public hearing mandate. Useful information gleaned from this presentation will be integrated in future reflections and recommendations of this Subcommittee to the extent possible.

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<sup>14</sup> Réseau DIALOG (Réseau de recherche et de connaissances relatives aux peuples autochtones) affiliated with the Institut national de la recherche scientifique.

<sup>15</sup> IAIA, August 2006. *Public Participation: International Best Practice Principles*. Online: <http://www.iaia.org/publicdocuments/special-publications/SP4%20web.pdf>, last accessed January 18<sup>th</sup> 2012.



## **A) Case Study: The Matoush Advanced Uranium Exploration Project**

The Subcommittee chose Ressources Strateco Inc.'s Matoush Advanced Uranium Exploration Project for a case study because it is a recent project<sup>16</sup> and because of the extent of public consultation carried out. The project was evaluated by COMEV, and jointly reviewed by COMEX and COFEX-South, as well as in accordance with the CEA Act.<sup>17</sup> Since the Eastmain 1A and Rupert River Diversion Hydroelectric Project, no other project subject to the Section 22 assessment and review procedure has been the subject of so many public participation activities. Another unique aspect of this project is the financial assistance available for public participation under the Canadian Environmental Assessment Agency's Participant Funding Program.<sup>18</sup> [Appendix III](#) contains an overview of all the activities undertaken by the review bodies and the Cree Nation of Mistissini in an effort to inform and consult the communities of Mistissini and Chibougamau, respectively.

The subcommittee examined this project in two steps.

First, a series of interviews were held with 11 people who attended the information sessions on the project held by the provincial and federal review bodies on May 24 and 25, 2010. Of the 11 respondents, 7 were from Mistissini, 3 were from Chibougamau and 1 was from a Canadian environmental NGO. All of the interviews were conducted in spring and summer 2010 by an expert from the subcommittee. Interviews conducted face-to-face lasted ~40 minutes. Two interviews were conducted in writing. Ten percent (10%) of the total number of participants in the hearings in Mistissini (~70 people) were interviewed and 7% of participants (of ~45 people) were interviewed in Chibougamau.

Then, people were asked when coming out the public hearings held by the review bodies on November 23 and 25, 2010 to complete questionnaires. Approximately 250 people (majority Cree) attended the hearings in Mistissini and all 10 submissions were against the project. Approximately 70 people (majority Jamesians) attended the hearings in Chibougamau. Four of the eight submissions were against the project, while the other four supported the project. The percentage of participants who completed questionnaires was ~10% in Mistissini (25 questionnaires) and ~7% in Chibougamau (10 questionnaires).

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<sup>16</sup> This project was reviewed by both COMEX and COFEX-South in 2010 and 2011. Public information sessions and consultations were jointly held in May and November 2010 in Mistissini and Chibougamau, respectively. COFEX-South tabled its review report in July 2011, and the Federal Administrator rendered a decision on February 2<sup>nd</sup> 2012. COMEX submitted its recommendation to the Provincial Administrator in August 2011. The Provincial Administrator has yet to render a decision, at the time of writing.

<sup>17</sup> The assessment under the CEA Act was triggered in May 2010 following the Supreme Court's decision in *Québec (Attorney General) v. Moses*, 2010 SCC 17. The Canadian Nuclear Safety Commission (CNSC), the responsible Federal Authority, then delegated the comprehensive study, including the public consultations and the preparation of the report, to COFEX-South. The Federal Review under Section 22 proceeded, such that two federal authorities had to take a decision concerning this project, the CNSC and the Federal Administrator. The Minister of the Environment of Canada had to make a decision statement before the application of the CNSC regulatory process.

<sup>18</sup> The Participant Funding Program made available \$45,567 through the Aboriginal Funding Envelope and \$23 799 through the Regular Funding Envelope. Note that the Québec and federal governments also offered financial assistance to facilitate participation of the public in past large-scale projects such as the Great Whale Eastmain 1A and Rupert River Diversion Hydroelectric Projects projects. However, participant funding from the Québec government is an exception, and none was allocated for the Matoush project.

The questionnaires were then studied in relation to the six key international principles of meaningful public participation (see [Research Initiatives](#) and [Appendix II](#)).

Due to the low number of interviews conducted and questionnaires completed, the results cannot be generalized. However, they do highlight several issues and concerns of a certain number of participants in the hearings.

Key observations and results from the interviews held after the May 2010 information sessions:

- Respondents were not very familiar with the Section 22 environmental and social impact assessment and review procedure.
- The information session in Mistissini allowed respondents to learn about the project and feel more informed.
- In general, there is a lack of dissemination of information on the project itself as well as on the public participation process.
- Translation services are essential, but need to be improved.
- Information sessions and public hearings should be held in the evening so that people who work during the day can attend.<sup>19</sup>
- Respondents encouraged the development of rules for public participation in information sessions and public hearings (speaking time, procedure).
- Public participation activities, as organized by the review bodies, are reliable and credible.
- There is a lack of confidence in the quality of information provided by the proponent. Greater use of non-technical language so that information is easy to understand should be encouraged.
- The format of information sessions and hearings are adapted to Cree culture Respondents from Mistissini mentioned, however, that the public might feel intimidated and be reluctant to speak in front of a large audience.

Key observations and results from the questionnaires administered after the November 2010 public hearings are summarised as follows:

- Respondents were primarily concerned about the distinct or separate assessment of an exploration project, as opposed to the assessment of the expected mine once it progresses to the exploitation stage.
- Time for expert interventions and clarifications is fundamental.

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<sup>19</sup> It must be noted that the information sessions held on May 24, 2010, in Mistissini occurred in the afternoon in order to facilitate public attendance and logistics for the sessions, as a Band Council meeting was held that morning.

- Respondents from both communities thought that consultations should be mandatory for all projects subject to the Section 22 assessment or review procedure and that, at the end of the process, the committees should return to the communities to present their recommendations.
- According to respondents, the best way of informing the public is still via traditional media (TV, radio), followed by information centres and community open houses. Respondents from Chibougamau held newspapers and magazines in equal regard. The best way of consulting the public is still considered to be organized public consultation sessions. Focus groups and online consultations were ranked second by respondents in Mistissini, whereas respondents in Chibougamau thought that surveys and questionnaires were the second-best way of consulting the public.
- Respondents from both communities expect consultations to be held during the review of environmental impact statements and during formulation of the review bodies' recommendations after they have finished reviewing a project.
- Respondents from both communities concurred that it is important that the following improvements be considered and made: 1) increase financial assistance for public participation; 2) produce documents providing general information on the consultation, assessment and review procedures; 3) provide online access to documents; and, 4) provide access to documents written in non-technical language.<sup>20</sup>

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<sup>20</sup> Not surprisingly, respondents from Mistissini placed greater importance on translation into Cree.

## ***B) Comparative Review of Public Participation Systems***

To support the recommendations regarding the public participation process under Section 22, a comparative analysis of the participatory process under four other public participation systems was conducted, namely the CEA Act procedures as applied in Nunavut, the Mackenzie Valley and the Yukon.<sup>21</sup> A literature review was conducted based on the key indicators of meaningful public participation previously mentioned (see [Research Initiatives](#) and [Appendix II](#)).

All pertinent information from a recent report, prepared for the Cree Regional Authority by Sanammanga Solutions Inc.<sup>22</sup> will also be integrated in this comparative analysis to the extent possible. Finally, additional data gleaned from discussions held with resource people involved in the other public participation systems will serve to fill in some of the information gaps.

The following results concern the six indicators as well as public participation initiatives that are outside of the Section 22 public participation process:

### **A) Transparency and Access to information**

- All of the public participation systems studied include online public registries and guidance documents that describe the process in detail, define the roles of the committees, proponents and other stakeholders, and specify the information that must be made public (project proposal, notice of commencement of the environmental assessment, project description, draft and final environmental impact statements, etc.).
- In Nunavut and the Mackenzie Valley, proponents and responsible authorities are required to make information available in non-technical language. This measure is optional under the CEA Act. As well, translation into Native languages is required in Nunavut, strongly suggested in the Mackenzie Valley and discretionary under the CEA Act. There is no mention of either of these issues in the documents reviewed for the Yukon.
- The Canadian Environmental Assessment Agency (CEA Agency) is required to report on the effectiveness of the process under its Quality Assurance Program for environmental assessments. In the Yukon, reviews of the environmental assessment procedure must occur every five years, and must include an assessment of the participatory process. The assessment, review, and participatory procedures applicable in the Mackenzie Valley were reviewed in 2005 and once again in 2010 (the report was very recently published in October 2011).<sup>23</sup>

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<sup>21</sup> The systems were selected as are: 1) subject to land claim agreements; 2) subject to similar pressure from development; 3) encompass Native populations; 4) offer guides and literature; and 5) CEA Act is the federal legislation.

<sup>22</sup> Sanammanga Solutions Inc., September 2011. Report on Public Participation under the James Bay and Northern Quebec Agreement Environmental Assessment and Review Process. Prepared for the Cree Regional Authority.

<sup>23</sup> See the Mackenzie Valley Environmental Impact Review Board (MVEIRB) website: [www.reviewboard.ca](http://www.reviewboard.ca).

## **B) Awareness of the process and its objective(s), and**

### **C) Credibility of the process**

- All of the public participation systems provide information on their environmental assessment and review procedures and public participation protocols through guidance documents, and use these documents to clarify the role and responsibilities of each player.
- Local information workshops are organized on a yearly basis in the Mackenzie Valley, whereas in Nunavut, informal information sessions are offered in accordance with the CEA Act.
- The CEA Agency offers training courses on the CEA Act environmental assessment process, including the importance, standards and objectives of public participation activities under the Act. These courses are offered to CEA Agency employees, responsible authorities, proponents, consultants, and all other interested persons or groups.
- The Participant Funding Program established pursuant to the CEA Act makes financial assistance available to facilitate the participation of Aboriginals, and all other interested groups and individuals in the public participation or consultation activities.

### **D) Predictability / “Foreseeability” of the process**

All of the systems studied determine the need for and timing of public participation on a case-by-case basis. However, public consultation is mandatory under the CEA Act for comprehensive studies, mediation and panel reviews.<sup>24</sup> In Nunavut and the Mackenzie Valley, public consultations are generally held before assessment or review guidelines are formulated, whereas in the Yukon and per the CEA Act, they are held after assessment or review guidelines are formulated.

All four systems require that proponents account for public concerns and state how these concerns influenced project planning. The manner in which they do this is flexible and open to interpretation. In Nunavut in particular, proponents are also required to develop a public involvement plan<sup>25</sup> and implement it throughout the life of the project, if the latter is approved.

The CEA Act and related guidance documents provide for adaptation and harmonization measures where there is an overlap between jurisdictions and responsibilities.

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<sup>24</sup> Note that the extent of public participation varies with the size of the project and the type of environmental assessment under the CEA Act. These statements are in reference to the CEA Act prior to royal assent of Bill C-38, on June 29<sup>th</sup> 2012.

<sup>25</sup> The public involvement plan must also be submitted to the board concerned, namely the Nunavut Impact Review Board (NIRB) or the Mackenzie Valley Environmental Impact Review Board (MVEIRB).

**E) Legal standing and the roles / responsibilities of the pertinent actors; and,**

**F) Socio-cultural adaptability**

All of the public participation systems rely on their websites and guidance documents to outline the roles of the different actors in the consultation and assessment and review processes. Although all of the systems require that the public be consulted, only Nunavut and the Mackenzie Valley provide lists of potentially interested individuals to help proponents determine whom to consult and when. Similarly, the YESAB<sup>26</sup> recommends that lists of potentially interested individuals and groups be made available for each project. Guidance documents for the CEA Act procedure propose strategies for identifying interested individuals and groups and choosing the best form of participation for a given project, but do not provide lists.

In general, all of the systems studied underline the need to take local customs and traditions into account when planning public activities. The actors<sup>27</sup> are granted considerable discretion and leeway in this regard.

However, the notion that public participation must be proportional to the complexity and scope of the project and level of public interest therein has been clearly set out only in the CEA Act and public participation systems in the Mackenzie Valley and the Yukon (it is not mentioned in Nunavut's system).

***C) INRS-DIALOG Research***

The report prepared by DIALOG discusses First Nation involvement in the environmental assessment of projects governed by the CEA Act. The report is also intended to serve as a baseline document to help with the development of recommendations and public consultation guidance materials for the territory covered by Section 22 of the JBNQA.

The study identified and documented several elements of public consultations held during the environmental assessment of projects as well as other local approaches and initiatives that enabled the Native groups concerned to modify conceptual or functional aspects of the projects and be more effectively involved in the development of their territory's natural resources. The study examined 12 projects in Canada, outside Quebec, for which a comprehensive study or panel review was conducted under the CEA Act: 8 mines, 2 hydroelectric projects, a forest management plan and the Mackenzie Valley natural gas pipeline.

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<sup>26</sup> 'YESAB' refers to the 'Yukon Environmental and Socio-Economic Assessment Board.'

<sup>27</sup> Boards (e.g. YESAB, MVEIRB, NIRB, CEA Agency), proponents, etc.

## ***Preliminary Conclusions & Recommendations***

The participation of the communities concerned, particularly First Nation communities, in the assessment and review of development projects is of crucial importance. This was clear 35 years ago, when a special status of involvement for the Cree people in the environmental and social protection regime of Section 22 was formalized in the JBNQA.<sup>28</sup>

The JBACE has considered courses of action to improve public participation in the assessment and review of projects occurring in the Territory. Several weaknesses in the Section 22 consultation procedures have been recognized to date, particularly in relation to a lack of transparency and access to information.

Although preliminary, the following recommendations represent potential solutions that would maintain the flexibility and adaptability of the consultation procedures during evaluations and reviews under Section 22:

### **➤ ACCESS TO INFORMATION**

- 1) Implement a central, online registry containing documents, reference lists or tools, updates and links and all other pertinent information concerning projects undergoing Section 22 environmental impact assessments, reviews, and public consultations. This registry must be available in French and in English.
- 2) Develop and disseminate guidance materials that provide information on the Section 22 assessment, review and consultation procedures, in order to encourage a transparent public participation process. Public access to such guidance and reference material would clarify the roles, rules, timing and planning of public participatory activities. These materials may serve to promote best practices at each stage of the impact assessment and review procedure, or for proponent-planned activities upstream from the assessment or review procedure. These guidance materials may take several forms.<sup>29</sup> They may also be designed specifically for the public, or targeted for a set of specific actors (e.g. proponents, consulting firms, other government agencies or departments, etc.).
- 3) Prioritize the development of guidance materials while accounting for the following principles:
  - Guidance materials should clearly explain the triggers and protocols for an assessment, review or public consultation under the Section 22 regime in a general sense and without affecting or constraining the discretion of the pertinent evaluating or review bodies.
  - All guidance materials on the assessment, review or consultation procedure should offer technical language directed at assessment and review practitioners, as well as non-technical language directed at the public and, especially, the Crees.

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<sup>28</sup> JBNQA, par. 22.2.2.

<sup>29</sup> Guidance materials may take the following formats, for example: Websites; Online documents; Published guides; Reference documents or primers; Training sessions or workshops; A compendium, or glossary, of environmental assessment terminology.

- Guidance materials may suggest that certain documents (e.g. summaries of proponents' impact statements, project notices, transcripts of consultation sessions, etc.) be translated into Cree as a matter of best practice, for instance.
- Guidance materials could provide information on the development of sound public participation plans by proponents, the role and necessity for public involvement in the assessment and review of development projects, or on harmonization and conflict resolution plans and performance reports, for example.<sup>30</sup>

➤ **PUBLIC AWARENESS**

Develop an approach for raising public awareness about the Section 22 assessment and review process.

➤ **INTEGRATION AND USE OF INFORMATION OBTAINED FROM THE PUBLIC**

- 1) Publish the information obtained from public consultations or hearings conducted during project reviews<sup>31</sup>. These reports must recount only the concerns and opinions expressed by the public; they must remain neutral and must not include recommendations.
- 2) Allow COMEV to review the public participation plans developed by proponents so that it may provide the administrators with recommendations concerning their nature and scope. During the review phase, COMEX or COFEX-South could thus schedule their respective public consultation activities with a clear knowledge of the proponents' public participation initiatives and timetables.

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<sup>30</sup> Good examples are the guidance documents published by the CEA Agency.

<sup>31</sup> Note that an example of this type of accountability already exists. The Cree-Naskapi Commission holds consultations in the communities to validate the comments made over the course of preceding consultations concerning the implementation of the Cree-Naskapi (of Québec) Act and the JBNQA. The Commission reports to the Minister of Aboriginal Affairs and Northern Development Canada every two years in this regard.



## **Appendix I      Composition of the Subcommittee on Public Consultation**

### **JBACE Members**

**Josée Brazeau** (February 2010 – June 2011)  
Biologist – Abitibi-Témiscamingue /  
Northern Quebec Regional Office  
Ministry of Sustainable Development,  
Environment and Parks (MDDEP)

**Jean-Francois Coulombe** (February 2012 – Present)  
Regional Director – Saguenay-Lac-Saint-Jean  
Regional Office  
Ministry of Education, Recreation and Sports (MELS)

**Annie Déziel** (February 2010 – Present)  
Team Leader - Quebec Region  
Canadian Environmental Assessment Agency

**Ginette Lajoie** (February 2010 – March 2011)  
Environmental Coordinator  
Cree Regional Authority

**Chantal Otter Tétreault** (June 2011 – Present)  
Environmental Analyst  
Cree Regional Authority

**Norman Wapachee** (June 2011 – Present)  
Cree Regional Authority

### **Invited Experts**

**Pierre André** (February 2010 – Present)  
Professor – Department of Geography  
University of Montreal

**Philip Awashish** (February 2010 – Present)  
Member of the evaluation and review committees  
(COMEV, COFEX & COMEX)

**Daniel Berrouard** (February 2010 – Present)  
Coordinator of First Nation Affairs  
Ministry of Sustainable Development,  
Environment and Parks (MDDEP)  
Member of the evaluation and review committee  
(COMEV, COMEX)

**Robert Joly** (February 2010 – June 2010)  
Head of Service – Industrial and Northern Projects  
Ministry of Sustainable Development,  
Environment and Parks (MDDEP)

**Kelly LeBlanc** (February 2010 – Present)  
Environmental Analyst  
Cree Regional Authority

**Sylvie Létourneau** (May to December 2010 – Present)  
Responsable des dossiers horizontaux nordiques  
Industrial and Northern Projects  
Ministry of Sustainable Development,  
Environment and Parks (MDDEP)

**Carole Lévesque** (May 2010 – April 2011)  
Professor – INRS-DIALOG, Centre  
Urbanisation Culture Société – University of Montreal

**Ioana Radu** (May 2010 – April 2011)  
Doctoral Candidate – Concordia University  
Research Intern – INRS-DIALOG, Centre Urbanisation  
Culture Société – University of Montreal

**Benoît Taillon** (February 2010 – March 2012)  
President – COFEX-South

### **Analysts and support team for the Sub-committee**

**Genevieve Dionne** (October 2009 – July 2010)  
Environmental Analyst – JBACE

**Jessica Labrecque** (August 2010 – November 2010)  
Environmental Analyst – JBACE

**Graeme Morin** (November 2010 – Present)  
Environmental Analyst – JBACE

NOTES:    1) Ioana Radu was identified as a supporting expert on behalf of Carole Lévesque (INRS-DIALOG).  
              2) Attendance at the subcommittee's meetings varied according to availability.

## Appendix II Guiding Indicators and Criteria for Research Initiatives

INDICATORS	CRITERIA
A. Transparency and access to information	<ol style="list-style-type: none"> <li>1) Transparency of the EA process and of project-level processes;</li> <li>2) Access and dissemination of information (e.g. What documents are made public?);</li> <li>3) Nature of the information (e.g. In technical or non-technical language?);</li> <li>4) Language of communication;</li> <li>5) Reporting / Performance reporting.</li> </ol>
B. Awareness of the process	<ol style="list-style-type: none"> <li>1) Awareness of the participatory process and of its objective(s).</li> </ol>
C. Credibility of the process	<ol style="list-style-type: none"> <li>1) Delineated role and/or rules for proponents and the public, and accounting for results of the process;</li> <li>2) Credibility of the process and integrity of the members involved.</li> </ol>
D. Predictability / 'Foreseeability' of the process	<ol style="list-style-type: none"> <li>1) Criteria for 'triggering' the process;</li> <li>2) Adaptive / harmonizing measures;</li> <li>3) Defined instances for public participation;</li> <li>4) Roles of the proponent and follow-up of the process once completed.</li> </ol>
E. Legal standing and the roles and responsibilities of the pertinent actors	<ol style="list-style-type: none"> <li>1) Defined hierarchy of the consultation process (e.g. Whom to consult and in what order?);</li> <li>2) Defined roles and responsibilities of the pertinent actors;</li> <li>3) Defined roles and responsibilities of those leading the consultation;</li> <li>4) Composition and workload of the committees involved;</li> <li>5) Rules in the event of conflicts of interest.</li> </ol>
F. Socio-cultural adaptability	<ol style="list-style-type: none"> <li>1) Different modes of group consultation (e.g. Tallymen, individuals, local / regional organisations, etc.);</li> <li>2) Culturally-adapted process in light of timing, season, etc. (e.g. Goose Break);</li> <li>3) Adaptability / proportionality of the process according to the context and scope of the project (e.g. The Matoush project).</li> </ol>

## **Appendix III Activities related to the Matoush Advanced Uranium Exploration Project Case Study – Federal procedure<sup>32</sup>**

### **Dissemination of information**

<b>Date</b>	<b>Description of the information available</b>	<b>Website</b>
March 5 <sup>th</sup> 2009	Notice of commencement of the environmental assessment.	CEA Agency
September 30 <sup>th</sup> 2009	Creation of the JBNQA web-link and of the Registry for JBNQA projects - Public notice posted on the Registry: Availability of \$40K in participant funding to assist in the assessment process (2 envelopes available, with one for Aboriginal peoples); - Direct mailing with Cree communities to announce the provisions of the Participant Funding Program.	CEA Agency
November 3 <sup>rd</sup> 2009	Directives and related appendices posted on the JBNQA Public Registry.	CEA Agency
November 14 <sup>th</sup> 2009	Public notice posted on the JBNQA Public Registry: - Environmental & Social Impact Statement / Report.	CEA Agency
January 18 <sup>th</sup> 2010	Document ' <i>Uranium: The facts</i> ' (care of Strateco Resources Inc.) posted on the JBNQA Public Registry.	CEA Agency
March 30 <sup>th</sup> 2010	Public notice posted on the website: Attribution of federal funding for participation in the assessment of the Matoush Project. Report of the Review Committee on the said funding.	CEA Agency
	4 Documentation centres: Mistissini, Chibougamau, CEA Agency - Quebec, CRA - Montreal (for Phase II).	
April 30 <sup>th</sup> 2010	Public notice posted on the website: Information sessions on May 25 <sup>th</sup> and 26 <sup>th</sup> .	CEA Agency
May 18 <sup>th</sup> – 24 <sup>th</sup> 2010	Radio announcements CINI-FM & 93.5FM - Chibougamau and Mistissini.	
May 12 <sup>th</sup> – 21 <sup>st</sup> 2010	Public notices posted in the ' <i>La Sentinelle</i> ,' ' <i>Le Jamésien</i> ' and ' <i>The Nation</i> .'	
Mid May 2010	Announcements on the GCC's Facebook page.	GCC/CRA
Continual	Maintenance of a distribution list (email) including all groups and individuals who applied for the participant funding <u>or</u> who manifested an interest in the project.	
May 19 <sup>th</sup> 2010	Technical glossary: terms related to uranium and to environmental assessment.	CEA Agency & GCC/CRA
May 24 <sup>th</sup> & 25 <sup>th</sup> 2010 (Info session days)	Information pamphlet (Communiqués and public notices available at the entrance, explaining the objectives of the info sessions and the future steps in the process).	
June 16 <sup>th</sup> 2010	Independent quality analysis of the proposal by three independent experts, at the request of the CRA, posted on the website.	GCC/CRA
June 25 <sup>th</sup> 2010	COFEX-South's request for additional information posted on the JBNQA Public Registry.	CEA Agency
August 18 <sup>th</sup> 2010	Strateco Resources Inc.'s deposition of additional information.	
August 27 <sup>th</sup> 2010	Verbatim of information sessions in Mistissini and Chibougamau.	CEA Agency & GCC/CRA
October 27 <sup>th</sup> 2010	Outline of the Phase II Public Hearings posted on the JBNQA Public Registry.	CEA Agency
October 27 <sup>th</sup> 2010	Posting of the outline / guide for participants of the Phase II Public Hearings.	CEA Agency
November 3 <sup>rd</sup> 2010	Public notice posted on website for Phase II Public Hearings schedules for November 23 <sup>rd</sup> & 25 <sup>th</sup> 2010	CEA Agency

<sup>32</sup> As of January 2011.

November 3 <sup>rd</sup> – 7 <sup>th</sup> 2010	Radio announcements CINI-FM & 93.5FM - Chibougamau and Mistissini.	
Continual	Maintenance of a distribution list (email) including all groups and individuals who applied for the participant funding <u>or</u> who manifested an interest in the project.	
Transmitted to Mistissini & Chibougamau 2 weeks before hearings	Information pamphlet to be available at the entrance (explaining the objectives, how to participate and obtain info, and outline of the process).	
December 2 <sup>nd</sup> 2010	Public hearings (November 23 <sup>rd</sup> & 25 <sup>th</sup> ): Public statements posted on the JBNQA Public Registry.	CEA Agency
November 23 <sup>rd</sup> 2010	Webcast – Public hearing in Mistissini: Audio files made available in December and verbatims in January.	CEA Agency
November 25 <sup>th</sup> 2010	Webcast – Public hearing in Chibougamau: Audio files made available in December and verbatims in January.	CEA Agency
May 2011	COFEX-South issued its Review Report	CEA Agency
February 2 <sup>nd</sup> 2012	Decision issued by Federal Administrator	CEA Agency
To come...	Decision to be issued by Provincial Administrator	

<b>Date</b>	<b>Description of informational activities organised by the Cree Nation of Mistissini</b>	
May 25 <sup>th</sup> 2010	<b>Meeting of local working group</b> Members from the community, the Cree Trapper's Association (CTA), Native Women Association (NWA), Cree Board of Health and Social Services of James Bay (CBHSSBJ), Cree Human Resources Development (CHRD), Niskamoon, Youth Council, Cree Outfitting and Tourism Association, and local coordinator for the Albabel-Témiscamie-Otish National Park Project	
July 13 <sup>th</sup> 2010	<b>Meeting of local working group</b> Families affected by the project	
July 14 <sup>th</sup> 2010	<b>Public information session –</b> Dr. Jean-Claude Dessault, Direction de Santé Publique du Nord-du-Québec (to discuss Radon)	
September 7 <sup>th</sup> 2010	<b>Meeting of local working group</b> Members of the CTA, NWA, CBHSSBJ, and families.	
September 7 <sup>th</sup> 2010	<b>Radio program with local representatives and experts from the Canadian Nuclear Safety Commission (CNSC)</b> Open hotline (to de-mystify the impacts of uranium exploration / exploitation, and the rules and protocol of the CNSC)	
September 8 <sup>th</sup> 2010	<b>Public information session –</b> Jean LeClair, CNSC	
September 8 <sup>th</sup> 2010	<b>Local information pamphlet / brochure</b> Information on the project and major issues for Mistissini - available at the following locations: Meechum, Esso, R&D Lumber, Laundromat, Band Office, Cree Sports, and Chewittin Gas Bar	
October 19 <sup>th</sup> 2010	<b>Meeting of local working group</b> Meeting of the Tallymen and trappers with Dr. Monique Dubé, Canada Research Chair, Aquatic Ecosystem Health Diagnosis - School of Environment and Sustainability, University of Saskatchewan	
October 20 <sup>th</sup> 2010	<b>Public information session –</b> Dr. Monique Dubé, Canada Research Chair, Aquatic Ecosystem Health Diagnosis – School of Environment and Sustainability, University of Saskatchewan	
October 20 <sup>th</sup> 2010	<b>Document “Frequently-Asked Questions”</b> Distributed at the public information session on October 20 <sup>th</sup> 2010	
November 22 <sup>nd</sup> 2010	<b>General Assembly in Mistissini</b> Public hearing (local) on Matoush project and the community's position thereon	
December 14 <sup>th</sup> 2010	Report presented to COFEX-South and COMEX	
January 11 <sup>th</sup> – 21 <sup>st</sup> 2011	Door-to-Door Survey	

## **Appendix IV Eastmain 1A and Rupert River Diversion Hydroelectric Project<sup>33</sup>**

The Eastmain 1A and Rupert River Diversion Hydroelectric Project is unique in matters relating to public consultation. The proponent, Hydro-Québec, signed an agreement with the Crees to jointly conduct the feasibility studies. Then, consultations occurred during the evaluation and review phases of the Section 22 provincial procedure. The procedure of the Canadian Environmental Assessment Act was also applied to this project. The proponent also worked with COMEX to set up a process for consulting with the Cree population. This consultation, which is expected in 2012, would occur after the construction period, before the beginning of operations, and would investigate Cree perspectives on existent and potential mitigation measures for the project's impacts.

The EM1A Monitoring Committee, composed of members from Cree communities, and representatives from the Niskamoon Corp. and from Hydro-Québec, was also created to oversee the implementation and to communicate with the communities, hunters and trappers on:

- Conditions regarding fish populations and habitats (e.g. Cooperation with the community of Waskaganish concerning the Smokey Hill fishing site and information program);
- Initiatives relating to birds and wildlife enhancement, including specific measures applicable to caribou, moose, and beaver;
- Aspects of Cree hunting, fishing and trapping practices that focus on the use and access to hunting grounds and camps, the use of wildlife resources, exploration of new areas, and the assessment of mitigation and compensation measures. This was done throughout the construction period and is expected to continue for up to ten years following the commencement of operations;
- Measures and monitoring relating to boat or snowmobile travel safety, including the development of navigation charts or maps;
- Guidelines for the hunting and fishing activities of non-native workers, in order to protect the rights of the Crees;
- A forum to receive comments and complaints, and to propose solutions to any problem resulting from the dissatisfaction of territory users regarding project impacts.

A long-term public dialogue – including information, consultation, and other elements of public participation – will thus occur for some time following the construction of all of the project's components.

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<sup>33</sup> Additional information on the project is available on the websites of the following entities:

- Ministry of Sustainable Development, Environment and Parks – [www.mddep.gouv.qc.ca](http://www.mddep.gouv.qc.ca)
- Grand Council of Cree – [www.gcc.ca](http://www.gcc.ca)
- Hydro-Québec – [www.hydroquebec.com](http://www.hydroquebec.com)
- Niskamoon Corporation – [www.niskamoon.org](http://www.niskamoon.org)