

Executive summary

Public participation during the environmental assessment and review of development projects has become increasingly important in recent years. Public participation during project assessments and reviews can generate novel design alternatives, promote corporate-social responsibility, and empower local communities and individuals in the decisions that may affect them. Public consultation, for example, can also ‘tool’ decision-makers with insights on the public’s concerns regarding projects under assessment and review.

The assessment and review procedure applicable in the James Bay Territory was established in 1975 with the signing of the James Bay and Northern Québec Agreement (JBNQA). Although decidedly innovative and recognized as the first modern treaty, the environmental assessment and review process outlined in Section 22 does not elaborate greatly on public participation.

This report presents the James Bay Advisory Committee on the Environment’s (JBACE) recommendations for modernizing, strengthening, and facilitating public participation during Section 22 assessments and reviews in light of recent advancements in the field. It also accounts for the special status of involvement of the Cree people in matters relating to public participation. This special status confirms that the Cree are entitled to be consulted above and beyond what is provided for the public in general, a crucially-important provision of Section 22. In light of this status, efforts have been made to promote and facilitate Cree involvement in Section 22 project assessments and reviews.

In addition, this report considers available literature on the subject, public participation procedures in other environmental assessment regimes in Canada, as well as insights gleaned from public and expert participants during a Section 22 project review.

All of the JBACE’s recommendations were formulated with the intention of maintaining a certain degree of flexibility to adapt according to project-specific needs. The initial focus of the recommendations is on improving the transparency and the public’s access to information during assessments and reviews.

The JBACE’s recommendations are addressed to the signatory parties of the JBNQA. We are mindful, however, that their implementation will require the implication of various governments, ministries, the Section 22 assessment and review bodies, and project proponents. The JBACE encourages these stakeholders to integrate the recommendations in their respective operating practices. For instance, we believe that the development of Section 22-specific guidance materials with information on public participation best practices can also assist proponents with public participation activities that they may undertake prior or following the assessment and review of their projects.

Moreover, because there are few provisions relating to public participation in Section 22 JBNQA, most of the recommendations can be implemented quickly without the need to modify its text. Their implementation would greatly improve the transparency and credibility of Section 22 assessments and reviews as a whole. Strides will also be made in terms of the public’s understanding of the process, of the roles of the actors involved, and of opportunities to participate therein.

Having said this, we believe that the signatory parties should reflect on whether, or not, updating the text of Section 22 with attention to such matters is necessary.

TERMINOLOGY¹

To ensure comprehension, the following terms used in this report are defined as follows:

1. Informing the public

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

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

3. Public hearing

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. A means of consulting the public.

4. Public participation

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.

INITIATIVES IN PROGRESS

Since the publishing of the JBACE's [Progress Report](#) in 2012, several new initiatives have arisen and efforts have been made to account for them in this report:

- The MDDELCC is developing an online registry to facilitate public access to information on projects subject to reviews undertaken by COMEX. The registry is in development and is expected to include information on Section 22 JBNQA, information provided for and by proponents, as well as notices and other information prepared by COMEX regarding public participation activities during reviews.
- COMEX launched a public commentary period on a draft directive designed to frame public participation in the context of its reviews in late 2014. This document includes information on the role of COMEX, as well as general protocols for public information and consultation activities during its project reviews. COMEX adopted the final version of the directive in February 2015.
- COFEX-South, in collaboration with the Canadian Environmental Assessment Agency (CEA Agency), has a new link on the Agency's online [registry](#) for projects subject to reviews by COFEX-South.² Entries include all documents submitted by the proponent, by COFEX-South, and by the public. The Matoush Advanced Uranium Exploration Project is the only project included to date.

¹ Sources:

- a) International Association for Public Participation (IAP2), 2011. *Spectrum of Public Participation*. Online: http://www.iap2.org/associations/4748/files/IAP2%20Spectrum_vertical.pdf.
- b) International Association for Impact Assessment (IAIA), 2012. *Multilingual Glossary of Impact Assessment*. Online: <http://web2.concordia.ca/iaia/index.php?f=all>.

² This is in addition to projects subject to an assessment under the *Canadian Environmental Assessment Act, 2012* (SC 2012 c.19 s.52) (hereafter – 'CEA Act 2012').

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Acronyms

AANDC	Aboriginal Affairs and Northern Development Canada (formerly, Indian and Northern Affairs Canada – INAC)
BAPE	<i>Bureau d’audiences publiques sur l’environnement</i>
CEA Act, 2012	<i>Canadian Environmental Assessment Act, 2012 (SC 2012 c.19 s.52)</i>
CEA Agency	Canadian Environmental Assessment Agency
CEA Registry	Canadian Environmental Assessment Registry
CNG	Cree Nation Government (formerly the Cree Regional Authority – CRA)
CNSC	Canadian Nuclear Safety Commission
COFEX-South	Federal Review Panel–South (Comité fédéral d’examen–Sud)
COMEX	Provincial Review Committee (Comité provincial d’examen)
COMEV	Evaluating Committee (Comité d’évaluation)
EA / ESIA	Environmental Assessment / Environmental and Social Impact Assessment (for concision, only EA is used in this report)
EQA	<i>Environment Quality Act (CQLR c.Q-2)</i>
EIS	Environmental Impact Statement
GCC	Grand Council of the Crees
IAIA	International Association for Impact Assessment
JBACE	James Bay Advisory Committee on the Environment
JBNQA	James Bay Northern Québec Agreement
MDDELCC	Ministère du Développement durable, de l’Environnement et de la Lutte contre les changements climatiques (formerly the MDDEFP and MDDEP)
MDDEFP	Ministère du Développement durable, de l’Environnement, de la Faune et des Parcs
MDDEP	Ministère du Développement durable, de l’Environnement et des Parcs
MVEIRB	Mackenzie Valley Environmental Impact Review Board
MVLWB	Mackenzie Valley Land and Water Board
MVRMA	<i>Mackenzie Valley Resource Management Act (SC 1998 c.25)</i>
NIRB	Nunavut Impact Review Board
NLCA	<i>Nunavut Land Claims Agreement Act (SC 1993 c.29)</i>
NPPAA	<i>Nunavut Planning and Project Assessment Act (SC 2013 c.14 s.2)</i>
YESAA	<i>Yukon Environmental and Socio-Economic Assessment Act (SC 2003 c.7)</i>
YESAB	Yukon Environmental and Socio-Economic Assessment Board

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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.

Findings of joint research conducted in collaboration with experts from Université de Montréal identified, in 2009, a number of important shortcomings with respect to public participation within the JBNQA assessment and review process. Significant improvements had however been noted during the review of the Eastmain 1A and Rupert River Diversion Hydroelectric Project which concluded with its authorization in November 2006, but these measures were not systematically inserted in the subsequent reviews of project proposals.

The JBACE thus remained committed to continue looking into these issues and to provide additional insight on how to improve the public participation component of the assessment and review process. The JBACE sought to determine if and how improvements may be brought in light of 1) recognized principles in the literature; 2) how public participation in Section 22 compares with other jurisdictions; and, 3) what operational issues must be addressed in light of the experiences of stakeholders acting ‘within’ the Section 22 assessment and review process.

This final report follows the recommendations published in a 2012 progress report.³

This final report also follows a parallel initiative which led to recommendations to the parties on the revision of schedules 1 and 2 of Section 22 JBNQA. This parallel initiative was designed to clarify those projects that are subject to or exempt from assessment and review. Ultimately, this revision was designed to assist all interveners in this process (including the public) in determining triggers for Section 22 reviews.

The JBACE invited experienced impact assessment practitioners and other experts to participate in its work on public participation. Professionals from various provincial and federal government departments, the Cree Nation Government, members of the Section 22 assessment and review bodies (COMEV, COMEX & COFEX-South), and several university researchers graciously contributed their time and effort. We would be remiss not to acknowledge the input of all whom have contributed to the work of the Subcommittee on Public Participation through their diversity of opinions and perspectives regarding improvements to current public participation practices.

³ JBACE, September 2012. *Progress Report - Preliminary recommendations and initiatives concerning the public participation process for the James Bay Territory*. Online: www.ccebj-jbace.ca/en/documents/category/4-updating-section-22?download=97:progress-report-on-public-participation-process-2012.

Objectives

Several key objectives were identified to frame this body work. All analyses and recommendations were undertaken and were developed to address the following:

1. Advances in public participation and consultation

Public participation has become increasingly important in light of its ability to generate sound project design alternatives, to promote corporate-social responsibility, and to empower local communities and individuals in development and planning processes. Public consultation in particular also assists decision-makers, given that the public's concerns regarding a project are made available.

Since the signing of the JBNQA in 1975, no clear, concise and transparent system of public participation or consultation during the environmental and social impact assessment and review of development projects in the James Bay Territory has been established. Public participation procedures and practices in the context of assessments and reviews have, however, evolved throughout the world since then – notable initiatives include the adoption of the [*Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters \(Aarhus\)*](#) by the United Nations in 1998, and the ongoing efforts of the International Association for Impact Assessment (IAIA) which was established in 1980.⁴ Important insights on public participation can also be gleaned from more recent territorial or legislative initiatives in various other jurisdictions.

Although not highly-developed in the James Bay Territory since the signing of the JBNQA, recent volition to promote public participation during environmental assessments and reviews is markedly encouraging (e.g. the consultations regarding the Eastmain 1A and Rupert River Diversion Hydroelectric Project, and the Matoush Advanced Uranium Exploration Project). Despite these recent steps to promote participation in Section 22 assessments and reviews, inroads and improvements are warranted given that the planning of consultations or hearings, and the guidelines or rules of procedure once planned, remain largely ad hoc and are determined on a case-by-case basis.

2. Addressing the special status of involvement of the Crees as well as local and regional stakeholders and governments

As will be discussed, the environmental and social protection regime set out in Section 22 provides for:

“A special status and involvement 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 to protect or give effect to the rights and guarantees in favour of the Native people established by and in accordance with the Agreement” (Par. 22.2.2c).

One of the primary objectives of this work is to promote the involvement of the Cree people in the assessment and review of development projects subject to the Section 22 procedure. Although Cree representation on the assessment and review bodies is assured, means of promoting the participation of Cree community members during Section 22 assessments and reviews must be addressed.

⁴ Readers will shortly note that the IAIA's best practice principles regarding public participation were used as guiding indicators and evaluation parameters for this work's analyses.

In conjunction with this objective, the JBACE equally seeks to promote the involvement and participation of all of the Territory's citizens and stakeholders in the same. We extend this to the participation of the Territory's local and regional organizations and governments – namely, that of the newly-established *Eeyou Istchee James Bay Regional Government*.

3. Enhancing and improving assessments and reviews

The JBACE holds that public participation and consultation is a key component in the assessment and review of projects. It is crucial to raising awareness of project-related issues, developing approaches to maximize benefits, and identifying innovative solutions to mitigate impacts. A transparent process of public participation and access to information within the context of project assessments and reviews can stimulate a dialogue between stakeholders, foster informed decisions, and improve project designs.

A commitment to providing open and transparent public participation, with a clear connection to the assessment process and decision, is also important for stimulating and empowering the inclusion of the public in issues that may influence them. Such a commitment can help ensure that assessments and reviews are adapted to the realities of the receiving environments and to the needs and concerns of the affected communities and stakeholders.

We believe that efforts to enhance public participation can improve the quality of project assessments and reviews and, ultimately, reinforce the Section 22 environmental and social protection regime.

The JBACE also holds that project proponents have a key role to play regarding public participation upstream and during activities organized by the Section 22 review bodies. Although proponent-driven public participation initiatives held prior to Section 22 reviews were not included in this study, the JBACE is keenly aware of this component and of the important contribution that proponents may bring to the process by improving their own initiatives. This is also espoused as a recognized principle of environmental assessment, as will be discussed.

4. Maintaining flexibility to adapt

No two development projects are alike and techniques and experiences relating to public participation and consultation continue to evolve.

Although a systematic process for the planning of public participation and consultation activities may be desirable, a degree of flexibility and adaptability must be maintained. The discretion of the Section 22 bodies tasked with undertaking these activities must be maintained so that they may continue to adapt them according to the specific context of the assessments and reviews (e.g. in light of the nature and scope of the projects, cultural contexts, traditions, perspectives, values, languages, timing). Indeed, flexibility to adapt public participation activities under the Section 22 procedure offers a potential means of adapting initiatives in a manner that may address the special status of involvement of the Cree.

Despite this, room for updating and improving the public participation and consultation protocols for project assessments and reviews conducted under the procedure remains (notably in terms of transparency and public access to information). It is thus the intention of the JBACE to table ameliorative recommendations, without affecting the flexibility and adaptability of the existent regime.

Analyses

The current work is based on three analyses:

I. Literature review of documents relating to public participation in general, and of materials on the JBNQA

This review was conducted to tease out coarse or broad insights from the literature, to inventory and confirm guiding principles or standards of public participation, and to see where Section 22 stands in relation to these principles and standards. This review also helped to support the indicators and criteria used for the three analyses.

II. Comparative analysis of public participation during EAs in other jurisdictions in Canada involving primarily Aboriginals

This analysis was undertaken to outline EA-specific insights and novel elements relating to public participation from other jurisdictions and to determine how public participation during Section 22 assessments and reviews compares in relation to them.

III. Analysis of public participation relating to the Matoush Advanced Uranium Exploration Project's Review

This analysis was completed in order to seek detailed Section 22-specific insights gleaned from stakeholders acting 'within' a Section 22 project review.

Guiding Indicators

A set of six internationally-recognized indicators for meaningful public participation, with criteria, were established as common evaluation parameters used for the three analyses. The six internationally-recognized indicators of meaningful public participation are:⁵

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

⁵ IAIA, 2006. *Public Participation: International Best Practice Principles*. Online: <http://www.iaia.org/publicdocuments/special-publications/SP4%20web.pdf>. See [Appendix I](#) for a complete list of the six indicators and related criteria

Limitations and constraints

The JBACE is limited in its access to information and the three analyses are also subject to methodological constraints:

- It does not have access to environmental impact statements tabled by proponents for projects subject to Section 22 reviews unless these are made public by proponents.⁶ Nor is the JBACE privy to the preliminary information tabled by proponents for ‘grey zone’ projects that are not listed in Schedules 1 or 2 of Section 22 for the purposes of an evaluation by COMEV.
- It does not have access to the exact criteria or considerations used by COMEV, COMEX or COFEX-South to formulate their respective recommendations on development projects. The recommendation reports prepared by COMEV or COMEX for the Administrators are also not publicly-available – those tabled by COFEX-South have only recently been made public.⁷

Despite relying on qualitative analyses, this report was prepared in collaboration with representatives from the CNG, MDDELCC and CEA Agency, and has also benefited from the input of several members of the Section 22 JBNQA evaluating and review committees (COMEV, COMEX and COFEX-South).

⁶ Environmental impact statements (EISs) have recently been made available if the project is subject to a Section 22 JBNQA review by COFEX-South, and/or to a concurrent assessment under the CEA Act 2012, through the auspices of the CEA Agency’s registry. The EIS for the Matoush project was the first one that was made available in this manner.

⁷ As in the previous footnote, but in regards to the recommendation reports prepared by COFEX-South.

I. Results from the literature review of documents relating to public participation in general, and of materials on the JBNQA

This review was conducted to tease out broad insights from the literature as well as to inventory and confirm recognized principles or standards of public participation. The review was also undertaken to determine if the gaps identified in the JBACE's 2009 joint project with experts from the Université de Montréal still apply in light of these standards and to see where Section 22 stands in relation to them.

A total of 28 documents relating to public participation in general, or the JBNQA, were identified for analysis. These documents were qualitatively evaluated across the six key internationally-recognized indicators for meaningful public participation that were initially established.⁸ Not all of the documents analyzed were immediately relevant. The following groupings present only the major take-away findings that were used in the formulation of recommendations.⁹

1. Objectives to be pursued via public participation

Several documents outlined an overall objective of providing opportunities for the public to participate in project EAs. This objective is aligned with our own:

- Public participation is of fundamental importance in order to gain an understanding of the public's concerns regarding projects under EA and to integrate and consider local concerns in the EA. It is essential to examine and improve project designs and alternatives, mitigation measures, and to seek common ground regarding acceptable project-related impacts (both positive and negative).

2. Types of public participation (categories)

Several documents confirmed that there are different 'types' of public participation. Some of these do not, however, constitute meaningful public participation when conducted on their own while others are not commonly undertaken in the context of EAs:

- Information = one-way flow of information. A precondition for all public participation. A prerequisite but, on its own, information does not constitute meaningful public participation as the public cannot express concerns or opinions.
- Consultation = two-way exchange of information. Consultation in the form of informal or formal sessions or hearings is the most common 'type' of public participation that may enable the public to express their views during EAs. Consultation during the review stage of project EAs is a norm.
- Involvement = interactive public participation that allows parties (the proponent and/or the organizing bodies and the public) to share analyses, to mutually set agendas, and to seek shared positions. Not as common during EAs as public consultation.

⁸ While conducting the literature review, several key principles mentioned in the documents were identical to the six indicators used as common evaluation parameters for our analyses. Such instances are in *italics*. These concurrences reinforce the validity of our selection of indicators.

⁹ Readers may access the detailed analyses forms prepared for each of the 28 documents via the JBACE [website](#).

- Negotiation = face-to-face discussion between stakeholders to achieve consensus or resolution of issues and differences. Not commonly undertaken during EAs. Generally only entertained between project proponents and members of the public or local governments ‘outside’ of the EA process (e.g. when negotiating impact benefit agreements).

Information and Consultation are cited as the primary types of public participation undertaken during EAs. Coupled with the JBACE’s earlier joint work with the Université de Montréal, improvements in these areas could be made during Section 22 JBNQA assessments and reviews.

2. Public participation and good governance

- The public must have a say in decisions that may affect them. Public participation in the decision making process is at the core of good governance. Similarly, participation of Aboriginals during EAs of projects is also a principle of good governance and must be afforded special attention.
- Public participation is known to improve the identification of project impacts. And, there must be a veritable interest in modifying project proposals or eventual decisions in light of public concerns. Because EA serves a decision-support tool, clear links between public input during project EAs and resultant decisions are now the expectation of societies and communities around the world.
- In the absence of legally-assured opportunities to inform and consult the public regarding such decisions, alternative measures must be taken to ensure public input.

These findings underline our objective to strengthen public participation during Section 22 assessments and reviews. They highlight the need for a clear link between public participation and EA decisions. They also support our objective to more adequately account for the special status of involvement of the Cree during EAs beyond Cree representation on the Section 22 assessment and review bodies.

3. Guiding principles for public participation

- The public’s *Access to information* on decisions or issues that may influence them is a basic right. It is not reasonable to expect the public to participate effectively without accessible information or with information that is not clear, and that is not provided in their customary language.
- *Transparency* of the EA process and of the parties tasked with organizing public participation activities, including proponents, is fundamental. *Transparency* and *Credibility* are symbiotic principles and this concept must be shared by all involved.
- *Predictability* of the EA process, and of public participation activities during a project EA, are necessary prerequisites to ensure that the public is ready to engage in a dialogue with proponents or the bodies tasked with organizing the activities. Consistency of the ‘triggering’ of the EA process, and of public participation activities during EAs, is also a pre-requisite for maintaining the *Credibility* of the decision-making exercise. ‘Triggers’ for the EA procedure and for public participation activities therein must be clear and publicly-available.

- On the other hand, *Adaptability* and *Flexibility* are key principles for the bodies responsible for overseeing and administering EAs and when establishing ‘general’ public participation procedures for EAs. The same applies when organizing participation activities during individual project EAs. A balance is important, such that the ‘scale’ of participation activities should be tailored to the scale of the project undergoing the EA or to the scale of its potential impacts. On the other hand, rigid procedures may limit the public’s ability, opportunity, or willingness to participate.
- All parties involved in information and consultation activities must clearly outline their *Roles and responsibilities*. Guidelines or guidance materials may be sufficient to address this.

These findings underscore the need to address issues relating to *Transparency* and *Access to information* regarding the Section 22 assessment and review process, as well as the roles and procedures of the bodies involved, without affecting the bodies’ *Flexibility* to *Adapt* to participation activities according to project specifics.

4. Potential solutions / best practices that should pursued for public participation

- Early and upstream participation is highly-desirable. Proponents should be encouraged to proactively and voluntarily establish public participation programs from the outset, before their projects undergo EAs, and before a legal obligation requires them to engage with the public. The bodies tasked with overseeing EAs should produce materials and tools to assist proponents in the development of these programs and to outline what is expected of them. The same materials may be used to inform the public of the EA process and how to get involved.¹⁰
- The involvement of the local governments responsible for the areas in which projects are to occur in the EA procedure and in public participation activities scheduled during project EAs is a must. This also applies to any upstream public participation activities organized by proponents prior to EAs.
- A public commentary period (form of consultation) during the ‘scoping’ stage of an EA (i.e. when the EIS guidelines are being developed prior to the preparation of an EIS) affords the public an opportunity to ensure that the eventual EIS addresses their concerns. This adds a ‘layer’ of relevance to the EIS and to the *Credibility* of the EA procedure as a whole.
- Public participation activities should be documented, especially those organized by the bodies tasked with overseeing EA.
- Public registries facilitate *Access to information* and can serve as a forum for consultation in some instances.

These findings highlight the need to establish Section 22-specific guidance materials outlining the roles of the actors in the assessment and review process and what is expected of proponents by the assessment and review bodies. They also point to the need for including local governments in participation activities, establishing a public registry, and setting up a public consultation period during the formulation of EIS guidelines. The need to document public participation activities is also clear.

¹⁰ Guidance materials may take many forms (e.g. online documents, published guides, training sessions or workshops).

II. Results from the comparative analysis of public participation during EAs in other jurisdictions in Canada involving primarily Aboriginals

Signed in 1975, the JBNQA was the first modern and comprehensive land claims agreement in Canada. It was highly innovative at the time.

Section 22 of the JBNQA outlines the environmental and social protection regime for the Territory, including the assessment and review process, with certain unique features. One of these unique features is the special status and involvement for the Cree people over and above that provided for in procedures involving the general public (Par. 22.2.2c).

Since then, other jurisdictions have enacted EA legislation or have concluded land claims agreements that set out EA processes. And, advances have been made in matters relating to participation in EAs.

Having said this, with the aid of the indicators for meaningful public participation as comparative parameters, the objectives of this comparative analysis are two-fold:

1. Although Cree representation on the Section 22 assessment and review bodies is assured via the ‘special status,’ the analysis seeks to determine if Cree citizens have adequate opportunities to participate in EAs when compared to the other jurisdictions.
2. To outline EA-specific insights and novel elements relating to public participation that benefit from contemporary experience in other jurisdictions, and that may be helpful if implemented during Section 22 assessments and reviews. This entails an evaluation of how public participation during Section 22 assessments and reviews compares to the others, and involves the analysis of the legislation applicable and of the guidance materials available in the other jurisdictions.

Public participation procedures in the context of EAs in southern Québec, under the CEA Act 2012, in the Yukon, in the Mackenzie Valley, and in Nunavut were analyzed for the following reasons:

- They are subject to land claim agreements like the JBNQA, they exhibit similar development pressures (e.g. mining, hydro), and they encompass Aboriginal populations in northern settings;
- The procedure in southern Québec is included to compare between the northern and southern procedures in the province;
- The procedure per the CEA Act 2012 is included as it is the federal statute relating to EA in application nationwide.

Results from the comparative analysis are emphasized in the ensuing sections of this report. For concision, only the Section 22 JBNQA assessment and review process is treated at length, textually. A detailed comparative analysis table is provided in [Appendix II](#).

Public participation during EAs conducted under Section 22 JBNQA

Section 22 outlines a unique environmental and social protection regime that provides for:

1. A two-tiered environmental and social impact assessment and review procedure designed to minimize the environmental and social impact of development projects when negative on the Native people and the Territory.
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 (Par. 22.2.2c).

The Section 22 environmental and social protection regime is also subject to a unique set of nine guiding principles (Par. 22.2.4):

- a) The protection of the hunting, fishing and trapping rights of Native people in the Territory, and their other rights on Category I lands, with respect to developmental activity affecting the Territory;
- b) The environmental and social protection regime with respect to minimizing the impacts on Native people by developmental activity affecting the Territory;
- c) The protection of Native people, societies, communities, economies, with respect to developmental activity affecting the Territory;
- d) The protection of wildlife resources, physical and biotic environment, and ecological systems in the Territory with respect to developmental activity affecting the Territory;
- e) The rights and guarantees of the Native people within Category II established by and in accordance with Section 24 until such land is developed;
- f) The involvement of the Cree people in the application of this regime;
- g) The rights and interests of non-Native people, whatever they may be;
- h) The right to develop by persons acting lawfully in the Territory;
- i) The minimizing of the negative environmental and social impacts of development on Native people and on Native communities by reasonable means with special reference to those measures proposed or recommended by the impact assessment and review procedure.

The special status of involvement of the Cree and the guiding principles are vital elements in the Section 22 environmental and social protection regime. The Cree are entitled to participate in all facets of the environmental and social protection regime and in all facets of the project assessment and review procedure that it provides for, through consultation or representation. These are two of the most notable differences relating to the process of Aboriginal consultation between the Section 22 regime and the assessment and review process applicable in southern Québec.

The two-tiered assessment and review procedure is built around the following elements:

- Administrators with decision-making authority over the procedure. Depending on the jurisdiction, this decision-making responsibility falls to the provincial administrator, the federal administrator or the regional administrator of the Cree Nation Government.¹¹
- Three committees that make recommendations to the pertinent Administrators in accordance with the provisions of Section 22 (membership on these bodies is not subject to fixed terms):¹²
 - 1) A six-member tripartite Evaluating Committee (COMEV) composed of two representatives appointed by each of the three parties;
 - 2) A five-member Provincial Review Committee (COMEX) composed of three representatives appointed by the Gouvernement du Québec and two from the Cree Nation Government; and,
 - 3) A five-member Federal Review Panel (COFEX-South) composed of three representatives appointed by the Government of Canada and two from the Cree Nation Government.
- Two lists of development projects:¹³
 - 1) Schedule 1, the ‘inclusion list,’ which identifies projects automatically subject to assessment or review and requiring the preparation of an EIS;
 - 2) Schedule 2, the ‘exclusion list,’ which identifies projects that are exempt from impact assessment or review, and do not require the preparation of an EIS.
- A description of the contents of an EIS that proponents prepare for the purposes of Section 22 reviews (Schedule 3). Schedule 3 confirms that proponents may include in their EIS a section on information and questions submitted by the communities potentially-affected by the project.

Assessments conducted by COMEV¹⁴

Projects not listed in either Schedule 1 or 2, so-called ‘grey zone’ projects, are submitted to COMEV which recommends whether or not an EIS should be prepared by the proponent in relation to the nature and scope of the project. COMEV may recommend the delivery of either an ‘Attestation of Exemption’ from an environmental and social impact review, or may recommend to the Administrator that the project be subject to a review. If need be, COMEV may also recommend specific conditions regarding the scope of the review and of the proponent’s EIS.

¹¹ The provincial administrator is the Deputy Minister of the MDDELCC, the federal administrator is the president of the CEA Agency, and the regional administrator of the Cree Nation Government is the Director of the Department of the Environment and Remedial Works.

¹² Paragraphs 22.5.6, 22.5.7, 22.6.2 and 22.6.5.

¹³ Paragraphs 22.5.1 and 22.5.2, and Schedules 1 and 2 of Section 22.

¹⁴ Section 22 assessments of ‘grey zone’ conducted by COMEV are also commonly referred to as ‘evaluations.’ See Paragraphs 22.5.11 to 22.5.15.

In general, proponents request of the Administrator an ‘Attestation of Exemption’ and submit the following preliminary information regarding their project to the attention of the Administrator whom then forwards the information to COMEV for assessment:

- The purpose, justification and objectives of the project;
- The nature and extent of the proposed project;
- The exact location of the project as well as the intention to study alternative sites for the development where appropriate and/or the reasons why no other alternatives are possible;
- The human and biophysical settings of the project’s location;
- The expected impacts of the project;
- Public information and consultation activities undertaken or to be undertaken by the proponent;
- The work calendar for the project and a description of the subsequent stages of the project and of project-related developments.

After the submission of this information, COMEV may still request any additional information of the proponent – including additional treatments of the project’s potential impacts and of proposed mitigative measures.

The end goal for proponents in the ‘grey zone’ assessment process (when seeking Attestations of Exemptions) is to demonstrate to COMEV that the anticipated impacts associated with their projects are minor or non-significant, and that all the necessary mitigation measures will be applied. From this perspective, COMEV undertakes ‘preliminary assessments’ or ‘screenings’ of all of the components of ‘grey zone’ projects in order to determine if more thorough environmental and social impact reviews are required.

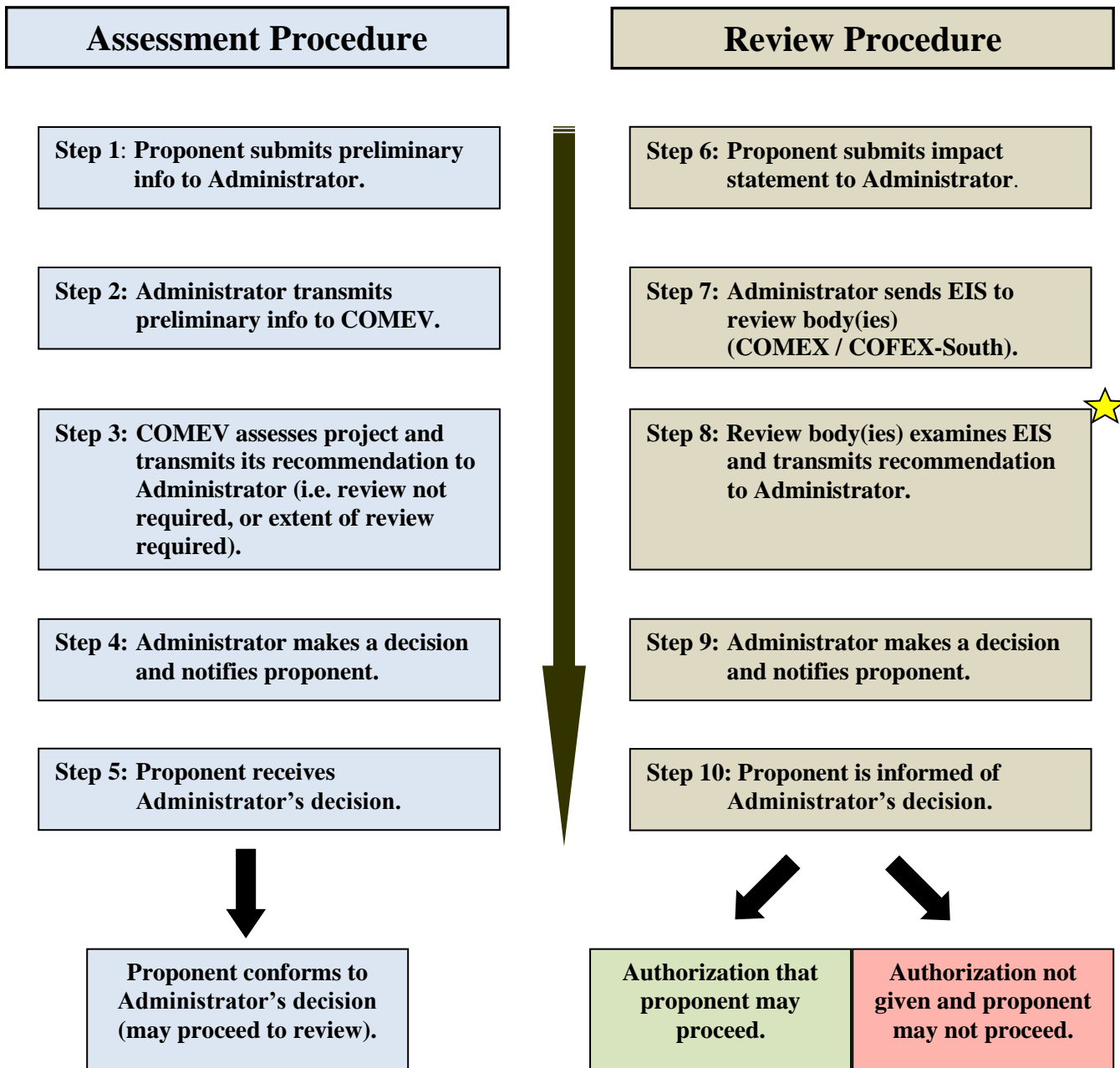
Reviews conducted by COMEX and COFEX-South¹⁵

Depending on the jurisdiction involved, the pertinent review bodies undertake the review of the project after the proponent has filed an EIS (either for projects subject to the procedure or for ‘grey zone’ projects so subjected following an evaluation by COMEV).

Following the environmental and social impact review, the pertinent review bodies transmit their recommendations to an Administrator who then ultimately makes a decision regarding the approval of the project.

¹⁵ Paragraphs 22.6.1 to 22.6.9.

Figure 1 Depiction of the Section 22 JBNQA assessment and review procedure



★ Indicates the step in which public consultations occur.

N.B.: This diagram illustrates the review procedure for projects listed in Schedule 1 of Section 22 JBNQA (automatically subject to impact assessment) and projects that are referred to reviews following their assessment by COMEV.

Public access to information during Section 22 assessments and reviews

There are no provisions set out in Section 22 that address obligations regarding the public's access to information – either by the proponent or COMEV – for projects subject to COMEV assessments. Paragraph 22.5.16 stipulates that the proponent's preliminary information, the recommendations of COMEV, and the Administrator's decision regarding projects subject to COMEV assessments may be transmitted to regional authorities through the auspices of the representatives on COMEV. It does not, however, stipulate that this information is to be accessible to the public.

For projects subject to reviews by COMEX or COFEX-South, paragraphs 22.6.11 and 22.7.1 confirm that proponent EISs, and the Administrator's final decision following the review, are to be transmitted to the Cree Nation Government. These paragraphs do not, however, confirm that the material is available for public access.

Proponents have the discretion to prepare their EIS in either French or English (not Cree), and are not obligated to include a section on information and questions submitted by the communities potentially-affected by the project.

Indeed, all public access to information initiatives relating to development projects subject to Section 22 assessments and reviews are considered to be the sole responsibility of proponents. Section 22 is silent on measures to ensure that proponents exercise this responsibility and that the information provided to the public is adequate.

Public consultations or hearings during Section 22 assessments and reviews

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

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.

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

Paragraph 22.6.12 stipulates that interested Cree communities and individuals may make oral or written presentations to the review bodies regarding projects subject to reviews. It mentions that these presentations are to occur to within 45 days of the review body's receipt of the proponent's EIS, although this period can be extended if required. Section 22 does not elaborate any further on how these presentations are to be sought, compiled, and considered. And so, if a review body deems that a project warrants one or more public consultations, the protocols for these consultations are devised on a

project-by-project basis. Pre-arranged descriptive reference material and operating guidelines for these consultations are thus not immediately available.

Given this discretion, the Section 22 review bodies can readily-adapt public consultations – and indeed public participatory activities in general – to project or review-specific considerations, public concerns, and cultural contexts.

There is no funding program established to facilitate the public’s participation during Section 22 assessments or reviews.

Terminology – Common Stages of EA

The issue of terminology must be addressed prior to outlining the results of the comparative analysis. All of the EA processes analyzed are characterized by similar stages. However, each jurisdiction may use different terms to describe each stage, documents that are submitted or produced, and the tasks undertaken at each stage. The following general stages of EA were established to simplify comparison, and are not designed to include all possible scenarios, but rather for situations most often encountered.

1. Notice of project / Submission of project proposal by proponent

The ‘start’ stage, where proponents notify the relevant boards or government bodies of their intention to develop a project. The notice normally includes descriptions of the project and perceived impacts. It may also include a description of participation activities previously undertaken by the proponent.

2. Screening / Scoping

The stage at which the responsible boards or government bodies determine if an in-depth review of the project is required based on the initial notice of the project / submission of the project proposal. These may entail a preliminary evaluation of the project’s components and perceived impacts.

3. Drafting of EIS guidelines / directives

The stage at which the responsible boards or government bodies prepare the instructions for the EIS that the proponent must prepare for eventual review. These guidelines / directives frequently include obligations for proponents to inform and consult the public.

4. Submission of EIS by proponent

The stage where proponents submit their EISs to the relevant board or government body for the purposes of the ensuing review.

5. Conformity review of EIS and exchanges of complementary information

The responsible boards or government bodies review the EIS for completeness, technical adequacy and quality in light of the guidelines / directives developed previously. This is generally an ‘in-house, exercise that does not necessarily include public participation.

6. Review of proponent’s EIS

The responsible boards or government bodies review the EIS. This stage generally includes public participation.

7. Drafting of recommendation report following the review of the EIS

The responsible boards or government bodies prepare their recommendation and attendant rationale for the decision-makers regarding the approval or refusal of the project.

8. Final decision

The ultimate decision regarding the approval or refusal of the project following the EA normally made by the relevant Administrator or Government.

1. Comparative Analysis Results – Organizational structures

The following table summarizes the structures of the different EA processes in each of the jurisdictions.

Jurisdiction	EA legislation (Date of inception)	Responsible boards / bodies	Membership on boards / bodies (includes Chair)	Aboriginal representation on boards / bodies	Length of mandate on boards / bodies	Decision-making powers of the boards / bodies
James Bay Territory (Eeyou Istchee)	Section 22 JBNQA (1975)	COMEV	2 Federal + 2 Provincial + 2 Aboriginal	2 out of 6 (Aboriginal Chair every second year)	None	Recommendation
		COMEX	3 Provincial + 2 Aboriginal	2 out of 5	None	Recommendation
		COFEX-South	3 Federal + 2 Aboriginal	2 out of 5	None	Recommendation
Southern Québec	EQA (CQLR Q-2, Ch. I) (1978)	MDELCC	n/a	None	None	Recommendation
		BAPE	5 Provincial (2-3 for hearings)	None	5 years	Recommendation
Canada	CEA Act 2012 (SC 2012 c.19 s.52) (2012)	CEA Agency ¹⁶	n/a	None	None	Recommendation
Yukon	YESAA (SC 2003 c.7) (2003)	Designated Offices (there are 6 offices)	None (only administrative staffs)	None (but staffs normally residents)	None	Decision / Recommendation
		YESAB	2 Federal + 2 Territorial + 3 Aboriginal	3 out of 7 (Chair must be a resident of Yukon)	3 years	Recommendation

¹⁶ In some cases, the Canadian Nuclear Safety Commission (CNSC) and the National Energy Board can act as the responsible federal body (referred to as ‘responsible authority’ in the text of the CEA Act 2012).

Jurisdiction	EA legislation <i>(Date of inception)</i>	Responsible boards / bodies	Membership on boards / bodies (includes Chair)	Aboriginal representation on boards / bodies	Length of mandate on boards / bodies	Decision-making powers of the boards / bodies
Mackenzie Valley	MVRMA (SC 1998 c.25) (1998)	Local land and water boards ¹⁷	1 Federal + 1 Territorial + 2 Aboriginal + 1 other (Chair)	At least 2 out of 5 (Chair is nominated by the other 4 members)	3 years	Decision
		MVLWB	3 Federal + 1 Territorial + 2 others	None (But the 3 'Federal' are appointed upon consultation with the Aboriginal communities and the Tlicho Gov't.)	3 years	Recommendation
		MVEIRB	3 Aboriginal + 3 Federal / Territorial + 1 other (Chair)	Minimum 3 out of 7 (Chair is nominated by the other 6 members)	3 years	Recommendation
Nunavut	NLCA (SC 1993 c.29) (1993) NPPAA (SC 2013 c.14 s.2) (2013)	NIRB	2 Federal + 2 Territorial + 2 Aboriginal + 7 others	At least of 2 out of 13 (All of the 'others' may be Aboriginal and the Chair is appointed upon consultation with the NIRB and the Gov't. of Nunavut)	3 years	Recommendation

Aboriginal representation on the responsible boards or bodies tasked with EAs is assured in the Yukon, Mackenzie Valley, and the Nunavut, as it is in the James Bay Territory. Aboriginal representation on these bodies is thus no longer a defining element of the Section 22 assessment and review procedure.

Of particular note, however, is that members of the Section 22 assessment and review bodies are not subject to fixed terms. In matters relating to the planning and undertaking of participation activities during assessments and reviews, means to ensure that new members of the Section 22 assessment and review bodies benefit from the insights of experienced incumbents must be considered. The parties should also consider fixed terms, as new members will offer different perspectives in matters relating to public participation.

¹⁷ The Gwich'in, Sahtu, and Wek'eezhii Land and Water Boards.

2. Comparative Analysis Results – Procedural components

The EAs conducted in each jurisdiction follow roughly similar procedures through the course of the general stages of EA, but also include certain unique elements. These include, for example, the ‘triggers’ for the commencement of EAs and for the decision to hold public consultations or hearings during EAs, as well as the publishing of final decisions post-EA. Consideration of these procedural differences allows for the comparison of the predictability of the EA processes in each jurisdiction and of public participation activities therein, while also highlighting the legal standing and the roles and responsibilities of the pertinent responsible boards or bodies.

Procedural components across the general stages of EA	Jurisdictions					
	Section 22 JBNQA	Southern Québec	CEA Act 2012	Yukon	Mackenzie Valley	Nunavut
Type of EAs	1. Assessments; 2. Reviews.	One type only – Environmental Assessment and Review).	One type only – Environmental Assessment (Screenings are a phase preceding EAs, held to determine if EAs are required).	1. Designated Office Evaluations; 2. Executive Committee Screenings; 3. Panel Board Reviews.	1. Preliminary Screenings; 2. Environmental Assessments; 3. Environmental Reviews.	1. Screenings; 2. Reviews.
‘Triggers’ for EAs	1. Reviews automatically required if in Schedule 1 of Section 22; 2. Exempt from reviews if in Schedule 2 of Section 22; 3. Projects not in the Schedules require assessments (‘grey zone’ projects).	Per regulation. ¹⁸	1. Per regulation; ¹⁹ 2. EAs triggered by referral after Screening phase.	1. Per regulation; ²⁰ 2. Panel of the Board Reviews triggered by referral after Screenings.	1. Per regulation for Preliminary Screenings; ²¹ 2. Assessments triggered by referral after Preliminary Screenings; 3. Reviews triggered by referral after Assessments.	1. Project must conform to land use plans. If so, project proceeds to Screening if not exempt per legislation; ²² 2. Reviews triggered by referral after Assessments.

¹⁸ Regulation respecting environmental impact assessment and review (CQLR c.Q-2 r.23 Div. II).

¹⁹ Regulations Designating Physical Activities (SOR/2012-147).

²⁰ Assessable Activities, Exceptions and Executive Committee Projects Regulations (SOR/2005-379, Schedule 3).

²¹ Preliminary Screening Requirement Regulations (SOR/99-12, Schedules 1 and 2).

²² Nunavut Land Claims Agreement Act (SC 1993 c.29, Schedule 12-1 – ‘NLCA’), and the Nunavut Planning and Project Assessment Act (SC 2013 c.14 s.2, Schedule 3 – ‘NPPAA’).

Procedural components across the general stages of EA	Jurisdictions					
	Section 22 JBNQA	Southern Québec	CEA Act 2012	Yukon	Mackenzie Valley	Nunavut
Notice of project / Submission of project proposal by proponent	Preliminary Information submitted by proponent.	Project Notice submitted by proponent.	Project Description submitted by proponent.	Project Proposal submitted by proponent.	Permit Application submitted by proponent.	Project Proposal submitted by proponent.
Drafting of EIS guidelines / directives	Drafted by COMEV on a project-by-project basis.	Drafted by MDDELCC by class, or on project-by-project basis.	Drafted by CEA Agency on project-by-project basis.	Drafted by YESAB on project-by-project basis.	Drafted by MVEIRB on project-by-project basis.	Drafted by NIRB on project-by-project basis.
Conformity review of EIS	Completed by COMEX and/or COFEX-South.	Completed by MDDELCC.	Completed by CEA Agency.	Completed by YESAB.	Completed by MVEIRB.	Completed by NIRB.
Review of proponent's EIS	Completed by COMEX and/or COFEX-South.	Completed by MDDELCC.	Completed by CEA Agency.	Completed by YESAB.	Completed by MVEIRB.	Completed by NIRB.
'Triggers' for holding public consultations or hearing during the review of proponent's EIS	At the discretion of COMEX and/or COFEX-South	At the discretion of the Minister MDDELCC ²³	Automatic per legislation, however public consultations on EIS guidelines / directives are done as a matter of best practice	Automatic per legislation and rules of procedure	Automatic per regulation and rules of procedure	Automatic per legislation and rules of procedure
Drafting of recommendation report following the review of EIS (reporting)	Completed by COMEX and/or COFEX-South.	1. Completed by MDDELCC; 2. Additional report if BAPE public hearings are conducted.	Completed by CEA Agency.	Completed by YESAB.	Completed by MVEIRB.	Completed by NIRB.

²³ Following a request from the public, the Minister of the MDDLECC may mandate the *Bureau d'audiences publiques sur l'environnement* (BAPE) to undertake a public hearing. One person's request may suffice for the 'triggering' of a public hearing, if the Minister deems that it is non-frivolous. In some cases, the BAPE may be mandated to undertake mediation if a limited number of requests are addressed and if these requests relate to a clearly defined issue for which there are possibilities for compromise between the interested parties. As such, all projects subject to EAs in southern Québec include a public information and consultation period, while public hearings are not necessarily held for each one.

Procedural components across the general stages of EA	Jurisdictions					
	Section 22 JBNQA	Southern Québec	CEA Act 2012	Yukon	Mackenzie Valley	Nunavut
Final Decision	1. Issued by the relevant Regional, Provincial, or Federal Administrator; 2. For reviews by COMEX, only approvals are normally published and do not include conditions for proponents; 3. Decisions for reviews by COFEX-South are published with conditions for proponents.	1. Issued by the Government of Québec by decree; 2. Decisions are published and include conditions for proponents.	1. Issued by federal Minister of the Environment; 2. Decisions are published with conditions for proponents.	1. Issued by the relevant Federal, Territorial, or First Nation Government or Agency; 2. Decisions are published with conditions for proponents.	1. Issued by the relevant Federal, Territorial, or First Nation Government or Agency; 2. Decisions are published with conditions for proponents.	1. Issued by the relevant Federal, Territorial, or First Nation Government or Agency; 2. Decisions are published with conditions for proponents.

The different ‘triggers’ for EAs across the jurisdictions are noteworthy, two of which are unique: 1) the EA process is triggered in the Mackenzie Valley as a result of permitting obligations; 2) the EA process in Nunavut begins only once projects are found to conform to available land use plans.

Similarly, one jurisdiction has a decidedly unique ‘trigger’ for the holding of public hearings during EAs: the Minister of the MDDELCC may direct an independent agency (the BAPE) to undertake public hearings, during EAs in southern Québec, following a citizen’s request to that effect.

Despite these three unique differences, clarity and predictability in the triggering of EAs, as well as obligations to hold public consultations or hearings, are assured by legislative instruments in the other jurisdictions. Indeed, Section 22 is the only procedure that includes a ‘grey zone’ for the assessment of projects that do not automatically require a review and that are not categorically exempted by legislation (i.e. Schedules 1 and 2 of Section 22).

As a result, in the absence of any legally-established triggers for public consultation during Section 22 reviews, decisions to hold public consultations and the manner in which they should proceed remain ad hoc. Assurances that public consultations are organized on a consistent basis during reviews, or that they will proceed in a relatively consistent manner, would improve the predictability of the Section 22 procedure. However, as was found in the literature review, a degree of flexibility is required to ensure that the review bodies can adapt public consultations in light of project specifics.

3. Comparative Analysis Results – Publicly-available tools and documents

As mentioned in the literature review, publicly-available information relating to EA processes and to specific projects undergoing EAs is of crucial importance. Access to information facilitates the public’s understanding and participation in EAs. Transparency, credibility, and predictability of the EA processes are all dependent on public access to process and project-specific information. The following table summarizes the tools and documents that are available to the public in each of the jurisdictions as a function of the general EA stages. It is not designed to include all possible scenarios, but rather for situations most often encountered.

Publicly-available tools	Jurisdictions					
	Section 22 JBNQA	Southern Québec	CEA Act 2012	Yukon	Mackenzie Valley	Nunavut
Public Registry (normally online and maintained throughout all stages of EA)	None for assessments by COMEV; In progress for reviews by COMEX; Projects under review by COFEX-South are in the CEA Act’s Registry. ²⁴	✓ ²⁵	✓	✓	✓	✓
Participant Funding Program (normally only available for reviews)	-	- ²⁶	✓	-	-	-
General guidance materials (e.g. procedural guides, rules / protocols of procedure – applicable throughout all stages of EA)	In progress for reviews by COMEX only.	✓	✓	✓	✓	✓

²⁴ Since the signing of the JBNQA in 1975, COFEX-South has reviewed a small number of projects. As such, the registry, maintained by the CEA Agency, does not harbour a wealth of information on a large number of projects. Indeed, the Matoush Advanced Uranium Exploration Project was the first project listed therein.

²⁵ The registry is currently in development. However, documentation relating to projects under EA in southern Québec is made available on the BAPE’s webpage for information and consultation purposes, even if the BAPE is not mandated to undertake formal public hearings for them.

²⁶ The provincial government’s Secrétariat aux affaires autochtones provides funding for Aboriginal Nations or communities that are planning to participate in consultation processes initiated by the Gouvernement du Québec. The funding is determined on a yearly basis according to the number and depth of the consultations in which the communities may participate, rather than on a case by case basis.

Publicly-available documents	Jurisdictions					
	Section 22 JBNQA	Southern Québec ²⁷	CEA Act 2012	Yukon	Mackenzie Valley	Nunavut
EIS guidelines / directives (after Screening / Scoping)	Only for reviews by COFEX-South and/or if subject to the CEA Act 2012.	✓	✓	✓	✓	✓
Report of conformity review (after receipt of proponent's EIS)	-	-	-	✓	✓	✓
Proponent's EIS (final draft after conformity review)	Only for reviews by COFEX-South and/or if subject to the CEA Act 2012.	✓	✓	✓	✓	✓
Consultation report (prepared by responsible boards or bodies after consultations during review of EIS)	-	Only when public hearings are held by the BAPE.	-	-	✓	✓
Recommendation report (submitted by responsible boards or bodies after review of EIS)	Only for reviews by COFEX-South and/or if subject to the CEA Act 2012.	✓	✓	✓	✓	✓
Final decision (issued once EA is completed)	Only approvals (project refusals not always published).	✓	✓	✓	✓	✓

In contrast with the other jurisdictions, EAs conducted under Section 22 are lacking in publicly-available process and project-specific tools and documents. Matters relating to transparency, access to information, and public awareness of the Section 22 process must be addressed.

Moreover, two Public Registries will exist for projects subject to Section 22 reviews (one for provincial reviews by COMEX and another for federal reviews by COFEX-South and/or per the CEA Act 2012). Neither will include specific information on projects subject to COMEV assessments. To facilitate the public's navigation and access to information over the continuum of the Section 22 assessment and review process, links will have to be established between the registries and the dissemination of additional information relating to projects subject to COMEV assessments will have to be addressed.

²⁷ Readers must note that, in southern Québec, the MDDELCC may nevertheless consult Aboriginal communities (in particular) at any stage throughout the EA process.

4. Comparative Analysis Results – Timing for seeking public input in the EA processes

The following table outlines at which stages the public’s input is normally sought via some form of consultation in each of the jurisdictions (e.g. written commentary periods, public consultations or hearings). The table is not designed to include all possible scenarios, but rather for situations most often encountered.

General stages of EA common to all of the jurisdiction	Stage when the public’s input is most-commonly sought across jurisdictions (i.e. consultation)					
	Section 22 JBNQA	Southern Québec	CEA Act 2012	Yukon	Mackenzie Valley	Nunavut
Notice of project / Submission of project proposal by proponent	-	-	-	-		-
Screening / Scoping	-	-	✓	✓	✓	✓
Drafting of EIS guidelines / directives	-	-	✓	✓	✓	✓
Submission of EIS by proponent	-	-	-	-	-	-
Conformity review of EIS and exchanges of complementary information	-	-	-	-	-	-
Review of proponent’s EIS	✓	✓	✓	✓	✓	✓
Drafting of recommendation report following the review of the EIS	-	-	✓	-	-	-

In contrast with the other jurisdictions, EAs conducted under Section 22 JBNQA normally afford only one opportunity for the collection of public insights and concerns (i.e. during the review of the EIS). This suggests that opportunities for public participation in Section 22 assessments and reviews are lacking when compared to the other jurisdictions. This situation must be remedied given that the the JBNQA establishes a special status of involvement for the Cree people over and above that which is provided for the public in general. When comparing with the other jurisdictions, efforts to provide an opportunity for public consultation during the drafting of EIS guidelines / directives should be made during Section 22 reviews. To ease administrative burdens, public consultation at this stage during Section 22 reviews could be undertaken only for major projects such as those outlined in Schedule 1 of Section 22, and could be coordinated through the auspices of the public registries.

5. Overview of additional results from the Comparative Analysis

Indicator	Elements relating to public participation in EAs held in the other jurisdictions, but <u>not</u> found in the Section 22 assessment and review process
<p>Transparency, access to information, and dissemination of information (includes public awareness of the process)</p>	<ul style="list-style-type: none"> • All benefit from publicly-available statutory instruments, instructions or directives that outline what projects are subject to EA, information that proponents must provide in their EISs, when and how the public may participate, as well as the criteria and considerations used by the responsible boards or government bodies to prepare their respective recommendations or decisions. • All maintain Public Registries with EA process information as well as information on projects undergoing EA. All use their registries to promote public awareness and for reporting recommendations and final decisions regarding project approvals. Several of the jurisdictions use their Public Registries as a vehicle for public consultation through written commentary periods. • Proponent EISs, recommendation reports with supporting rationale, and final decisions are published. Several jurisdictions publish the transcripts from public consultations, while others also publish consultation reports.
<p>Credibility of the process</p>	<ul style="list-style-type: none"> • Several jurisdictions undertake public consultations during the ‘Screening / Scoping’ stage of EAs, prior to developing the EIS guidelines / directives that proponents must follow. These exercises hone the EISs and their eventual review to the concerns and expectations of the public. • Several benefit from publicly-available rules of procedure for the various responsible boards and bodies. • Several undertake periodic ‘efficiency’ revision exercises to ensure that improvements may be made to the EA process, including matters relating to public participation. <p><u>These three elements improve the transparency and credibility of the EA process as a whole.</u></p>
<p>Predictability of the process (includes timing of participation activities during EAs)</p>	<ul style="list-style-type: none"> • All have publicly-available guidance materials outlining the EA process and how the public may participate therein. Also see Table 2 (Procedural components).
<p>Legal standing and the roles and responsibilities of the pertinent actors</p>	<ul style="list-style-type: none"> • Several benefit from publicly-available rules of procedure for the various responsible boards and bodies.
<p>Socio-cultural adaptability (includes operational and logistical issues, and means and formats of informing the public and of seeking public input)</p>	<ul style="list-style-type: none"> • The EA process in Nunavut is unique in the importance afforded to informality. The process allows Elders and residents of Nunavut the opportunity to file comments regarding screenings or reviews by telephone. • All of the jurisdictions, <u>including the Section 22 process</u>, value flexibility and adaptability in planning and undertaking public participation activities during EAs.

III. Results from the case study of public participation relating to the Matoush Advanced Uranium Exploration Project Review

The previous analyses were undertaken to evaluate and compare public participation during Section 22 assessments and reviews in light of relevant literature and procedures in other jurisdictions. To complement the results gleaned from those analyses, a case study was undertaken to obtain insights on public participation from participants, experts, and review board members acting ‘within’ the context of a recent Section 22 project review. The objective was to inventory Section 22-specific suggestions or detailed operational inputs on what can be improved.

Ressources Strateco Inc.’s Matoush Advanced Uranium Exploration Project was selected as the object of the case study for several reasons:

1. The project’s review occurred recently and included a number of public participation activities;²⁸
2. As an exploration project, it was not automatically subject to a Section 22 review, but it included a number of works that could be prescribed for the construction of a mine (e.g. access shaft, dewatering systems, water treatment, and tailings management). It was thus only after an assessment by COMEV and a decision of the Provincial Administrator that a Section 22 review was required.
3. It was jointly reviewed by COMEX and COFEX-South, as well as under the CEA Act 1992.²⁹
4. Financial assistance was made available for public participation under the CEA Agency’s Participant Funding Program.³⁰

The project’s progression through the review was complex, also requiring coordination with the federal statute. It involved various bodies and experts from both levels of governments. The project thus offers an interesting case for analyzing elements relating to public participation.

²⁸ Indeed, since the Eastmain 1A and Rupert River Diversion Hydroelectric Project, no other project subject to the Section 22 review procedure has included as many public participation activities (information sessions and consultations were jointly held in May and November 2010 in Mistissini and Chibougamau, respectively). It was also one of the few projects where public consultation occurred in the assessment stage for the purposes of drafting the EIS directives.

²⁹ Provincial and Federal Reviews under Section 22 and an EA under the CEA Act occurred. Public participation activities organized by COMEX and COFEX-South were coordinated together, but there was no harmonization of the actual EAs:

- The project was reviewed by both COMEX and COFEX-South in 2010 and 2011. COMEX tabled its report to the Provincial Administrator in August 2011 and the latter refused to authorize the project. COFEX-South tabled its review report in July 2011, and the Federal Administrator rendered a favourable decision on February 2nd 2012.
- An 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 president of the CEA Agency confirmed that the report issued by COFEX-South would be used in the decision-making process, such that the Canadian Nuclear Safety Commission (CNSC) would use the report issued by COFEX-South for its own purposes as the responsible Federal Authority under the CEA Act. Thus, two federal authorities had to take a decision concerning this project, the CNSC and the Section 22 Federal Administrator.

³⁰ The program made available \$45,567 through the Aboriginal Funding Envelope and \$23,799 through the Regular Funding Envelope. Participant funding from the Québec government is an exception and none was allocated for the project.

One set of interviews and two sets of questionnaires were used to gather information on the public participation aspects of the review.³¹

The interviews and questionnaires were designed to determine the respondents' familiarity with the Section 22 assessment and review process, their impressions regarding the credibility of the process, and their suggestions on means to inform and to consult the public, among other things. Input obtained from the interviews and questionnaires was then analyzed qualitatively with regard for the six indicators of meaningful public participation.

Although necessarily low in the number of responses, the results obtained from the interviews and questionnaires were quite useful. Indeed, in some instances, respondents provided very precise Section 22-specific suggestions to further promote public participation during assessments and reviews.

For concision only the key results are presented. [Appendix III](#) lists the activities relating to the dissemination of information undertaken by the CEA Agency in collaboration with COFEX-South and the Grand Council of the Crees in light of Section 22's federal review procedure, as well as those organized by the Cree Nation of Mistissini, in an effort to inform the community of Mistissini.

A. Results obtained from public participants at the information sessions and hearings held by the Section 22 review bodies in May and in November 2010

1. Familiarity with the assessment and review process

- Respondents expressed concern 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.
- They also stated that they were not initially familiar with the assessment and review process, but that the information sessions held in May (in Mistissini and Chibougamau) allowed them to learn about the project and feel more informed, in preparation for the hearings.

These responses point to the need to develop materials that offer additional clarification regarding the Section 22 assessment and review process. They also signal a need for preparatory public information sessions prior to consultations, or hearings, during reviews. This may be particularly important when a project's progression through the review process is similarly complex.

³¹ Eleven interviews were completed by participants at the information sessions held by COMEX and COFEX-South in May 2010. Questionnaires were distributed to participants after the hearings held by COMEX and COFEX-South in November 2010 (35 respondents or about 10% of those in attendance). A questionnaire was distributed to the members of COMEX and COFEX-South, and to the various experts from the CNSC and other federal agencies, involved in the review (9 respondents out of a possible 16, some responded collectively).

2. Credibility of the assessment and review process and of public participation procedures

- Respondents from both communities found that the information sessions organized by the review bodies were reliable and credible. But, while those from Chibougamau were confident that the review bodies would account for the concerns voiced at the hearings, those from Mistissini were not.

This highlights the need to address credibility of the Section 22 process. As found via the literature review, improving the transparency of the process will assist in this endeavour.

3. Timing of participation activities in the assessment and review process

- Respondents felt that the public should be informed of the following: 1) notification of the project; 2) drafting of the EIS guideline; 3) writing of the EIS. Several stated that the public should be consulted during either the drafting of the EIS guideline, or the conformity review of the EIS.
- All confirmed that public consultations or hearings should be mandatory for all projects subject to Section 22 reviews and that, at the end of the process, the review bodies should return to the communities to present their recommendations.
- Respondents from Mistissini suggested that the public be consulted during the follow-up and monitoring stage of the project post-review. Respondents from Chibougamau were divided on the issue, but maintained that they should be kept informed.

These insights suggest that additional information on the progression of the projects, from commencement, should be provided to the public. They also highlight a need to provide further opportunities for consultation during reviews; most notably, at a stage prior to the acceptance of the proponent's EIS by the review bodies as well as following the review.

4. Dissemination of information

- Respondents mentioned that there was a lack of dissemination of information on the project as well as on the participation process, and that use of non-technical language must be encouraged. Those from Mistissini voiced a lack of confidence in the quality of information provided by the proponent.

Section 22-specific guidance materials, in non-technical language, outlining the roles of the actors in the assessment and review process and of what is expected of proponents by the assessment and review bodies should be produced. They should also outline how the public may participate.

5. Operational and logistical issues

- Respondents encouraged the use of rules for participation during information sessions and hearings (e.g. speaking time, protocols for asking questions).
- Respondents held that translation services (French, English and Cree) are essential and should be improved to avoid intermittent break-downs.

- Many confirmed that information sessions, consultations, or hearings should be held in the evening so that people who work during the day can attend. Many also asserted that adequate time for expert interventions and clarifications during consultations or hearings is fundamental.

These results further support the development of guidance materials that outline the general protocols employed by the bodies tasked with organizing participation activities. Translation services should be employed to facilitate understanding. However, the results also point to a need to maintain a degree of flexibility to schedule activities in a manner that maximizes public attendance and that allows for sufficient exchanges with experts (during consultations).

6. Means and formats of informing the public and of seeking public input

- According to respondents, the best way of informing the public is via traditional media (TV, radio, newspaper), followed by information centres and community open houses. They found that the best way of consulting the public is via organized consultation sessions or hearings. Focus groups and online consultations were ranked second by respondents in Mistissini, while those in Chibougamau thought that surveys and questionnaires were the second-best vehicles for consultation.
- Respondents from Mistissini found that the format of information sessions and hearings were adapted to Cree culture, but that the public might feel intimidated and be reluctant to speak in front of a large audience.

These results reinforce the need to maintain a degree of flexibility to undertake different means or formats for informing the public and for seeking public input.

B. Results obtained from experts and members of the Section 22 review bodies involved in the review of the project (includes experts from the CNSC, Environment Canada, and Health Canada)³²

1. Familiarity with the assessment and review process

- Respondents felt that the public generally did not have an adequate understanding of the assessment and review process. All concur that efforts must be made to improve public awareness of the procedure as a whole. Several respondents mention that JBNQA-specific guidance materials could be quickly produced at modest cost, and that they should be available online and in hardcopy at the outset of public participation activities (must be clear, in non-technical language, and brief).³³

³² Because the review of the Matoush Advanced Uranium Exploration Project was conducted in conjunction with the CEA Act, several experts from federal agencies were on hand during the information and consultation sessions held by the Section 22 review bodies. Their participation in the questionnaires thus provided the JBACE with an interesting opportunity to glean ‘outside’ impressions on the public participation activities held ‘within’ the Section 22 review process.

³³ Readers should note that, as a rule, it was confirmed that both COMEX and COFEX-South systematically explain their roles and mandates at the beginning of all public participation activities in which they are involved.

- The review bodies should produce public communication strategies outlining the protocols for the public participation activities that they hold (must be clear, in non-technical language and brief).

These insights prescribe the development of guidance materials that provide general information on the assessment and review process, while outlining the general protocols employed by the bodies tasked with organizing participation activities. They also suggest that the simultaneous and uncoordinated review of the project by COMEX and COFEX-South, as well as under the CEA Act, was a source for the confusion or lack of understanding of the process on the part of public participants.

2. Credibility of the assessment and review process and of public participation procedures

- All concur that the attendance of the review bodies and of experts during public participation activities is fundamental for maintaining the credibility of the process.
- Although the presence of experts at all such activities may not be warranted, the review bodies should always consider their implication once it has been determined that such activities are needed during the review of a project. The experts selected to attend must be properly briefed on elements relating to the assessment and review process, and on how to deal with sensitive issues before an audience. This may entail planning and briefing sessions.
- The standard floor plan for hearings – the public seated in front of a panel composed of members from the review committees – may create a dynamic of confrontation. Those presiding over the consultations should make opening statements to address this issue, reiterate their independence from other stakeholders and their overall goal of ‘listening’ to the public.

These responses prescribe the development of guidance materials that outline how the review bodies determine the need for public participation activities and how they undertake them as independent bodies. They also confirm a need to ensure that experts invited to participate as such during consultations must be afforded sufficient preparation and briefing on the Section 22 process (guidance materials may facilitate this).

3. Timing of participation activities in the assessment and review process

- All concurred that consultations and hearings offer occasions to get a sense of the public’s ‘social-acceptability’ of projects and to obtain a better understanding of the public’s concerns and perceptions of the project in question. Many state that consultations should now be considered ‘standard’ for all projects subject to reviews.
- Efforts to improve the predictability of participation activities are critically required, while flexibility is needed to ensure that the review bodies can continue to adapt participation activities in light of project-specific factors (e.g. scale of the project, severity of perceived impacts).
- In order to develop a relationship based on trust and mutual-respect, respondents unanimously suggest that proponents make efforts to establish a dialogue and share info with the public well before the project becomes the object of a review. Guidance materials should be produced to assist proponents in these endeavours.

Descriptions of when and how the public may be engaged in assessments and reviews are required. These descriptions should also include treatments of what is expected of proponents upstream from the assessment and review process. These must not affect the review bodies' flexibility to adapt proceedings to project-specifics.

4. Dissemination of information

- Respondents pointed out that the duty of providing credible, timely and objective information on projects subject to assessments and reviews is solely that of the proponents. And, it is the proponents' duty to 'prove' to the review bodies that they informed the public.
- They also stated that the proponent was actively encouraged to prepare document summaries in English and in Cree. Such documents must be brief, clear and in non-technical language.

These insights are of prime importance. They further solidify the need to produce guidance materials that clearly outline what is expected of proponents in matters relating to public participation and, in this case, the dissemination of project information. The perceived success of the non-technical summaries produced by the proponent in English and in Cree confirms the utility of such materials. Moreover, such guidance materials could include frequently-used technical terms with their respective translations in Cree, French and English to further facilitate comprehension (their circulation during public participation activities may also improve the translation services, if provided).

5. Operational and logistical issues

- Consultations or hearings should be structured to ensure that persons in favour or against a proposed project have an equal opportunity to express themselves. Similarly, local and regional political positions, either for or against the project, should be entertained only after the public have had an opportunity to participate. Another alternative is to ensure that local and regional governments remain neutral during hearings.
- The bodies tasked with undertaking public participation activities must be adequately resourced. Because membership on these bodies is not subject to fixed terms, resources must also be set aside to ensure that new appointees benefit from the experience amassed by current members in relation to the assessment and review process and in matters directly relating to public participation activities during review (e.g. presiding over hearings on sensitive issues before an audience, maintaining project and review-relevant discussions).

These inputs suggest that the guidance materials should address the issue of equity in participation. They also suggest that new members of the review bodies should benefit from briefing or mentoring from the experienced incumbents (guidance materials may facilitate this).

6. Means and formats of informing the public and of seeking public input

- Information and consultations or hearings could be made more ‘personal’ (e.g. small targeted discussion groups, kiosks, small theme-based consultations). Visual and graphical depictions and presentations should be used to facilitate the public’s comprehension of the information. However, there is no universal solution – flexibility and adaptability must be maintained.
- The use of teleconference, web-conference, and other new technologies facilitates the exchange of information and helps maximize participation and should be considered in the future.
- During the hearings in Mistissini, the review bodies refrained from limiting the time available for interventions in respect of the Cree’s oral tradition and also in order to maximize participation.

A degree of flexibility is crucial in order to schedule and organize activities in a manner that maximizes participation and that allows for sufficient oral exchanges when occurring in Cree communities, for example. Nevertheless, the use of new technologies that permit remote-participation should be included as potential options in the afore-mentioned guidance materials that must be produced.

Recommendations

There are few provisions relating to public participation in the Section 22 JBNQA assessment and review procedure. The JBACE is of the opinion that a number of improvements relating to public participation can be implemented within the confines of its existing provisions. Despite this, we believe that the parties should indeed reflect on whether or not a revision of the text of Section 22 in matters dealing with public participation is necessary.

The following recommendations are tabled so as to address recognized principles of public participation and to modernize public participation procedures during Section 22 assessments and reviews. They also address the special status of involvement of the Crees as well as other issues that arose from our analyses. Moreover, the JBACE acknowledges that the Cree language holds a central place in Cree society. The recognition and promotion of the Cree language in the Section 22 assessment and review process was thus also held as a key principle underscoring the recommendations.

The recommendations are tabled to the signatory parties of the JBNQA, but will invariably require the attentions of various governments, ministries, the Section 22 assessment and review bodies, and project proponents to be implemented. The JBACE encourages these stakeholders to integrate the recommendations in their respective operating practices. We believe, for example, that the development of the Section 22-specific guidance materials with information on public participation best practices can also assist proponents with their own public participation activities that they may undertake prior or following the assessment and review of their projects.

Transparency and access to information

Establish an online registry for projects undergoing assessments and reviews:

- Include Preliminary Information submitted by proponents to the Administrator, environmental impact statement guidelines / directives, environmental impact statements and summaries, notices for public participation activities, information obtained from public consultations, and the recommendation reports of the assessment and review bodies;
- Prior to a review, a public commentary period should be established regarding the Administrator's draft guidelines / directives for the environmental impact statement. This commentary should be coordinated through the online registry and apply for certain classes of projects;
- Establish links between existing and planned registries for provincial and federal reviews, and include information used at the assessment stage (EIS guidelines / directives and proponent's Preliminary Information);
- Make the information available in French and in English, and, on a case by case basis, specific documents in Cree given the importance that the Cree language has in Cree society.

Production of guidance and public awareness material

Develop and disseminate guidance materials that provide general information on the assessment and review procedure and on public participation therein:

- Clarify the roles of the stakeholders and bodies involved in assessments and reviews, as well as the possible triggers, timing, planning, and the general protocols for public participation activities;
- Outline best practices relating to public participation at each stage of the assessment and review procedure, as well as for proponent-planned activities;
- Provide the public with information in non-technical language in French, in English, and in Cree.
- Publish glossaries of frequently-used technical terms in Cree, in French, and in English. Circulate these glossaries during public participation activities.

Strategy to promote public participation and to improve public awareness

Develop a strategy for raising public awareness about the assessment and review process and implicate the Territory's local and regional organizations in its implementation:

- Outline different measures to facilitate participation during assessment or reviews (e.g. using web-diffusion and remote participation technologies, timing of activities to maximize attendance).
- Establish training or orientation sessions on the Section 22 assessment and review procedure for the citizens and communities of the James Bay Territory, so that they may develop a better understanding of the process and on how to participate therein.

Resources and consistency

Mobilize resources to facilitate and support public participation during assessments and reviews:

- Consider the establishment of a participant funding program to facilitate and support the participation of the citizens and communities of the James Bay Territory during Section 22 assessments and reviews. This program should earmark funds to facilitate Cree participation given their special status of involvement per paragraph 22.2.2c of the JBNQA.
- Offer new members of the assessment and review bodies the required preparation, training or mentoring, and support to exercise these functions given that the planning and chairing of public participation activities requires specialized skill sets. The following should also occur:
 - Staff the secretariats of these bodies with employees that have the necessary qualifications and experience to manage the logistical aspects and related requirements of planning and undertaking public participation activities.
 - Consider the possibility of establishing fixed terms for members of the Section 22 assessment and review bodies that may be renewed as required.

Conclusion

Section 22 of the JBNQA is largely silent on the issue of public participation in the context of assessments and reviews conducted thereunder.

The three analyses conducted point to a lack of transparency and of public access to information regarding the Section 22 process. They suggest that clarity regarding the Section 22 assessment and review process, and regarding the roles of the various actors involved (including proponents and the public), is warranted. The analyses confirm that in addressing this issue, inroads may be made regarding the predictability and credibility of the process and of public participation activities that occur during project assessment and reviews.

Of particular note is the need to afford additional opportunities to the Cree for public consultation during the Section 22 projects assessments and reviews in light of the special status of involvement outlined in paragraph 22.2.2c of the JBNQA.

The analyses also point to a need to actively raise public awareness of the assessment and review process and to the maintenance of available resources for the bodies tasked with organizing and undertaking public participation activities, among other things.

The recommendations proposed in this report were developed in light of these findings. Their implementation would address the special status of the Cree peoples as outlined in Section 22, and would modernize public participation procedures during assessments and reviews while also aligning them with recognized best practices and contemporary procedures in other Canadian jurisdictions.

The majority of the recommendations, we believe, may be implemented quickly without the need for modifying the text of Section 22. For example, the production of guidance materials that include explanations of the Section 22 assessment and review process and public participation best practices, can occur without undue delay.

The recommendations are addressed to the signatory parties of the JBNQA, but their implementation will require the implication of federal and provincial ministries, the Section 22 assessment and review bodies, and project proponents. We encourage these stakeholders to integrate the recommendations in their respective operating practices. Indeed, we believe that the development of the afore-mentioned guidance materials, for instance, can also assist proponents with participatory activities that may precede or follow the assessment and review of their projects.

Having said this, the signatory parties have the discretion to consider updating the text of Section 22 with attention to public participation, and may mutually determine the breadth and timeline of such an exercise. We believe that the signatory parties should reflect on whether or not such a revision is necessary.

Finally, the JBACE will be reflecting on its recent experience with the public consultation sessions that were jointly-organized by the JBACE Commission on Uranium Issues and the BAPE Inquiry Commission on Uranium Issues, in 2014. The JBACE may provide additional ameliorative analyses and elements relating to public participation in the near future.

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Appendix I Guiding Indicators and Criteria for the Analyses

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

Appendix II

Comparative analysis table of public participation during EAs in other jurisdictions in Canada involving primarily Aboriginals

A) Transparency and access to information						
Criteria	Section 22 JBNQA	Southern Québec (per EQA Ch. 1 Div. IV.1)	CEA Act 2012	Yukon (YESAA)	Mackenzie Valley (MVRMA)	Nunavut (NLCA & NPPAA)
1. Transparency of the EA process and of project-level processes	<ul style="list-style-type: none"> - Public registry for COFEX-South is maintained via the CEA Registry (online).³⁴ - COMEV and COMEX meeting minutes are available via the JBACE website. <u>These are not designed for public information purposes.</u> 	<ul style="list-style-type: none"> - Public registry is maintained (online); - Project files (hardcopies) are maintained by the MDDELCC or BAPE and are available to the public on request; - Various guides on the EA process (for proponents, and the public); - Documents outlining the BAPE's procedures are public. 	<ul style="list-style-type: none"> - Public registry is maintained (online); - Project files (hardcopies) are maintained by the CEA Agency and are available to the public on request; - Various guides on the EA process (for government authorities, proponents, and the public). 	<ul style="list-style-type: none"> - Designated Offices (DOs) maintain websites for all project evaluations; - YESAB maintains a public registry (online), for all project Executive Committee (EC) Screenings and Panel of the Board Reviews; - Project files (hardcopies) are maintained by the YESAB and are available to the public on request for all EC Screenings and Panel of the Board Reviews; - Various guides on the EA process (for proponents, and the public); - Rules of procedure are public. 	<ul style="list-style-type: none"> - Boards tasked with preliminary screenings maintain websites and hardcopies for all project screenings; - MVEIRB maintains a public registry (online), for all project EAs and reviews; - Project files (hardcopies) are maintained by the MVEIRB and are available to the public on request, for all project EAs and reviews; - Various guides on the EA process (for proponents, and the public); - Rules of procedure are public. 	<ul style="list-style-type: none"> - Public registry is maintained (online); - Project files (hardcopies) are maintained by the NIRB and are available to the public on request; - Various guides on the EA process (for proponents, and the public); - Rules of procedure are public.

³⁴The first project uploaded to the COFEX-South registry was the Matoush Advanced Uranium Exploration Project.

A) Transparency and access to information

Criteria	Section 22 JBNQA	Southern Québec (per EQA Ch. 1 Div. IV.1)	CEA Act 2012	Yukon (YESAA)	Mackenzie Valley (MVRMA)	Nunavut (NLCA & NPPAA)
2. Access and dissemination of information (e.g. What documents are made public?)	As above; and, - Paragraphs 22.5.11 to 22.5.15 outline what Preliminary Information <u>may</u> be required for an assessment by COMEV. - Schedule 3 of Section 22 outlines what an EIS <u>may</u> contain.	- Project Notice; - EIS guideline (directive); - EIS; - EIS Summary; - Supplemental information provided by proponent as requested by MDDELCC; - Public information and consultation notices; - MDDELCC's recommendations report; - All public comments, interventions, and documents submitted during a BAPE public hearing (if applicable); - BAPE's recommendation report (if applicable); - Government's final decision.	- Project Notice; - Project Description; - EIS guideline; - Summary of the EIS; - Supplemental information provided by proponent as requested by CEA Agency; - Final EIS; - Public information and consultation notices; - All public comments, interventions, and documents submitted during public consultations; - Decisions to refer the project EA to a review panel; - CEA Agency's recommendations report; - Government's final decision; - Per s.81 of the CEA Act 2012, all EA and project-related documents are uploaded to the registry unless they must be kept confidential under the <i>Access to Information Act</i> (RSC 1985 c.A-1).	- Project Notice; - Project Description; - EIS guideline; - EIS; - Supplemental information provided by proponent as requested by the DOs and/or by the YESAB; - Public information and consultation notices; - All public comments, interventions, and documents submitted during public consultations; - YESAB's consultation reports; - DOs' decisions to refer the project to YESAB for an EC Screening or Panel of the Board Review; - YESAB's recommendations report; - Government's final decision.	- Project Notice; - Project Description; - EIS guideline; - EIS; - Supplemental information provided by proponent as requested by the boards tasked with preliminary screenings, and by the MVEIRB; - Public information and consultation notices; - All public comments, interventions, and documents submitted during public consultations; - Decisions to refer the project to a MVEIRB EA or review (if applicable); - MVEIRB's recommendations report; - Per s.142.1 of the MVRMA, all EA and project-related documents are uploaded to the registry unless they must be kept confidential under the <i>Access to Information Act</i> (RSC 1985 c.A-1).	- Project Notice; - Project Description; - Non-technical project summary in English, in Inuktitut, or in another language deemed necessary by the NIRB; - EIS guideline; - EIS; - Supplemental information provided by proponent as requested by the NIRB; - Public information and consultation notices; - All public comments, interventions, and documents submitted during consultations, or via telephone; - Decisions to refer the project to a NIRB review, Joint Panel Review, or Federal Environmental Assessment Panel (FEAP) Review; - NIRB's recommendations report; - Government's final decision; - Per rules 13.1-13.4 of the <i>Rules of Procedure</i> , ³⁵ all EA and project-related documents are included in the registry unless the NIRB has been requested not to do so and/or they may infringe on personal privacy.

³⁵ NIRB, 2009. [NIRB Rules of Procedure](#).

A) Transparency and access to information

Criteria	Section 22 JBNQA	Southern Québec (per EQA Ch. 1 Div. IV.1)	CEA Act 2012	Yukon (YESAA)	Mackenzie Valley (MVRMA)	Nunavut (NLCA & NPPAA)
3. Nature of the information (e.g. In technical or non-technical language?)	Nothing on the subject.	Nothing on the subject.	<p>No legal obligation.</p> <p>- However, per s.6.1 of the <i>Ministerial Guideline on Assessing the Need for and Level of Public Participation in Screenings under the Canadian Environmental Assessment Act</i>,³⁶ drafted under the previous version of the CEA Act:</p> <p><i>“The government authority should ensure that all participants are provided with the information they need to participate effectively on a timely basis. <u>Consideration should be given to the appropriate language for this information and the need to use culturally sensitive means of communication.</u>”</i></p> <p>This is still the case for the CEA Agency during EAs under the CEA Act 2012.</p>	<p>No legal obligation.</p> <p>- However, representatives of the YESAB confirmed that proponents are required to prepare non-technical summaries of their projects, and of their EISs, as a matter of best practice.</p>	<p>No legal obligation.</p> <p>- However, representatives of the MVEIRB confirmed that proponents are required to prepare non-technical summaries of their projects, and of their EISs as a matter of best practice;</p> <p>- And, for public hearings during Preliminary screenings, per the MVLWB’s <i>Engagement and Consultation Policy</i> (p.21):³⁷</p> <p><i>“[The Boards] make best efforts to ensure that translation and plain language materials are provided at the public hearing.”</i></p> <p>This is also done for public hearings during EAs and reviews.</p>	<p>Per the <i>Guide to the Filing of Project Proposals and the Screening Process</i> (p.5)³⁸ and rule 10.6 of the <i>Rules of Procedure</i>:</p> <p>- The NIRB may require proponents to produce non-technical executive summaries of any document filed with the NIRB, and that they are translated in Inuktitut or Inuinnaqtun, for all projects subject to screenings. Summaries are generally restricted to 300-500 words and are reproduced for projects subject to reviews.</p>

³⁶ CEA Agency, 2006. [Ministerial Guideline on Assessing the Need for and Level of Public Participation in Screenings under the Canadian Environmental Assessment Act](#).

³⁷ MVLWB, 2013. [Engagement and Consultation Policy](#).

³⁸ NIRB, 2007. [Guide to the Filing of Project Proposals and the Screening Process](#).

A) Transparency and access to information

Criteria	Section 22 JBNQA	Southern Québec (per EQA Ch. 1 Div. IV.1)	CEA Act 2012	Yukon (YESAA)	Mackenzie Valley (MVRMA)	Nunavut (NLCA & NPPAA)
4. Language of communication	Nothing on the subject.	Nothing specific on the subject. However: - Most of the information available on the MDDELCC's and the BAPE's websites is in French (includes information provided by proponents). - All MDDELCC and BAPE recommendations reports are only in French; - All final decisions are only in French; - Various guides on the EA process and on the BAPE's public participation procedures (for proponents, and the public) are available in English and in French.	As above; and, - The CEA Agency maintains the CEA Registry in English and in French (as obligated under the <i>Official Languages Act</i> (RSC 1985 c.31)).	Nothing on the subject.	Per rule 28 of the <i>Rules of Procedure</i> , ³⁹ the MVEIRB <u>may</u> direct a party to arrange for the translation of any documents into or from French or an aboriginal language(s) including the following documents: - EIS; - EIS Summary; - Summaries of relevant documents; or. - Any relevant document provided by a party that, in the MVEIRB's opinion should be translated in order to conduct a fair proceeding. Per rule 28 of the <i>Rules of Procedure</i> : - MVEIRB organizes translation (English-French-Aboriginal language), where necessary and appropriate.	Per art. 12 NLCA, art. 37 of the NPPAA, and rules 20.3 & 41 of the NIRB's <i>Rules of Procedure</i> : - NIRB operates in English and French, and upon request by any member, also in Inuktitut; - For scheduling oral public hearings, the NIRB informs as many people as possible in Inuktitut and any other language deemed necessary (includes Inuinnaqtun); - Oral hearings must occur in English and/or French. The NIRB provides translation and/or interpretation services in Inuktitut or Inuinnaqtun upon request by a NIRB member, a proponent, or a participant. - The NIRB has a duty to ensure that any witness giving evidence before it may be heard in English and/or French, in Inuktitut or Inuinnaqtun. Witnesses must not be disadvantaged due to language.

³⁹ MVEIRB, 2005. [Rules of Procedure for Environmental Assessment and Environmental Impact Review proceedings.](#)

A) Transparency and access to information

Criteria	Section 22 JBNQA	Southern Québec (per EQA Ch. 1 Div. IV.1)	CEA Act 2012	Yukon (YESAA)	Mackenzie Valley (MVRMA)	Nunavut (NLCA & NPPAA)
5. Reporting / Performance reporting	Nothing on the subject.	Nothing specific on the subject. However, - The BAPE distributes satisfaction surveys after every public hearing it undertakes for internal purposes. - All recommendation reports and decisions (with supporting rationale) are published on the MDDELCC's website and on the BAPE's website (if applicable).	Nothing specific on the subject. However: - All recommendations reports and decisions (with supporting rationale) are published on the CEA Registry.	Nothing specific on the subject. However: - All recommendation reports and decisions (with supporting rationale) are published on the YESAB Online Registry, and on the websites of the various DOs in the case of their Evaluations	Nothing specific on the subject. However: - All recommendation reports and decisions (with supporting rationale) are published on the MVEIRB Public Registry and/or on the websites of the various boards that undertake Preliminary Screenings. - The MVEIRB hosts annual EA practitioner workshops to examine challenges and potential solutions – a past workshop looked at issues relating to public participation. ⁴⁰	Nothing specific on the subject. However: - All recommendation reports and decisions (with supporting rationale) are published on the NIRB Public Registry

⁴⁰ As confirmed by a MVEIRB representative. The next workshop is planned for early 2015. For more information, see the MVEIRB's webpage on the matter: www.reviewboard.ca/reference_material/practitioners_workshop.php.

B) Awareness of the process

Criteria	Section 22 JBNQA	Southern Québec (per EQA Div. IV.1Ch. 1)	CEA Act 2012	Yukon (YESAA)	Mackenzie Valley (MVRMA)	Nunavut (NLCA & NPPAA)
<p>1. Awareness of the participatory process and of its objective(s)</p>	<p>Nothing specific on the subject. However:</p> <ul style="list-style-type: none"> - The MDDELCC provides some general info on the Section 22 JBNQA EA process on their website. <u>Very little information pertains to public participation during EAs.</u> 	<p>Nothing specific on the subject. However:</p> <ul style="list-style-type: none"> - The MDDELCC and the BAPE rely on their websites and registry; - The MDDELCC and the BAPE have produced various guides on the EA process and public participation therein (for government authorities, proponents, and the public). 	<p>Nothing specific on the subject. However:</p> <ul style="list-style-type: none"> - The CEA Agency relies on its website and the CEA Registry; - The CEA Agency has produced various guides on the EA process and public participation therein (for government authorities, proponents, and the public). 	<p>Nothing specific on the subject. However:</p> <ul style="list-style-type: none"> - The YESAB relies on its website and the YESAB Online Registry. - The YESAB has produced various guides and rules of procedure on the EA process, on participating therein, and on expectations of proponents (for government authorities, proponents, and the public). - The YESAB also maintains a seasonal newsletter, 'The Voice,' that provides information on the duties and activities of the YESAB's, as well as updates and information on projects undergoing EAs (including opportunities to participate therein and means of obtaining information on the projects). 	<p>Nothing specific on the subject. However:</p> <ul style="list-style-type: none"> - The MVEIRB relies on its website, as do the various boards that undertake Preliminary Screenings, and on the MVEIRB Public Registry. - The MVEIRB and the boards tasked with Preliminary Screenings have produced various guides and rules of procedure on the EA process, on participating therein, and on expectations of proponents (for government authorities, proponents, and the public). - The MVEIRB also maintains a periodic newsletter, 'Valley talk Newsletter,' that provides information on the duties and activities of the MVEIRB, as well as updates and information on projects undergoing EAs (including opportunities to participate therein and means of obtaining information on the projects). 	<p>Per the <i>Guide to the Filing of Project Proposals and the Screening Process</i> (p.4):</p> <ul style="list-style-type: none"> - When a project is undergoing review, the NIRB may facilitate information sessions for the public in the affected communities to ensure they are aware of the NIRB review process, the project undergoing the review, and any relevant correspondence relating to the project. - The NIRB also relies on its website and the NIRB Public Registry. - The NIRB has also produced various guides and rules of procedure on the EA process, on participating therein, and on expectations of proponents (for government authorities, proponents, and the public).

C) Credibility of the process

Criteria	Section 22 JBNQA	Southern Québec (per EQA Div. IV.1Ch. 1)	CEA Act 2012	Yukon (YESAA)	Mackenzie Valley (MVRMA)	Nunavut (NLCA & NPPAA)
<p>1. Delineated role and/or rules for proponents and the public, and accounting for results of the process</p> <p>N.B.: For accounting results, see ‘Reporting / Performance reporting’ above.’</p>	<ul style="list-style-type: none"> - Paragraphs 22.5.11 to 22.5.15 outline what preliminary information <u>may</u> be required for an assessment by COMEV. - Schedule 3 of Section 22 outlines what an EIS <u>may</u> contain. <p><u>None of the provisions in the above bullets outline exactly what is expected of proponents.</u></p>	<ul style="list-style-type: none"> - Publicly-available EIS guidelines (also called ‘directives’) are established for proponents. These outline all expectations, including expectations relating to proponent-driven public participation activities. - The MDDELCC and BAPE have produced various guides on the EA process, on participating therein, and on expectations of proponents. - The MDDELCC and the BAPE websites provide more information on their roles. - If hearings are requested, they follow the <i>Rules of procedure relating to the conduct of public hearings</i> (CQLR c.Q-2 r.45). 	<ul style="list-style-type: none"> - Publicly-available EIS guidelines are established for proponents. These outline all objectives and requirements, including those relating to proponent-driven public participation activities (e.g. information to be provided by proponents in their reports regarding public or Aboriginal concerns). - The CEA Agency has produced various guides on the EA process and on participating therein. - The CEA Agency website provides additional information on the Agency’s role. 	<ul style="list-style-type: none"> - Publicly-available EIS guidelines are established for proponents (for Screenings by the EC and Panel of the Board Reviews). These outline all expectations, including expectations relating to proponent-driven public participation activities. - The YESAB has produced various guides and rules of procedure on the three types of EAs, on participating therein, and on expectations of proponents. - The YESAB website provides more information on its role. - The DOs maintain websites that provide more information on their roles. 	<ul style="list-style-type: none"> - Publicly-available EIS guidelines are established for proponents (for EAs and reviews). These outline all expectations, including expectations relating to proponent-driven public participation activities. - The MVEIRB, with the assistance of the boards tasked with Preliminary Screenings, have produced various guides and rules of procedure on all three types of EAs, on the bodies tasked with these, on participating therein, and on expectations of proponents. - The MVEIRB website and the websites maintained by the boards tasked with Preliminary Screenings provide more information on their roles. 	<ul style="list-style-type: none"> - Publicly-available EIS guidelines are established for proponents (for project subject to reviews). These outline all expectations, including expectations relating to proponent-driven public participation activities. - The NIRB has produced various guides and rules of procedure on the two types of EAs, on participating therein, on the responsible bodies, and on expectations of proponents. - The NIRB website provides more information on its role.
<p>2. Credibility of the process and integrity of the members involved</p>	<p>Nothing on the subject.</p>	<ul style="list-style-type: none"> - Members of the BAPE are subject to the <i>Code of Ethics and Professional Conduct of the Members of the Bureau d’audiences publiques sur l’environnement</i>,⁴¹ which is designed to maintain their independence in the exercise of all of their functions. 	<p>Nothing on the subject.</p>	<p>Nothing on the subject.</p>	<ul style="list-style-type: none"> - Nothing on the subject for boards tasked with Preliminary Screenings or for MVEIRB. - Per the guidelines,⁴² “<i>The Review Panel is an independent body whose members are not acting on behalf of, or in the interests of, their nominating agency or any other organization. Its deliberations are independent of the developer, government or interested parties.</i>” 	<p>Nothing on the subject.</p>

⁴¹ BAPE, 2014. [Code of Ethics and Professional Conduct of the Members of the Bureau d’audiences publiques sur l’environnement](#).

⁴² MVEIRB, 2004. [Mackenzie Valley Environmental Impact Assessment Guidelines](#). Page 36.

D) Predictability / ‘Foreseeability’ of the process

Criteria	Section 22 JBNQA	Southern Québec (per EQA Div. IV.1Ch. 1)	CEA Act 2012	Yukon (YESAA)	Mackenzie Valley (MVRMA)	Nunavut (NLCA & NPPAA)
1. Criteria for ‘triggering’ the process	<ul style="list-style-type: none"> - Projects listed on Schedule 1 of Section 22 automatically require an EA; those on Schedule 2 are automatically exempt. - <u>Decisions made to exempt or subject projects that do not appear on either list are made project-by-project. Criteria for these decisions are not public.</u> - <u>Criteria for ‘triggering’ public participation activities during a review is not public.</u> 	<ul style="list-style-type: none"> - EAs are required for all projects that are listed or exceed the thresholds listed in Div. II of the <i>Regulation respecting impact assessment and review</i> (CQLR c.Q-2 r.23). - Per s.31.3 of the EQA and ss.6-12 of the above-mentioned regulation, <u>a public information and consultation period is mandatory for all EAs.</u> - Per s.31.3 of the EQA and s.13 of the above-mentioned regulation, any person, group, or municipality may request a public hearing during the above-mentioned public information and consultation period. The BAPE’s guide entitled <i>How to participate?</i> is designed to assist those wishing to make such a request. - If a public hearing is granted by the Minister, it must occur according to the <i>Rules of procedure relating to the conduct of public hearings</i> (CQLR c.Q-2 r.45). 	<ul style="list-style-type: none"> - Projects that include any of the physical activities listed in the <i>Regulation Designating Physical Activities</i> (SOR/2012-147) must undergo Screenings to decide if an EA is needed. - Per s.4 of the CEA Act 2012, consultation is compulsory for all Screenings and EAs. - The CEA Agency determines when and how to undertake the public hearings (<u>project-by-project / criteria are not public</u>). - However: <ul style="list-style-type: none"> a. During Screenings, commentary is limited to submission of written comments via the registry. b. During EAs, commentary on the EIS guidelines can be limited to submission of written comments via the registry, but may also occur through public hearings. c. During EAs, consultations or hearings occur when reviewing the proponent’s EIS. d. During EAs, commentary on the CEA Agency’s recommendation report is limited to submission of written comments via the registry. 	<ul style="list-style-type: none"> - Projects requiring a land use or water use permit are subject to Evaluations by DOs. - Projects in Schedule 3 of the <i>Assessable Activities, Exceptions and Executive Committee Projects Regulations</i> (SOR/2005-379) are subject to EC Screenings. - DOs may recommend a Screening, which may in turn, recommend a Panel of the Board Review (<u>project-by-project / criteria are not public</u>). - Per rules 25-26 of the <i>Rules for Evaluations Conducted by DOs</i>, comments must be sought (may be in writing). - Per rules 40-43 & 60 of the <i>Rules for Screenings Conducted by the EC</i>, consultation is <u>mandatory</u> for Screenings. Comments may be in writing and the EC <u>may</u> hold meetings. <u>Criteria for these decisions are not public.</u> - Per rules 74-88 of the <i>Rules for Reviews Conducted by Panels of the YESAB</i>,⁴³ written comments <u>must</u> be sought during technical reviews of EISs; and, hearings are <u>mandatory</u> thereafter. The rules are clear on how these occur. 	<ul style="list-style-type: none"> - Projects requiring a permit listed in statutes set out in Schedules 1 & 2 of the <i>Preliminary Screening Requirement Regulations</i> (SOR/99-12) need Preliminary Screenings. - Boards doing Screenings may recommend an EA (<u>project-by-project / criteria are not public</u>). - MVEIRB may recommend a review (<u>project-by-project / criteria are not public</u>). - Proponents <u>must</u> inform and consult the public prior to Preliminary Screenings. They determine how to do so. - For EAs, public scoping sessions; comment periods for technical reviews; or, formal hearings / community hearings to review EISs are <u>mandatory</u>. MVEIRB chooses what is best (<u>project-by-project / criteria are not public</u>). Rules of procedure are clear on how these occur.⁴⁴ - Per s.127.1 of the MVRMA, public consultations / hearings are <u>mandatory</u> for all EAs that occur on First Nation lands. - Per s.134(1)e of the MVRMA, public consultations / hearings are <u>mandatory</u> for all reviews. Rules of procedure are clear on how these occur.⁴⁵ 	<ul style="list-style-type: none"> - The Nunavut Planning Commission determines if projects should be subject to Screenings (see p.26 for details). - Per art. 12 NLCA and rules 8.4-8.10 of the NIRB’s <i>Rules of Procedure</i>, the NIRB <u>must</u> notify the public when Screenings begin, and <u>must</u> allow for a written or phoned-in commentary period. - After a Screening, the NIRB may recommend that a review by the NIRB, or a review by a FEAP, is required (<u>project-by-project / criteria are not public</u>). - For all NIRB reviews, the NIRB <u>must</u> solicit public oral / written comments on EIS guidelines (per art.12 NLCA and art.101(4) NPPAA). Also the case for reviews by FEAPs. - Per art.12 NLCA and art.102 NPPAA, for all NIRB reviews, the NIRB <u>must</u> solicit public comments on the EIS. The NIRB may opt to do so by correspondence, community meetings, public hearings, or any other means it deems fit (<u>project-by-project / criteria are not public</u>). Rules of procedure are clear on how these occur. Also applies for FEAP reviews.

⁴³ YESAB, 2006. *Rules for Reviews Conducted by Panels of the Yukon Environmental and Socio-economic Assessment Board*.

⁴⁴ MVEIRB, 2005. *Rules of Procedure for Environmental Assessment and Environmental Impact Review proceedings*.

⁴⁵ Ibid.

D) Predictability / 'Foreseeability' of the process

Criteria	Section 22 JBNQA	Southern Québec (per EQA Div. IV.1Ch. 1)	CEA Act 2012	Yukon (YESAA)	Mackenzie Valley (MVRMA)	Nunavut (NLCA & NPPAA)
2. Adaptive / harmonizing measures	Nothing specific on the subject other than provisions allowing for joint reviews.	Nothing specific on the subject other than legislative provisions allowing for joint reviews, and the agreement on cooperation with the Federal Government for a one-project, one-assessment approach. ⁴⁶	Nothing specific on the subject other than legislative provisions allowing for joint reviews, and the agreement on cooperation with the Government of Québec for a one-project, one-assessment approach. ⁴⁷	Nothing specific on the subject other than legislative provisions allowing for joint reviews.	Nothing specific on the subject other than legislative provisions allowing for joint reviews.	Nothing specific on the subject other than legislative provisions allowing for joint reviews, or a FEAP.
3. Defined instances for public participation	Nothing on the subject.	- See ' Criteria for 'triggering' the process ' above.	As at left.	As at left.	As at left.	As at left.
4. Roles of the proponent and follow-up of the process once completed	Nothing on the subject.	- See ' Delineated role and/or rules for proponents and the public, and accounting for results of the process. ' above. - Nothing on the subject of follow-up other than the publishing of all recommendation reports (with supporting rationale) and decisions.	As at left.	As at left.	As at left.	As at left.

⁴⁶ See the [Canada-Québec Agreement on Environmental Assessment Cooperation \(2010\)](#).

⁴⁷ Ibid.

E) Legal standing and the roles and responsibilities of the pertinent actors

Criteria	Section 22 JBNQA	Southern Québec (per EQA Div. IV.1Ch. 1)	CEA Act 2012	Yukon (YESAA)	Mackenzie Valley (MVRMA)	Nunavut (NLCA & NPPAA)
1. Defined hierarchy of the consultation process (e.g. Whom to consult and in what order?)	<p>Nothing beyond the text of the Section 22:</p> <ul style="list-style-type: none"> - “A special status and involvement 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 to protect or give effect to the rights and guarantees in favour of the Native people established by and in accordance with the Agreement” (Par. 22.2.2c). - The regional authorities and the Cree Nation Government are also mentioned (pars. 22.5.16, 22.6.11 and 22.7.1). 	<p>Nothing on the subject. However:</p> <ul style="list-style-type: none"> - The Government of Québec has a duty to consult Aboriginal communities as outlined in recent court decisions. The Government of Québec has a guide on the matter (document #45 in the References section of this report). 	<p>Nothing specific on the subject. However:</p> <ul style="list-style-type: none"> - Per ss.4 & 10, the purposes of the CEA Act 2012 are to promote communication and cooperation with Aboriginal peoples and to ensure opportunities are provide for meaningful participation. EAs under the Act may take also into account community knowledge and Aboriginal traditional knowledge whenever necessary (s.19). - The Government of Canada has a duty to consult Aboriginal communities as outlined in recent court decisions. AANDC has a guide for federal officials on the matter (document #1 in the References section of this report). <u>However, the duty to consult Aboriginal communities has been integrated within the environmental assessment process as set out in the Act.</u> 	<p>Nothing specific on the subject. However:</p> <ul style="list-style-type: none"> - Per ss. 42(1g) & 108(1e) of YESAA, special attention must be brought to First Nation participation, the need to protect the rights of Yukon Indian persons, the special relationship between Yukon Indian persons and the wilderness environment of Yukon and the cultures, traditions, health and lifestyles of Yukon Indian persons and other residents of Yukon. - The Designated Offices and the YESAB maintain notification / distribution lists for the purposes of organizing public participation activities during all three types of EAs. These lists include First Nations, individuals previously-engaged in a project’s EA or who have expressed an interest in a project, government and independent agencies. 	<p>Nothing specific on the subject. However:</p> <ul style="list-style-type: none"> - The land and water boards, the MVLWB, and the MVEIRB maintain distribution lists for the purposes of organizing public participation activities during all three types of EAs. These lists include First Nation communities, individuals previously-engaged in a project’s EA or who have expressed an interest in a project, government and independent agencies. 	<p>Nothing specific on the subject. However:</p> <ul style="list-style-type: none"> - Designated Inuit organizations must be afforded full standing when making submissions on behalf of the people they represent during hearings. - The NIRB maintains distribution lists for the purposes of organizing public participation activities during both types of EAs. These lists include Inuit communities, individuals previously-engaged in a project’s EA or who have expressed an interest in a project, government and independent agencies. - Per <i>A Proponent’s Guide to Conducting Public Consultation for the NIRB Environmental Assessment Process</i> (pp.5-6),⁴⁸ proponents may need to consult with affected persons, communities, and organizations such as: <ul style="list-style-type: none"> a. Regional Inuit associations; b. Community governments, lands and resource committees; c. Hunters and trappers organizations; d. Wildlife officers / board; e. Women’s and youth groups; f. Elder’s committees; g. Health centres.

⁴⁸ NIRB, 2006. [A Proponent’s Guide to Conducting Public Consultation for the NIRB Environmental Assessment Process](#).

E) Legal standing and the roles and responsibilities of the pertinent actors

Criteria	Section 22 JBNQA	Southern Québec (per EQA Div. IV.1Ch. 1)	CEA Act 2012	Yukon (YESAA)	Mackenzie Valley (MVRMA)	Nunavut (NLCA & NPPAA)
2. Defined roles and responsibilities of the pertinent actors	- See ' Delineated role and/or rules for proponents and the public, and accounting for results of the process, ' above.	As at left.	As at left.	As at left.	As at left.	As at left.
3. Defined roles and responsibilities of those leading the consultation	- See ' Delineated role and/or rules for proponents and the public, and accounting for results of the process, ' above.	As at left.	As at left.	As at left.	As at left.	As at left.
4. Composition and workload of the committees involved	- For composition, see p.22 of this report. - Nothing on the subject of workload.	- Nothing on the subject of composition for the MDDELCC. - Nothing on the subject of workload.	- Nothing on the subject of composition. - Nothing on the subject of workload.	- For composition, see p.22 of this report. - Evaluations by DOs (900+) far outnumber EC Screenings and Review Panels (none to date); but nothing specific on workload.	- For composition, see p.22 of this report. Preliminary Screenings far outnumber EAs and reviews (including joint reviews); but nothing specific on workload.	- For composition, see p.22 of this report. - NIRB Screenings (many hundreds) far outnumber NIRB Reviews (including reviews by a Joint Panel or by a FEAP); but nothing specific on workload.
5. Rules concerning conflicts of interest	Nothing on the subject.	- Members of the BAPE are subject to the Code of Ethics and Professional Conduct of the Members of the Bureau d'audiences publiques sur l'environnement , which is designed to maintain their independence in the exercise of all of their functions.	Nothing on the subject.	Nothing on the subject.	Nothing on the subject.	Nothing on the subject.

F) Socio-cultural adaptability

Criteria	Section 22 JBNQA	Southern Québec (per EQA Div. IV.1Ch. 1)	CEA Act 2012	Yukon (YESAA)	Mackenzie Valley (MVRMA)	Nunavut (NLCA & NPPAA)
1. Different modes of group consultation (e.g. Tallymen, individuals, local / regional organizations)	- There are no fixed formats or durations for public consultations during EAs – COMEV, COMEX and COFEX-South may tailor activities according to project-specifics or to the needs and concerns of communities at their discretion.	- The public information and consultation activities are fixed according to a strict set of steps as outlined in the <i>Rules of procedure relating to the conduct of public hearings</i> (CQLR c.Q-2 r.45).	- There are no fixed formats or durations for public consultations during EAs – the CEA Agency tailors activities according to project-specifics or to the needs and concerns of communities at its discretion. - Section 19(3) of Act provides the CEA Agency with the discretion to consider traditional knowledge in EAs. Although produced under the previous version of the Act, the CEA Agency’s guide entitled Considering Aboriginal traditional knowledge in environmental assessments conducted under the Canadian Environmental Assessment Act – Interim Principles , provides insight on how the CEA Agency may access this knowledge during EAs.	- There are no fixed formats or durations for public consultations during EAs. - Whenever public meetings or hearings are to occur during EC Screenings or Panel of the Board Reviews, the EC and the Panel determine the best manner in which to conduct them according to project-specifics or to the needs and concerns of communities (YESAA, ss.50(3) & 70(1)).	- There are no fixed formats or durations for public consultations during EAs. - Whenever community meetings or formal hearings are to occur during MVEIRB EAs or reviews (or by a Review Panel), the MVEIRB and the Review Panel determine the best manner in which to conduct them according to project-specifics or to the needs and concerns of communities (MVRMA, s.123.1).	- There are no fixed formats or durations for public consultations during EAs. - Whenever public meetings, conferences or hearings are to occur during NIRB reviews (including Joint Panel and FEAP reviews), the NIRB determines the best manner in which to conduct them according to project-specifics or to the needs and concerns of communities (NLCA art. 12; NPPAA, art.26). - Rules for public hearings <u>must</u> account for Inuit oral communication and decision-making traditions (NLCA art. 12; NPPAA, art.26-27 & 37). - Rules for public hearings <u>must</u> emphasize flexibility and informality (arts. as above).
2. Culturally-adapted process in light of timing, season, etc. (e.g. Goose break)	As above.	Nothing on the subject.	As above.	As above.	As above.	As above; and, - The NIRB utilizes Traditional Inuit Knowledge in exercising its mandate. ⁴⁹
3. Adaptability / proportionality of the process according to the context and scope of the project (e.g. The Matoush project)	As above.	Nothing on the subject.	As above.	As above.	As above.	As above.

⁴⁹ NIRB, 2007. [Guide to the NIRB](#). Page 2.

Supplementary documents available to the public regarding EA and public participation

(N.B.: Provided here for information purposes only. These documents are in addition to those listed in the ‘References’ section of this report)

Section 22 JBNQA	Southern Québec (per EQA Div. IV.1Ch. 1)	CEA Act 2012	Yukon (YESAA)	Mackenzie Valley (MVRMA)	Nunavut (NLCA & NPPAA)
<p>1. Various additional materials are available via the MDDELCC’s website (www.mddelcc.gouv.qc.ca/evaluations/mil-nordique/index.htm).</p>	<p>1. Various additional materials are available via the MDDELCC’s website (www.mddelcc.gouv.qc.ca/evaluations/procedure.htm).</p> <p>2. Various additional materials are available via the BAPE’s website (www.bape.gouv.qc.ca/sections/bape/index.htm).</p>	<p>1. CEA Agency, 2014. Aboriginal Consultation in Federal Environmental Assessment.</p> <p>2. CEA Agency, 2014. Guide to Preparing a Description of a Designated Project under the Canadian Environmental Assessment Act, 2012.</p> <p>3. CEA Agency, 2014. Technical Guidance for Assessing Physical and Cultural Heritage or any Structure, Site or Thing that is of Historical, Archeological, Paleontological or Architectural Significance under the Canadian Environmental Assessment Act, 2012.</p> <p>4. CEA Agency, 2013. Participant Funding Program – National Program Guidelines.</p> <p>5. CEA Agency, 2013. Practitioners Glossary for the Environmental Assessment of Designated Projects Under the Canadian Environmental Assessment Act, 2012.</p> <p>6. CEA Agency, 2013. Operational Policy Statement - Addressing “Purpose of” and “Alternative Means” under the Canadian Environmental Assessment Act, 2012.</p>	<p>1. YESAB, 2012. Assessment of Cumulative Effects.</p> <p>2. YESAB, 2012. Learning About Assessments.</p> <p>3. YESAB, 2012. Make Your Voice Count.</p> <p>4. YESAB, 2012. Public Participation in Assessments.</p> <p>5. YESAB, 2012. Socio-Economic Effects Assessment.</p> <p>6. YESAB, 2012. The Role of Designated Offices.</p> <p>7. YESAB, 2012. The Role of YESAB.</p> <p>8. YESAB, 2012. YESAB Public Registry.</p> <p>9. YESAB, 2010. Public Participation in Assessments.</p> <p>10. YESAB, 2005. First Nation Participation in Assessments.</p>	<p>1. MVEIRB, 2014. MVEIRB Public Registry User Manual;</p> <p>2. MVEIRB, 2014. The creation of the Mackenzie Valley Environmental Impact Review Board.</p> <p>3. MVEIRB, 2011. Environmental impact assessment stages.</p> <p>4. MVEIRB, 2011. Process Diagrams.</p> <p>5. MVEIRB, 2011. The Decision Makers in the Process (infosheet).</p> <p>6. MVEIRB, 2010. Draft Guidelines for Considering Wildlife at Risk in Environmental Impact Assessment in the Mackenzie Valley.</p> <p>7. MVEIRB, 2007. Socio-Economic Impact Assessment Guidelines.</p> <p>8. MVEIRB, 2005. Environmental Impact Assessment Guidelines: Overview. Also available in French, Chipewyan, Gwich’in North and South Slavey, and Tlicho.</p> <p>9. MVEIRB, 2005. Guidelines for Incorporating Traditional Knowledge in EIA.</p> <p>10. MVEIRB’s Step-by-step information through the process.</p> <p>11. MVEIRB’s Reference Bulletins.</p>	<p>1. NIRB, 2013. NIRB and You – NIRB Public Guide Series – Introduction. Get involved in the assessment of proposed projects in Nunavut from start to finish.</p> <p>2. NIRB, 2013. NIRB Public Guide Series – Stage 1. Screening: Help determine whether projects can be approved with terms and conditions or whether a full Review is required.</p> <p>3. NIRB, 2013. NIRB Public Guide Series – Stage 2. Review: Participate in the assessment of major proposals affecting your community.</p> <p>4. NIRB, 2013. NIRB Public Guide Series – Stage 3. Participate in Monitoring programs to help manage project impacts.</p> <p>5. NIRB & Nunavut Water Board, 2012. Detailed Coordinated Process Framework for NIRB Reviews and NWB Licensing.</p> <p>6. NIRB, 2007. Guide to Terminology and Definitions.</p>

Appendix III Public information activities during the Matoush Advanced Uranium Exploration Project Review⁵⁰

These tables only includes the activities relating to public dissemination of information undertaken by the CEA Agency in collaboration with COFEX-South and the Grand Council of the Crees in light of Section 22's federal review procedure, as well as those organized by the Cree Nation of Mistissini, in an effort to inform the community.

Date	Description of the information available	Website
March 5 th 2009	Notice of commencement of the environmental assessment.	CEA Agency
September 30 th 2009	Creation of the JBNQA web-link on the CEA Agency's Public Registry: <ul style="list-style-type: none"> - 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 rd 2009	Directives and related appendices posted on the Public Registry.	CEA Agency
November 14 th 2009	Public notice posted on the Public Registry: EIS.	CEA Agency
January 18 th 2010	Document ' <i>Uranium: The facts</i> ' (care of Strateco Resources Inc.) posted on the Public Registry.	CEA Agency
March 30 th 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, Quebec (CEA Agency), Montreal (CRA - for Phase II).	
April 30 th 2010	Public notice posted on the website: Info sessions on May 25 th and 26 th .	CEA Agency
May 18 th – 24 th 2010	Radio announcements CINI-FM & 93.5FM - Chibougamau and Mistissini.	
May 12 th – 21 st 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 expressed an interest in the project.	
May 19 th 2010	Technical glossary: terms related to uranium and to environmental assessment.	CEA Agency & GCC/CRA
May 24 th & 25 th 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 th 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 th 2010	COFEX-South's request for additional information posted on the Public Registry.	CEA Agency
August 18 th 2010	Strateco Resources Inc.'s deposition of additional information.	

⁵⁰ As of January 2011.

Date	Description of the information available	Website
August 27 th 2010	Verbatim of information sessions in Mistissini and Chibougamau.	CEA Agency & GCC/CRA
October 27 th 2010	Outline of the Phase II Public Hearings posted on the Public Registry.	CEA Agency
October 27 th 2010	Posting of the outline / guide for participants of the Phase II Public Hearings.	CEA Agency
November 3 rd 2010	Public notice posted on the Public Registry for Phase II Public Hearings schedules for November 23 rd & 25 th 2010	CEA Agency
November 3 rd – 7 th 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 and Chibougamau two 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 nd 2010	Public hearings (November 23 rd & 25 th): Public statements posted on the Public Registry.	CEA Agency
November 23 rd 2010	Webcast – Public hearing in Mistissini: Audio files made available in December and verbatims in January.	CEA Agency
November 25 th 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 nd 2012	Decision issued by Federal Administrator	CEA Agency

Date	Description of informational activities organized by the Cree Nation of Mistissini
May 25 th 2010	Meeting of local working group 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 th 2010	Meeting of local working group Families affected by the project
July 14 th 2010	Public information session Dr. Jean-Claude Dessault, Direction de Santé Publique du Nord-du-Québec (to discuss Radon)
September 7 th 2010	Meeting of local working group Members of the CTA, NWA, CBHSSBJ, and families.
September 7 th 2010	Radio program with local representatives and experts from the Canadian Nuclear Safety Commission (CNSC) Open hotline (to de-mystify the impacts of uranium exploration / exploitation, and the rules and protocol of the CNSC)

Date	Description of informational activities organized by the Cree Nation of Mistissini
September 8 th 2010	Public information session Jean LeClair, CNSC
September 8 th 2010	Local information pamphlet / brochure 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 th 2010	Meeting of local working group 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 th 2010	Public information session Dr. Monique Dubé, Canada Research Chair, Aquatic Ecosystem Health Diagnosis – School of Environment and Sustainability, University of Saskatchewan
October 20 th 2010	Document “Frequently-Asked Questions” Distributed at the public information session on October 20 th 2010
November 22 nd 2010	General Assembly in Mistissini Public hearing (local) on Matoush project and the community’s position thereon
December 14 th 2010	Report presented to COFEX-South and COMEX
January 11 th – 21 st 2011	Door-to-Door Survey