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## 1. **Executive Summary**

This brief, filed by the Grand Council of the Crees (Eeyou Istchee) on behalf of the people of the Cree Nation of Eeyou Istchee, addresses the issue of softwood lumber trade between Canada and the United States of America.

Nearly 60% of Quebec's softwood lumber comes from the boreal forests on Cree traditional lands in the James Bay Territory of northern Quebec, known to us as Eeyou Istchee. Any future arrangements for lumber trade will have a direct impact on the Cree people, particularly the 4,000 full-time Cree subsistence hunters. The Grand Council of the Crees (Eeyou Istchee) wishes to influence the trade discussion to more fairly account for our rights and circumstances.

Quebec's current forestry regime promotes and subsidizes unsustainable, unfair and unconstitutional logging in our territory. Forestry activities on the public lands of northern Quebec, subject to little environmental research and exempt from environmental assessment, are destroying the family hunting territories of the Cree people. This is in direct violation of the Crees' constitutional rights under the *James Bay and Northern Quebec Agreement*, and of our human rights under the *International Covenant on Civil and Political Rights*. Moreover, Quebec's *Forest Act* ensures that these activities are subsidized by public funds, giving those companies with whom the province has Timber Supply and Forest Management Agreements a competitive edge over other companies which might harvest wood in a more socially or environmentally sustainable manner.

Currently in the James Bay Territory, forestry companies hold near-perpetual timber licenses to 27,027 mi<sup>2</sup> (an area exceeding the size of Belgium), and clear-cut over 308 mi<sup>2</sup> of boreal forests annually. This is twice the area clear-cut in 1990. The amount of wood harvested in the James Bay Territory since 1995, a year before the current softwood lumber trade agreement was struck, has risen by 45%. Given this sharp increase in lumber production, even in an environment of

regulated trade, the Crees are fearful of the potential consequences of any future “free trade” scenario, particularly if the present unsustainable forestry policies remain in place.

The existing regulatory environment that guides Quebec’s forestry industry places the environmental and social costs of operating in northern Quebec upon the shoulders of the Crees. Unsustainable forestry activities conducted on our lands are in contravention to the *James Bay and Northern Quebec Agreement*. This Treaty, signed by Canada, Quebec, the Inuit, and the Crees in 1975, established strict guidelines on how natural resource exploitation was to occur in northern Quebec. Paramount to all future extraction activities was the recognition of the Crees (and Inuit) right to continue to pursue a subsistence way of life. To safeguard this right, the *Agreement* set out an environmental regime whose chief tool was an environmental and social impact assessment and review process. The Government of Quebec has since exempted forestry operations from social or environmental assessment by amending provincial environment legislation, thereby violating the provisions of the Treaty through legislative sleight-of-hand.

With the passage of the Canadian *Constitution Act* in 1982, the rights recognized in the *James Bay and Northern Quebec Agreement* were entrenched in the Constitution, taking precedence over other laws—including provincial forestry laws—that may infringe on them. By virtue of Canada’s signature on the *James Bay and Northern Quebec Agreement* and the inclusion of these Treaty rights in the Constitution, the federal government is legally bound to uphold the Treaty rights of the Crees under the *Agreement*. Put another way, the Crees’ rights over the Territory is a legal encumbrance over the forestry resources that form the basis of trade negotiations.

Quebec’s *Forest Act* establishes an industrial forestry regime that clearly favours the rights of forestry companies to harvest wood above all other concerns, including environmental, Treaty and human rights. The *Forest Act* grants near-perpetual timber access licenses to large tracts of *public* forests, thereby providing a select few companies long-term rights to all of the available public timber in Quebec. At the same time, the Government of Quebec has abdicated nearly all

of its responsibility for managing public forests to the forestry companies themselves, whose legislative priority—stipulated by the *Forest Act*—is to cut wood.

In exchange for access to public forests, Quebec charges stumpage fees for wood cut on these lands. However, much of these fees flows back into the coffers of the companies through rebates granted for managing the public's forests. In effect, the province has given private companies perpetual access to the public forest in exchange for managing the forests for production values alone. With rebates, stumpage fees set by the province for public wood is well below its market value.

The subsidization of the Quebec forestry industry represents a significant loss of revenue to the population of Quebec and has obvious implications for competition with the U.S. forestry industry. Subsidies, granted in large part through unsustainable forestry practices that violate the Treaty rights of the Crees, bring indirect downward pressure on U.S. environmental laws. If American forestry companies are forced to compete in a “free trade” environment with Quebec's unsustainable regime, pressure will rise to modify U.S. forestry regulations to replicate those in Canada. Is this the goal of free and open trade—to strive for the lowest standards?

It is our belief that our American neighbours do not knowingly wish to buy Canadian forest products at the expense of the forest environment or the Cree people. This is why we are appealing to American political representatives and trade officials to pressure the Government of Canada for the elimination of unsustainable forestry management policies in Canada, and in particular Quebec. We also call upon our American friends to urge the Government of Canada to respect its Treaty commitments to aboriginal peoples in Canada, including those made to the Cree Nation of Eeyou Istchee. Only when both of our nations follow a socially and environmentally sustainable forestry regime will there be a level playing field for trade.

## 2. Introduction

We are drawing upon the world's natural capital far more rapidly than it is regenerating. Rather than living on the "interest" of the "natural capital", we are borrowing from poorer communities and from future generations.<sup>1</sup>

Canada and the U.S.A. entered into the Canada/U.S. Softwood Lumber Agreement in 1996, in an effort to equalize national operating environments related to unfair pricing advantages. With this Agreement slated to expire in April 2001, the future of softwood trade is on the drawing board.

With this in mind, this brief will speak to 5 key issues related to the Crees, the forestry industry in Quebec, and softwood lumber trade with the United States. These issues are:

- the growth of the forestry industry in northern Quebec;
- environmental and social impacts of the current forestry regime on the Cree people;
- Cree Treaty rights and the imperative to recognize them in future trade negotiations;
- unfair subsidies built into the legislative forestry regime in Quebec; and
- the implications of the current forestry regime on human rights.

The Grand Council of the Crees (Eeyou Istchee) maintains that any future softwood lumber trade agreement must recognize the Treaty rights and human rights of the Cree people. Such an agreement must also promote and reward environmentally sustainable forestry practices. We urge the Office of the U. S. Trade Representative, in its discussions with its Canadian counterpart, to insist upon the elimination of unfair advantages provided to select companies benefiting from Quebec's unsustainable forestry regime. We likewise urge you to uphold the Treaty and human rights of the Cree people, and to insist that current violations of these rights no longer be tolerated by the Government of Canada.

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<sup>1</sup> *Our Forest, Our Future*, Report of the World Commission on Forests and Sustainable Development: 1999; Forward.

## 2.1 The Cree People

The people who comprise the Cree Nation of Eeyou Istchee have inhabited the eastern region of James Bay since time immemorial. Thriving as a nomadic hunting, fishing and gathering society, the Crees of Eeyou Istchee ranged over an area from approximately the 79<sup>th</sup> meridian in the west to the 70<sup>th</sup> meridian in the east, and from the 48<sup>th</sup> parallel in the south to just north of the 56<sup>th</sup> parallel.

Three centuries ago, coinciding with the arrival of European settlers, the Crees became active participants in the fur trade, with several trading posts being established throughout the Cree territory. Over time many of these posts developed into permanent Cree communities. For example, Fort Rupert has become Waskaganish, Fort George has become Chisasibi and Poste-de-la-Baline has become Whapmagoostui or Great Whale. Nearly all of the nine existing Cree communities developed from, or in proximity to, former fur trading posts. Today these nine communities are home to over 12,000 people who make up the Cree Nation of Eeyou Istchee. The Cree families still occupy the full extent of their traditional lands. They depend upon their harvest from the land for food, and as an important element of their culture and society.



Prepared for The Grand Council of the Cree (of Eeyou Istchee). Cartography by Richard Barkand.  
This document is intended for consultation only, and should not be used to define political boundaries.

## **2.2 The Grand Council of the Crees (Eeyou Istchee)**

The Grand Council is the regional political representative organization of the nine Cree communities. The Grand Council is comprised of elected representatives from each community and is headed by a popularly elected Grand Chief. The Council is charged with the duty of ensuring that the governments of Canada and Quebec fulfill their obligations with respect to the implementation of the *James Bay and Northern Quebec Agreement* and also with the protection of other Cree rights and interests.

## **2.3 The James Bay and Northern Quebec Agreement**

In 1975, the Crees presence and title in the region was formally recognized. Arising out of pressure to develop the region's rich natural resources, the Crees (and Inuit further north) entered into a treaty with the government of the province of Quebec and the federal government of Canada known as the *James Bay and Northern Quebec Agreement*. Key among the many provisions of this Treaty is a land and environmental regime that recognizes the Cree right to occupy the Territory through the traditional subsistence economy and to have a major role in other types of future economic development in the region. The *Agreement* established an environmental protection regime to safeguard the resources necessary for a viable subsistence economy in the context of development.

## **2.4 Quebec's Forest Industry, Trade and the Crees**

When the *James Bay and Northern Quebec Agreement* was signed in 1975, the annual amount of boreal forest cut by forestry companies was approximately 125 km<sup>2</sup> (48 mi<sup>2</sup>) within a licensed area totaling 25,000 km<sup>2</sup> (9,652 mi<sup>2</sup>).<sup>2</sup> In 1995, the same year that the current Canada/U.S.

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<sup>2</sup> Pierre Dugas, *Le Territoire Forestier Délimité par le Chapitre 22 de la Convention de la Baie James et du Nord Québécois: Evolution et Enjeux* (James Bay Advisory Committee on the Environment, 1995) p. 68; Pierre Dugas, *Industrie Forestière: Rapport pour les besoins du schéma d'aménagement* (Quebec: Société de développement de la Baie James, 1977) p. 14. It should be noted that statistics on the forestry industry during this early period were not

Softwood Agreement was signed, forestry companies in Eeyou Istchee clear-cut over 500 km<sup>2</sup> (193 mi<sup>2</sup>) from a total licensed area of 52,000 km<sup>2</sup> (20,077 mi<sup>2</sup>). In 1999, the total area clear-cut was over 800 km<sup>2</sup> (308 mi<sup>2</sup>) from a total licensed area of 70,000 km<sup>2</sup> (27,027 mi<sup>2</sup>).<sup>3</sup> Despite this level of forestry activity, less than 1% of Crees have employment in the forest industry.

### **Cree System of Land Management**

*Evolving from a nomadic hunting and gathering culture over the last 1000 years, the Crees have developed and refined a unique system of land and resource management. According to elders, Crees traditionally organized their hunting activities on the land along family and kinship lines. Each family or group returns to the same hunting or fishing grounds year after year. This does not exclude other families from using these areas; however, it means that permission is required from the "ouchimaw" or tallyman for access to the territory. It is the tallyman's responsibility to ensure that the family hunting territory has enough fish and game to support the group. In modern terms, the tallyman is the equivalent of a resource manager or game warden, determining where and when hunting can occur and who can harvest how much. Despite numerous changes over the past millennium, including the development of permanent communities, the system of family hunting territories, with its associated customs of use and the land and resource management function of the tallyman, remains in place today and has become a cornerstone of Cree culture.*

The rapid escalation of forestry occurring in Eeyou Istchee is having dire consequences on the subsistence activities of Cree hunters. Small and large game, birds and fish that reside in the northern boreal forest ecosystems are a primary source of food for Cree hunters. These animals are being displaced by the cumulative effects of thousands of square miles of clear-cuts and road networks. In the areas most heavily logged there has already been a well-documented collapse in the moose population. Moose in southern Eeyou Istchee are a primary source of food. Large-scale industrial logging operations in the north are displacing Cree families from their traditional hunting territories and forcing them into lives of welfare dependency.

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collected as vigorously as they are today. This is due in part because of the remoteness of the region at the time, the lack of activity and overlapping jurisdictions of provincial government organizations.

<sup>3</sup> Figures based on compilation of 5-year management plans of license holders in the territory.

At the source of these impacts is the provincial government's political decision to ignore the social, environmental and economic costs in favour of an unsustainable forestry system. The present system is driven by short-term profit through increased cutting, to the detriment of long-term sustainability. Cree interests and rights are not factored into the equation. In order to maximize profit through increased production, a growing market is necessary. For Quebec this market is the U.S.A. In 1998, Quebec exported \$10.8 billion<sup>4</sup> worth of forestry products to the United States. This represented 87% of Quebec forest exports. It should be recognized that, since the signing of the Canada/U.S. Softwood Lumber Agreement, Quebec exports to the U.S.A. have increased by approximately 30%, while cutting in Eeyou Istchee has increased by 45%.<sup>5</sup> These numbers indicate that the boreal forest that we Crees depend upon for our economic and cultural survival is the primary source of the recent increase in softwood lumber trade with the U.S.A. Indeed, recent information submitted in Court by the government of Quebec indicates that nearly 60% of the province's softwood lumber comes from Eeyou Istchee.<sup>6</sup>

The Quebec forestry regime is structured to give the *public* forests to a select few companies in the form of near-perpetual timber supply agreements. There is no larger plan for the use of the forests, as was promised in the *James Bay and Northern Quebec Agreement*. Nor is there room for other non-timber values in Quebec's boreal forests. Recreational uses are minimized: there are no parks in the region and tourism opportunities are diminished by the extent of forestry activities. The provincial regime is based on maximizing the number of trees that can be cut in the shortest amount of time, regardless of the consequences.

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<sup>4</sup> Monetary figures throughout are in Canadian dollars.

<sup>5</sup> Canadian Forest Service, *The State of Canada's Forests*. (Ottawa: Natural Resources Canada 1994-1998); Michel Vincent et al. *Economic Output from the James Bay Forest* (Nemaska: Grand Council of the Crees (Eeyou Istchee 1996); Affidavits of the Plaintiffs filed before the Superior Court of Quebec: *Mario Lord et. al. v. Attorney General of Quebec et al.* (Montreal case no.500-05-043203-981, 1999)

<sup>6</sup> Affidavits of the Plaintiffs filed before the Superior Court of Quebec: *Mario Lord et al. v. Attorney General of Quebec et al.*: (Montreal case no.500-05-043203-981, December 1999)

### 3. Background on Forestry Exploitation

According to Cree elders, forestry companies began cutting in their traditional territory in the early 1960s. In these years, forestry operations were mainly conducted during the winter months when horse teams hauled the wood out to the road or rail for shipping. Although the chainsaw had replaced the axe and crosscut saw, logging was still labour intensive, as crews of men were needed to cut, de-limb, and load the logs on sleighs and then trucks and trains. At the time, the Crees served as a readily available labour source, and many Cree men camped with their families near the operations during logging season. Then, using the money from logging, they would buy provisions and head out to their hunting territories for the remainder of the year.



*Crees working in a lumber camp south of the Cree community of Waswanipi in the late 1960s.*

The Crees maintained this mutually beneficial relationship with forestry until the early 1970s. As tractors and skidders replaced the horse teams and feller-bunchers supplanted chainsaws, the nature of work in the forestry industry changed. Cree men were no longer needed in the face of mechanization and, for the most part, the benefits that Crees had derived from forestry ended.<sup>7</sup>

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<sup>7</sup> Mechanization within Quebec's logging industry has resulted in a net loss of jobs despite an overall expansion of the industry. In 1975 a total harvest of 135,094 hectares supported 14,815 jobs (9.12 ha/job). In 1996 a total harvest of 343,313 hectares supported 10,212 jobs (33.62 ha/job). See the Council of Canadian Forest Ministers, *Compendium of Canadian Forestry Statistics: National Forestry Database* (Ottawa: Natural Resources Canada,

With the efficiency of skidders and feller-bunchers churning out more and more wood at the roadside, the capacity of pulp and sawmills in the region increased. An exponential increase in the construction of intrusive road networks allowed for year-round logging operations. By the late 1970s and early 1980s, Cree family hunting territories in the southern part of Eeyou Istchee (at the 49<sup>th</sup> parallel) near the community of Waswanipi were ruined by extensive clear-cutting and road building.

From the mid-1980s to the present, the forestry industry continued its growth in Eeyou Istchee and more family hunting territories were affected by logging activities each year. During this period, capital investment in wood production facilities in and adjacent to the James Bay Territory grew from 13.1% of the provincial total in 1983 to 57.7% in 1988.<sup>8</sup> This growth in capital investment coincided with the passage of the *Forest Act* in 1986, which ushered in a whole new forestry regime in Quebec. It is estimated that the amount of land cleared annually increased from 400 km<sup>2</sup> (154 mi<sup>2</sup>) in 1985 to over 800 km<sup>2</sup> (308 mi<sup>2</sup>) in 1998. Presently over 90 Cree family hunting territories from 5 different communities have suffered forestry-related disturbance, and cutting has moved further north to the 52<sup>nd</sup> parallel.

## **4. Social and Environmental Impacts of Forestry in Quebec**

### **4.1 The Global Importance of the Boreal Forest Ecosystem**

Encircling the globe, the boreal forest is the world's most extensive and most important forest ecosystem. The boreal forest accounts for nearly one-third of the earth's forests and encompasses the world's largest expanses of wetlands and lakes. Forests of this magnitude play

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1998) and Ministère des Ressources naturelles, *Quebec's Forest Resources and Industry: Statistical Report, 1999 Edition* (Quebec: Gouvernement du Quebec 1999) p. 161.

a vital role in maintaining global climatic conditions as they act as filters converting carbon dioxide into woody tissue and leaves. It is estimated that the world's boreal forests remove 0.2 gigatonnes of atmospheric carbon per year.<sup>9</sup>

Canada contains one-quarter of this global forest and thus has significant responsibility for the ecological health of the entire planet. Sharing in this global responsibility is the province of Quebec, which possesses 10% of Canada's forested land, the majority being boreal. Given the scale of forests involved in this discussion, the ramifications of policy are felt far beyond the issue of trade between two countries.

#### **4.2 Lack of Monitoring**

The increase in forestry activity described in this brief has a profoundly negative effect on the boreal ecology of the entire James Bay Territory. However, there has been very little official governmental documentation of these impacts. Among other factors, this is due to:

- a reduced levels of monitoring;
- a lack of coordination among provincial and federal governmental agencies responsible for the territory (e.g., federal and provincial Ministries of the Environment, the provincial Ministry of Natural Resources, the federal and provincial departments of wildlife and fisheries, the Canadian Forest Service, etc.);
- the shift in responsibility for forest management from the government to private forest companies (see section 6); and
- the slashing of budgets for all agencies responsible for the maintenance of the entire forest ecosystem, including the application of the environmental protection provisions of the *James Bay and Northern Quebec Agreement* (see section 5).

A review of Quebec's official statistics related to the enforcement of Quebec forestry regulations from 1990 to 1997 indicates that infraction-related fines levied by Quebec's Ministry of Natural Resources rose steadily from \$130,241 in 1990 to a peak of \$694,930 in 1995. Two years later

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<sup>8</sup> Luc Blanchette, *Monographie Sectorielle de l'industrie Forestiere de l'Abitibi-Témiscamingue* (Commission de Formation Professionnelle de l'Abitibi-Témiscamingue, 1989).

<sup>9</sup> W.A Kurz et al. "Global climate change: Disturbance regimes and biospheric feedbacks of temperate and boreal forests", in G.M. Woodwell et. al. (eds.), *Biospheric Feedback in the Global Climate System: Will the Warming Speed the Warming?* (New York: 1998) pp. 119-133.

in 1997, the total amount of fines levied dropped to \$42,711. During the same period statistics reveal that the budget allocated to Forest Management Planning and Monitoring was reduced from \$165 million in 1991-92 to \$87 million by 1997-1998.<sup>10</sup> Perhaps a more telling indicator of Quebec's lack of monitoring can be found in the *Compendium of Canadian Forestry Statistics*. In the silviculture section of this annual national collection of forestry data, Quebec is the only province that does not provide information on the average size of clear-cuts in the province.<sup>11</sup>

In the absence of programs to monitor the health of the forest, particularly in the far northern boreal forest where the Crees reside, the Crees have had to initiate their own monitoring efforts. Stitching together limited government reports, plus their own independent research and a heavy reliance on the first-hand knowledge and experience of Cree hunters, who are in the bush year-round, the Crees have developed a profile of the social and ecological impacts of forestry exploitation in the James Bay Territory.

### **4.3 Extensive Clear-Cutting**

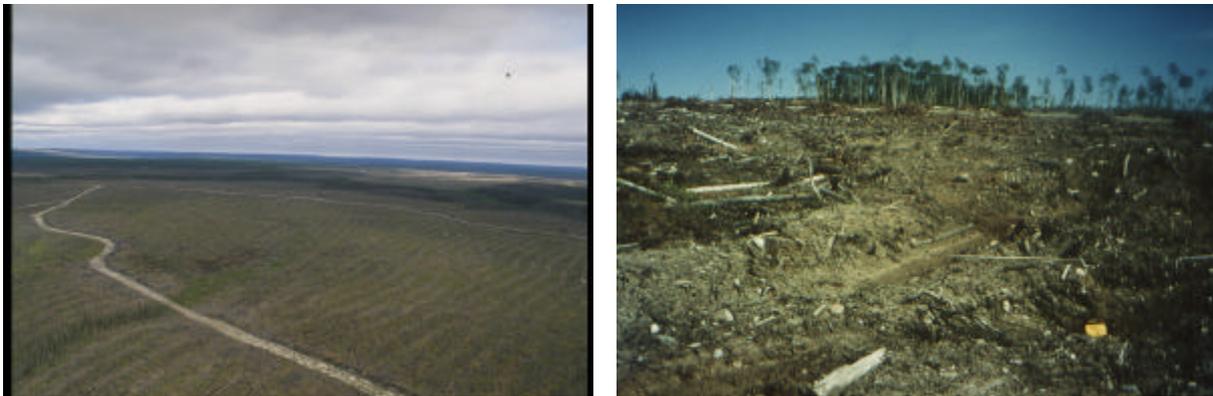
Undoubtedly, the most disruptive aspect of forestry exploitation in the boreal forest is the use of extensive clear-cutting. Considering that the average tree height and diameter of the northern black spruce forest is much less than southern tree species such as red or white pine, forestry companies operating in the boreal forest cannot afford to be selective in their logging. Add to the small trees the extensive road networks over difficult terrain that cover the lengthy distances to the processing mills, and the economic benefits of this type of forestry are very marginal. Companies must clear as much forest in the shortest amount of time possible to make up for the required upfront investment. *This is why clear-cutting is the only practical method of logging used in the James Bay Territory.*

The impact of this economic reality is thousands of square kilometers of clear-cut forests. Conservatively, the Crees estimate that over 5,000 km<sup>2</sup> (1,930 mi<sup>2</sup>), or an area equivalent to the

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<sup>10</sup> *Quebec's Forest Resources and Industry: A Statistical Report*, 1999 Edition, p. 155 and 231.

state of Delaware, have been cumulatively cleared since the signing of the *James Bay and Northern Quebec Agreement* in 1975.<sup>12</sup> Current regulations allow for clear-cutting in large blocks up to 150 hectares (370.5 acres). They stipulate that treed buffers of at least 110-yards in width must separate adjoining blocks.<sup>13</sup> The net effect of these cutting regulations is a landscape of large nearly continuous clear-cuts (often dozens of square miles) separated by football field-sized buffers.



*Typical scenes of clear-cutting in Eeyou Istchee.*

#### **4.4 Loss of Habitat**

Obviously, thousands of square miles of forest clear-cut in large near-continuous blocks results in substantial habitat loss. The remaining buffer strips between clear-cut blocks, and the prescribed 22-yard forested buffers around lakes, rivers and streams, provide little alternative habitat to the large-scale clear-cut areas. Beyond these buffers, there is little protection from logging for the fish and game in the northern boreal forest.

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<sup>11</sup> *Compendium of Canadian Forestry Statistics: National Forestry Database 1998.*

[http://nfdp.ccfm.org/frames2\\_e.htm](http://nfdp.ccfm.org/frames2_e.htm)

<sup>12</sup> This figure could range as high as 7,000 km<sup>2</sup> (2,703 mi<sup>2</sup>); however, as indicated previously, early data on logging activity is scarce and more figures for 1999 have not been tabulated.

<sup>13</sup> *Compendium of Canadian Forestry Statistics: National Forestry Database 1998.*

[http://nfdp.ccfm.org/frames2\\_e.htm](http://nfdp.ccfm.org/frames2_e.htm)

Recent changes to Quebec's forestry regulations have further reduced the amount of protected habitat. Prior to 1996, license holders were required to set aside, in addition to cut-block buffers, a minimum of 4% of the area to manage as moose yards. These yards, designed to offer more protection for the moose, especially in the winter months, were to be located in mixed forest stands of trees of various ages and species throughout the cutting areas. Also in the old regulations, beaver habitat was protected by the 22-yard buffers around watercourses already mentioned, plus an additional 219-yard buffer upstream from any beaver dams. When the forestry regulations were revised in 1996, both of these habitat provisions were removed without replacement.

Beaver and moose are the two most important animals to Cree hunters, and yet there are no specific provisions in the forestry regulations to protect them.

#### ***4.5 Impact on Moose Population***

Even before the removal of provisions to protect moose habitat in Quebec forestry regulations, Cree hunters began warning of an impending crash in the moose population in the areas most actively logged. After intense lobbying by the Crees, the provincial government agreed to undertake an aerial moose survey. The results indicated a steep decline in numbers of moose. In 1985 provincial wildlife managers had estimated the population of moose in the south of the James Bay Territory to be 1200. By 1995 estimates were at 400. Recent studies indicate that the moose population appears to be migrating further north into areas as yet untouched by logging activities. Cree hunters north of traditional moose habitat regions have corroborated this migration. Despite the recognition by provincial wildlife managers (Ministry of Environment) of a serious decline in the moose population, no special arrangements or constraints have been placed on forestry companies to try to reverse this trend.

The decline of the moose population in southern Cree family hunting territories has placed a severe strain on the social relations between Cree and non-Cree sport hunters who are in competition for a dwindling number of animals. In several instances, competing groups of

hunters have nearly engaged in violence over who has access to the few remaining areas which hold significant numbers of moose. Many of the older Cree hunters have succumbed to the intimidation of non-Cree hunters and vacated their camps during the sport-hunting season. Bitterness over this situation has resulted in theft and vandalism of Cree hunting camps. In the worst cases, Cree hunters have reported finding bullet holes in their cabins.

#### **4.6 Soil Erosion and Water Quality**

At the present scale of clear-cutting, little consideration is given to the problem of soil erosion. The heavy machinery disrupts the soil and leaves behind deep ruts that, especially in low-lying areas, are often the source of erosion. Much of the soil is washed into roadside ditches and finds its way into nearby watercourses (see photos). Cree hunters



*In these pictures soil is being eroded from both the cut block and the logging road and washed directly into a nearby stream.*

consistently comment that local fish stocks, muskrats, otter and beaver are all affected by soil erosion and the associated siltation of small watercourses.

Further soil erosion is caused by improper road construction, particularly improper bridging materials and undersized drainage culverts. To access the high volumes of wood coming out of

the James Bay Territory, a vast road network is required. Logging roads cross thousands of creeks, small streams, rivers and small lakes. Despite specific regulations concerning the standards of roads, bridges and culverts, drainage and associated erosion problems are found throughout the Territory. The vast majority of logging roads are not subjected to any environmental impact assessment or regular government inspection.

One specific problem occurs when drainage culverts are used instead of proper bridges. Water and debris clog up the undersized culverts, leading to disruptions in natural stream flows, flooding, and in many cases the washout of the entire bridge. All of this further degrades the local aquatic environment. Many Cree hunters traveling by boat or canoe on these watercourses must frequently portage these undersized culverts.



*Using metal drainage culverts instead of proper bridging material leads to flooding, soil erosion and washouts.*

#### **4.7 Regeneration of the Boreal Forest**

Forestry engineers normally recommend that current logging rates be based upon the expectation of future regeneration success rates. History tells us that if forestry managers are wrong in their predictions of future regeneration, then the industry will be forced to scale back operations or find new sources of wood. The industry in Quebec is accustomed to falling short of its predictions and has a record of seeking out new sources of wood. After all, logging in the James Bay Territory only began to escalate in the early 1980s when it was recognized that forests south

of the territory were nearing depletion.<sup>14</sup> Moreover, by the 1980s half of Maine's softwood lumber was exported to mills in Quebec that were in need of alternative wood supplies.<sup>15</sup>

Current planning (harvesting) cycles for the northern boreal forest are inaccurate and based on a good deal of speculation. Since the federal government phased out its Forest Resource Development Agreements—a provincial/federal subsidy program that supported artificial tree planting—in 1992, Quebec's forest managers have relied on natural regeneration.



*In these cut blocks, almost all of the remaining black spruce trees left as advance growth have blown down or are about to fall down.*

In addition to this reliance, the province has implemented a logging practice known as *cutting with protection of regeneration and soil*. In theory this practice should result in careful logging, where forest soils are protected and new advanced forest growth is left undisturbed after harvesting. This new advanced growth is supposed to kick start the natural regeneration of the cut block. At the time of its introduction, Quebec announced that this new technique would replace clear-cutting in Quebec's forests. However, at the end of the day, the differences

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<sup>14</sup> At the time the Minister responsible for the forests stated, "Quebec's forests are in such a pitiful state, we are facing shortages in many regions." Christie McLaren, "Heartwood" in *Equinox* (September/October 1990) p. 54.

<sup>15</sup> Elizabeth May, *At the Cutting Edge: The Crisis in Canada's Forests* (Toronto: Key Porter, 1998) p. 117.

between clear-cutting and *cutting with protection of regeneration and soil* are in name alone. Research conducted by the Grand Council indicates that in many areas the advance growth left behind, if not damaged in the logging itself, soon blows down (see photographs above).

The thirty years that companies have been operating in the James Bay Territory have offered ample time for regeneration research specific to the far northern boreal forests (50<sup>th</sup> parallel and north). Yet the Quebec Ministry of Natural Resources has yet to conduct any serious research validating its reliance on natural regeneration. Indeed, Quebec has yet to establish any permanent forest research sites in the James Bay Territory, even though the region supplies 20% of the province's wood supply and nearly 60% of the province's softwood lumber.<sup>16</sup>

We hypothesize that current regeneration planning cycles are based on the growth rates of test plots well south of the James Bay Territory, combined with data on the fire cycles in the region. Most forest ecologists would agree that there are vast differences between growth rates in the southern, central and northern portions of the boreal forest. It is also widely recognized that clear-cutting does not mimic forest fires and thus planning on fire cycles is highly speculative.<sup>17</sup>

In the absence of any definitive official data on regeneration in the James Bay Territory, the Grand Council has begun conducting its own modest research. Preliminary study suggests that areas logged up to 13 years ago have yet to be successfully restocked with enough new growth to be classified as a productive forest<sup>18</sup>. While this information is far from definitive, it does indicate that the Government of Quebec should invest more resources into researching the impact of large-scale industrial logging in boreal forests north of the 50<sup>th</sup> parallel before it

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<sup>16</sup> *Quebec's Forest Resources and Industry: A Statistical Report*, 1999 Edition, p. 157. Despite the lack of research in Quebec, the government of Ontario has conducted extensive research into the success of forest regeneration. It found that artificial tree planting is far more effective at regenerating black spruce and jack pine forests. Spruce and pine forests left to regenerate naturally had an overwhelming tendency to convert to mixed forests. See the Ontario Independent Forest Audit Committee, *A Report on the Status of Forest Regeneration*. (Sault St. Marie: Ontario Ministry of Natural Resources, 1992).

<sup>17</sup> Terry Carleton, P. MacLellan, "Woody vegetation response to fire versus clear-cutting: a comparative survey in the Canadian central boreal forest" in *Ecoscience* 1(2) 1994, p. 141-152.

commits to long-term planning cycles with projected growth rates based more on speculation than science.

#### **4.8 Cultural and Economic Displacement**

The Crees of the eastern James Bay region have long defined themselves as a forest people, “Notchimeeweeyouch” as we say in Cree. Fully one third of the over 12,000 Crees live primarily from what the land provides. Recognizing the high levels of unemployment in Cree communities (often above 40%), the Crees estimate that another one third of the Cree population participates in a mixed subsistence/seasonal employment economy. Similar to those Crees who worked in forestry during the time of the crosscut saw and chainsaws, this segment of the Cree population relies on fish and game to help make ends meet during periods when no other employment is available. All Crees are proud of their heritage of living on the land, and participate in their culture of hunting and gathering.

Every year Cree families are displaced from their traditional hunting territories because of rapidly expanding forestry activities. When this is explained to government and forestry company officials, they respond by telling the Crees not to worry because those areas will have many new trees growing within 10-20 years. Aside from the regeneration debate already discussed, which makes this claim highly suspect, these officials fail to recognize that 10-20 years represents nearly a generation—a generation of young Crees who will not have the benefit of hundreds of years of traditional subsistence knowledge that has been passed down through generations. *This knowledge is the fabric of Cree culture and without the forest classroom in which to share and foster this knowledge, the culture is lost.*

As the ability to subsist from the land is lost, so too is the alternative source of income the land provides. The impact of this loss is already being felt in those Cree communities most affected by forestry. Although there has yet to be any formal study, it appears that the cultural and

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<sup>18</sup> The Forestry Working Group, *The Nemaska Trapline Project: A Preliminary Review of Forest Regeneration on*

economic displacement caused by forestry leads to elevated social problems that are endemic to many aboriginal communities across Canada in similar circumstances. These problems arise from poverty, its idleness and the resulting loss of self-worth. They are the result of policies that suffocate a traditional economy while closing the doors to alternative employment opportunities. With logging slated to continue at current levels, many of our Cree elders fear for the future of their children and grandchildren.

## **5. *The James Bay and Northern Quebec Agreement and the Paramountcy of Cree Rights over Forestry and Trade***

In 1971, the Government of Quebec made public its plan to transform three vast watersheds, “the frozen wastes” of Quebec’s north, into the world’s largest hydroelectric complex. Millions of mega-watts were to be produced from a series of newly created inland oceans whose waters would store enough energy for much of Quebec and the northeastern United States. At the time the plans for this grand scheme were unveiled to the world, the Crees whose traditional hunting lands stretched over the future hydro reservoirs, had not been notified of them. They became aware of these projects through the media.

This threat from the “outside” to the lands the Crees had inhabited long before Europeans set foot on the continent served to galvanize the nine largely independent Cree bands into joint action to protect their land. After an international public relations campaign and a prolonged court battle, the Crees, Inuit, Quebec and Canada entered into the *James Bay and Northern Quebec Agreement* in 1975, as an out-of-court settlement.

The *Agreement*, among other things, guarantees that all future development in the region will occur in a manner that will ensure that the Crees can continue their subsistence way of life. The

*Agreement* also holds promise of affirmative employment policies that would open the door to benefits from future development in the region.<sup>19</sup> The chief means to attain this goal is an extensive environmental protection regime contained in section 22 of the *James Bay and Northern Quebec Agreement*.

The philosophy of this environmental and social protection regime is clearly expressed in the “Principle of Conservation” set out in the Treaty:

[Conservation] means the pursuit of the optimum natural productivity of all living resources and the protection of ecological systems of the Territory so as to protect endangered species and to ensure primarily the continuance of the traditional pursuits of Native people, and secondarily the satisfaction of the needs of non-Native people for sport hunting and fishing.<sup>20</sup>

This definition of conservation, formulated in 1975, has since become widely known as “sustainable development” and it is at the heart of the Treaty. In effect the principle of “conservation” as defined in the *Agreement*, was to take precedence over all other forms of development in the Territory. The primary instrument for ensuring that development in the Territory adhered to this principle of “conservation” was the environmental and social assessment process established in section 22 of the *Agreement*. The application of this process was to safeguard the Crees’ continued right to a land base that could support their right of traditional subsistence living.

With the adoption of the *Canadian Constitution Act* in 1982, the rights of aboriginal peoples and their Treaty rights were entrenched in the Canadian Constitution. Essentially this made Treaty rights, such as those in the *James Bay and Northern Quebec Agreement*, paramount over other laws that may conflict with Treaty rights. The Crees are presently before the Courts arguing that

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<sup>19</sup> It is important to note that the Crees do not wish to stop or ban all forestry. Indeed, two of the nine Cree communities are involved in the forestry industry. Instead the Crees seek to bring reform to the current forestry regime in Quebec so that forestry management practices adhere to the *James Bay and Northern Quebec Agreement and its environmental protection regime*.

<sup>20</sup> *The James Bay and Northern Quebec Agreement, 1975* (Quebec: Official Editor of Quebec, 1976), p. 359.

Quebec's laws governing forestry conflict with Cree Treaty rights and are hence unconstitutional.<sup>21</sup>

Cree subsistence rights, with the legal force of the Constitution behind them, bring into question the right of the Government of Canada to exclude the Crees from any formal negotiations that will have a direct impact on these rights. In a recent (November 1999) ruling against a motion by the Government of Canada requesting its dismissal from the Crees' forestry case presently before the Courts, the judge reasoned:

...when the Canadian Parliament adopted the Constitution in 1982, its modifications in 1983 and the Law on the Application of the JBNQA (*James Bay and Northern Quebec Agreement*), it chose to limit its sovereignty.<sup>22</sup>

The limitation of sovereignty regarding Canada's legal responsibilities towards the Crees with respect to forestry must also be applied to Canada's involvement in trade negotiations that may have an adverse effect on the boreal forests and the Crees Treaty rights.

By virtue of Canada's signature on the *James Bay and Northern Quebec Agreement* and the inclusion of these Treaty rights in the Constitution, the federal government is bound to uphold the Treaty rights of the Crees under the *Agreement*. That is, the Crees rights over the Territory are a legal encumbrance over the forestry resources that are the basis of trade negotiations on softwood lumber.

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<sup>21</sup> Lord et. al. v. The Attorney General(s) of Quebec and Canada et. al. (Montreal, case no.: 500-05-043203-981, July 17, 1998)

<sup>22</sup> Lord et. al. v. The Attorney General of Canada et. al. (Montreal, case no. 500-05-043203-981, November 24, 1999, Justice Jean-Jacques Croteau, Quebec Superior Court)

## **6. Aspects of Quebec's Forest Act**

The Quebec *Forest Act* dates from 1986 and sets up a forestry regime under a legal instrument known as a "Timber Supply and Forest Management Agreement". These Agreements give wood processing plants near-perpetual cutting rights over most of Quebec's public forests. The legislative regime shifts much of the responsibility for managing these public forests onto the forestry companies that own wood processing plants.

Environmental issues and other uses of the forest, including the Treaty rights of aboriginal communities, are not taken into account in the *Forest Act*. The *Act* deals mainly with the long-term wood supply needs of processing plants. Moreover, the forestry management regime grants generous stumpage fee relief for silviculture work conducted by the Timber Supply and Forest Management Agreement holders. In effect, the province pays the forestry companies to manage the public forests that it has allocated to those very same companies. The *Union des producteurs agricoles*, an organization of companies who harvest wood from private lands in Quebec, has characterized the forestry regime in Quebec as a "scandalous system" for managing public forests and public funds.<sup>23</sup>

A closer examination of the *Forest Act* and associated Timber Supply and Forest Management Agreements is presented below.

### **6.1 Timber Supply Access Provided to Quebec Based Mills**

Sections 36 and 37 of the *Forest Act* specify that the Quebec government may only enter into a Timber Supply and Forest Management Agreement with the owner of a wood processing plant. Forestry companies who do not possess a processing mill are not eligible.

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<sup>23</sup> Bruno Bisson, "Bouchard Government Accused of Selling Off Public Forests: Quebec wood producers subject to unfair competition" in *La Presse* (Montreal: Wednesday April 5, 2000), p. A22.

Sections 159 to 161 of the *Act* require companies holding a Timber Supply and Forest Management Agreement to provide for the following:

**159.** All timber harvested in the public domain...must be completely processed in Quebec.

**160.** Timber is completely processed when it has undergone all the treatments and processes...to render it suitable for its intended final use.

**161.** The Government may...authorize the shipment outside Quebec of incompletely processed timber from the public domain of Quebec if it appears to be contrary to the public interest to do otherwise.

In establishing criteria limiting access to public timber stocks to those companies owning mills (pulp and paper or lumber mills), Quebec has narrowed the industry to a select few companies with little fear of competition. Furthermore, by tying mill owners to the Timber Supply and Forest Management Agreements, the forestry system is skewed towards fulfilling the capacity of the mill in order to meet demands of invested capital, rather than ensuring the long-term viability of timber stocks.

## ***6.2 Timber Supply and Forest Management Agreements: A Right to a Perpetual Timber Supply***

Sections 42, 43 and 66 of the *Forest Act* clearly state that a forestry company with an Agreement has the right to harvest a volume of timber within a specific geographic area sufficient to meet the requirements of its processing plant.<sup>24</sup> Other Agreement holders may also have access to alternative tree species in the same geographic area.

The only limit on volume of timber cut is “*the maximum volume of annual timber harvests that may be obtained in perpetuity*” from that geographic area without reducing “*the production capabilities of the forest*” (sections 45 and 46 of the *Forest Act*). This right to cut timber in a

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<sup>24</sup> In the James Bay Territory, one company, Barrette Chapais, has a Timber Supply and Forest Management Agreement covering 17,000 km<sup>2</sup> or 6,560 mi<sup>2</sup> (1995). This is the largest Agreement in the province.

Timber Supply and Forest Management Agreement is granted for a *minimum* period of 25 years, and thereafter *automatically extended* every five years.

To date, almost all of the commercial wood supply from Quebec's public lands has been allocated through Timber Supply and Forest Management Agreements. As of March 31, 1996, a total of 262 Timber Supply and Forest Management Agreements had been signed, allocating over 97.5% of the available softwood supply.<sup>25</sup> An additional 7.3 million cubic metres of other wood types have also been allocated under these Agreements. The Ministry has stated that: "*almost all available volumes of the most sought-after species [softwoods] have now been allocated*".<sup>26</sup>

With public timber stocks limited to a select few companies who possess processing plants, and with the perpetual nature of the Timber Supply and Forest Management Agreements, competition for these companies in Quebec is seriously restricted.

### **6.3 Forest Management Devolved to License Holders**

These Timber Supply and Forest Management Agreements largely devolve the responsibility of managing public forests to companies that own processing mills. In this sense the Government of Quebec has abdicated its responsibility to manage the forest for multiple values and uses, including the hunting activities of the Crees, to private companies whose chief motivation is profit. The fox is guarding the hen house.

Forestry companies holding Timber Supply and Forest Management Agreements are solely responsible for preparing the forest management plans which will apply to their forest management unit (sections 51, 52 and 57 of the *Forest Act*). The *Forest Act* stipulates that companies with Agreements must provide 25-year, 5-year and annual forest management plans.

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<sup>25</sup> Ministry of Natural Resources, *Le Bilan du régime forestier* (Quebec: Ministry of Natural Resources, 1998).

<sup>26</sup> Ministry of Natural Resources, *Updating the Forest System—Consultation Document* (Quebec: Ministry of Natural Resources, Sept. 1998), p. 8.

The companies holding the Agreements employ the forestry engineers who must approve the companies' plans.

In the 25-year or "general" plans, the details the various long-term forest management activities necessary to attain its maximum annual yield while promoting the development of the forest resources within its Agreement.

In the 5-year plans, the company determines the forest management activities for the period covered by the plan, including the cutting areas, the cutting sequence, the cutting methods, and silviculture work it intends to apply during this period within its Agreement.

In the annual forest management plan, the details the forest management activities for the upcoming year in order to implement its 5-year plan.

All of these management plans are submitted for approval to the Quebec Minister of Natural Resources. The 25-year and 5-year plans are also subject to a 45-day public consultation process.

Public documents from the Ministry of Natural Resources indicate that over 550 modifications have been made to these management plans since 1990, after the plans were first approved. The approval and control process for these plans thus appears deficient. According to the Ministry itself,

Timber supply and forest management agreement holders have fulfilled their obligations to produce general, five-year and annual forest management plans. On the other hand, the plans are often modified after they come into force. In most cases the modifications are necessary because the original plans were of *poor quality*. The problems observed are related mainly to the *lack of sufficient documentation* on forest management problems, leading to sometimes *inadequate management strategies*, *invalid forest possibility calculations* and questions as to

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the exclusive responsibility of agreement holders in this respect. Also problematical are the *incomplete nature of the survey data* collected and the *failure to coordinate the activities* of agreement holders in the same common area, contrary to the provisions of the *Forest Act*.<sup>27</sup> [emphasis added]

The public consultation process is also considered deficient. In the same report, the responsible Ministry states the following.

The measures adopted to inform and consult the general public on the general and five-year forest management plans submitted by timber supply and forest management agreement holders *have not been as successful as was originally hoped: very few people* have shown an interest; elements such as lack of publicity for consultations and the absence of plans written in non-technical language are blamed for this;<sup>28</sup> [emphasis added]

The end result is a forest management system driven by those mills holding Timber Supply and Forest Management Agreements. This is cause for considerable concern, particularly when recognizing that the forest management plans grant substantial rights to the forestry companies with these Agreements. In the 5-year forest management plan, for example, is the right not to have the geographic area of the Agreement altered. If such unit is altered during the 5-year plan, then “*the Government shall grant equitable compensation to the agreement holder*” (section 50 of the *Forest Act*). Other rights include:

- b) the right not to have revised downward the volume of timber allocated for the duration of an approved 5-year forest management plan. Such downward revision can lead to compensation by the government (sections 77 and 78 of the *Forest Act*);
- c) the right to carry out only the forest management activities which have been stipulated in the approved 5-year plan. No additional activities or conditions may be required of the holder of the Timber Supply Agreement during the life of the approved 5-year plan (sections 59 and 42 of the *Forest Act*).

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<sup>27</sup> Ministry of Natural Resources, *Updating the Forest System–Consultation Document* (Quebec: Ministry of Natural Resources, Sept. 1998), p. 11.

<sup>28</sup> Ministry of Natural Resources, *Updating the Forest System–Consultation Document* (Quebec: Ministry of Natural Resources, Sept. 1998), p. 8.

#### **6.4 Little Consideration for Environmental Concerns**

The *Forest Act* as a whole revolves around the wood supply needs of the holders of the Timber Supply and Forest Management Agreements. Environmental concerns are not strongly emphasized in the *Forest Act*.

After five years, the Minister of Natural Resources may revise the volume of the timber supply and the area to be logged specified in the Agreement. According to official reports, these revisions usually result in an overall increase in cutting volumes.<sup>29</sup> Should the Minister take into account concerns other than the volume of wood needed by the processing plant, such as concerns for environmental or social impact, the Government of Quebec would then be potentially liable to the company.

**77.** At the end of each five-year period, the Minister may revise the residual volume of round timber from the public domain that has been allocated, the area of the forest management unit or the annual yield indicated in the agreement, to take account of

- (1) changes in the requirements of the wood processing plant;
- (2) changes in the availability of timber from private forests, wood chips, sawdust, shavings, timber from outside Québec or recycled wood fibres;
- (3) the average annual volume of round timber from forests in the public domain used by the plant in the last five years;
- (4) a revision of the calculation of the allowable annual cut that has become necessary on account of new data obtained during that period in respect of the forest inventory or of the biophysical characteristics of the areas intended for forest production in the forest management unit;
- (5) the forest management activities carried out in the last five years.

For the purposes of subparagraph 3 of the first paragraph, no account shall be taken of any failure to use any part of the volume allocated that is due to the salvaging, from watercourses, of stocks or round timber from forests in the public domain following the discontinuance of driving activities.

**78.** An agreement holder may require that the Minister submit to the arbitration procedure provided in the Code of Civil Procedure (chapter C-25) if he

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<sup>29</sup> Ministry of Natural Resources, *Le Bilan du régime forestier* (Quebec: Ministry of Natural Resources, 1998), p. 1-12.

is of opinion that the revision of his allocated volume was not made according to the criteria set forth in section 77.

Where the application appears to be justified, *the arbitrator may grant compensation to the agreement holder* for any damage suffered, or adjust the volume allocated in the agreement. [emphasis added]

Under the *Forest Act* (section 25 and 171), the provincial government may adopt standards regarding the location of cutting areas, the protection of the shorelines and water quality, and the protection of forest regeneration. However, as indicated in Section 6.2 of this brief, these standards are not always adequately policed and may be completely set aside at the discretion of the concerned Minister.

Under section 25.3 of the *Forest Act*, the Minister may authorize a forestry company to apply standards of forest management which differ from the regulations “*where so justified by the characteristics of the forest in that unit and the nature of the project to be carried out*”. This very unusual legislative provision allows companies to negotiate special—usually lower—standards of forestry management for their logging territories.

Indeed, the Ministry of Natural Resources has recognized the lack of effective controls to properly implement these standards, and stated the following.

The Regulation respecting standards of forest management for forests in the public domain, adopted in 1988, contains provisions relating, among other things, to the protection of water quality, the routing and construction of roads, the protection of wildlife habitats, and the protection of forest regeneration. The regulation was revised in 1996, following adoption of the Forest Protection Strategy. Tougher standards were introduced at that time, to govern elements such as the protection of lakes and watercourses, and the size of cutting areas. So far, however, the Department cannot confirm that all forest management permit holders have complied with all the provisions of the regulation, since it lacks effective control mechanisms.<sup>30</sup> [emphasis added]

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<sup>30</sup> Ministry of Natural Resources, *Updating the Forest System—Consultation Document* (Quebec: Ministry of Natural Resources, Sept. 1998).

## **6.5 An Absence of Thorough Environmental Review**

Although Quebec's environmental legislation establishes an environmental impact assessment and review process for specific developmental activities (section 33.1 of the *Environment Quality Act*, R.S.Q., Ch. Q-2), it specifically exempts forestry activities from this process. The federal government has also failed to review the impacts of forestry activities in Quebec.

For the Crees, whose territory is jointly administered by the environmental provisions of section 22 of the *James Bay and Northern Quebec Agreement* and Quebec's *Environment Quality Act*, the exemption of forestry activities from an environmental review process represents a violation of their Treaty. Section 22 of the *Agreement* includes a schedule of "Future Developments Automatically Subject to Assessment." Listed among these, under the heading of "Forestry and Agriculture," are:

- a) Major access roads built for extraction of forest products;
- b) Pulp and paper or other forestry plants;
- c) In general, any significant change in land use substantially affecting more than 25 square miles.<sup>31</sup>

This clearly indicates that "significant" forestry developments, such as those allowed by Timber Supply and Forestry Management Agreements, should be automatically subject to a full environmental and social impact assessment. However, the Quebec *Environment Quality Act* was amended in 1986 to specifically exempt forestry developments from environmental assessment and review. The Crees believe this action was a deliberate circumvention of the provisions of the *James Bay and Northern Quebec Agreement* that were designed to safeguard the environment of the James Bay Territory and their continued right to hunt, fish and trap.

The Crees are presently contesting this situation in Court. The case received an initial ruling from the presiding judge that the *Forest Act* was "inoperative" and "unconstitutional" with respect to the rights of the Crees as set out in the *James Bay and Northern Quebec Agreement*. This judgement has been suspended pending an appeal before the Court.

## 6.6 Stumpage Fees

The *Forest Act* provides for the payment of stumpage fees by holders of Timber Supply and Forest Management Agreements (sections 71 to 73.6 of the *Forest Act*). Stumpage fees, charged to private forestry companies for cutting wood on public lands, are widely used across Canada. The fees serve as the public's rent or tax for the trees. However, Quebec's *Forest Act* ensures that it is the public whose taxes subsidize the forestry companies' operations on public lands. Subsidies occur through low stumpage fees, fee rebates, and the investment of public funds in silvicultural treatments to achieve the companies' production objectives.

In the province of Quebec, stumpage fees are determined by multiplying the volume of timber harvested by a rate corresponding to the stumpage value assigned to the area where the wood is cut (tariff zone). Across Quebec there are 65 tariff zones, each with a specific stumpage value.<sup>32</sup> Stumpage values are determined by the Minister of Natural Resources according to a series of calculations set by the Quebec government.

In theory these calculations should reflect the market value of wood according to what private wood producers (i.e., those harvesting on private lands) charge for wood of similar quality. However, given that the volume of wood coming from forestry companies operating in public forests dwarfs the volume from private sources, and given that private wood producers usually have to sell their wood to mills held by companies with a Timber Supply and Forest Management Agreement, which already have a perpetual public wood supply, downward pressure on the price of private wood is built into the system. This serves to keep stumpage values low.

Of even greater interest is the fact that stumpage fees are payable in cash or, if accepted by the Minister of Natural Resources, *by way of silvicultural treatments carried out by the concerned company in order to attain its annual yield* (section 73.1 of the *Forest Act*). The Minister may

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<sup>31</sup> *The James Bay and Northern Quebec Agreement, 1975* (Quebec: Official Editor of Quebec, 1976), p. 327.

also authorize the company to perform any other forest management activity or contribution intended to promote the protection or development of forest rather than pay the stumpage fee. (section 73.1 of the *Forest Act*).

The value of the silvicultural treatments, other activities and contributions which are to be subtracted from the stumpage fees owed by a company is determined by the Minister according to rules of calculation established by the Quebec government (section 73.3 of the *Forest Act*).

The Ministry of Natural Resources describes the system as follows:

To achieve the forest production objectives established in their agreements, [the agreement holders] must also plan and carry out forest management activities such as the planting of trees and pre-commercial thinning.

*The Government helps fund activities such as these.* It agrees that the amounts invested in silvicultural treatments, applied to achieve production objectives may count *in lieu of the payments of dues* on harvested timber.<sup>33</sup>  
[emphasis added]

Forestry companies with Timber Supply and Forest Management Agreements must also pay to the Minister a contribution for the financing of activities related to seedling production, forest inventory data and forest research. This contribution is established by the Minister on the basis of a rate per cubic metre of timber that is applicable to the volume of timber allotted to the Agreement holder (section 73.4 of the *Forest Act*). These contributions are placed into a Forestry Fund (section 73.5 of the *Forest Act*). The Government of Quebec can authorize that payments into this fund be deducted from the stumpage fees owed by the holders of Timber Supply and Forest Management Agreements (section 170.5.1 of the *Forest Act*).

This Forestry Fund is used to finance forest management activities designed to maintain and improve the protection or development of forest resources and is therefore of commercial advantage to the forestry companies.

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<sup>32</sup> *Quebec's Forest Resources and Industry: A Statistical Report, 1999 Edition*, p.88.

<sup>33</sup> Ministry of Natural Resources. *Updating the Forest System – Consultation Document* (Quebec: Ministry of Natural Resources, Sept. 1998) p. 5

Contributions may also be assessed on the holders of Timber Supply and Forest Management Agreements for forest fire *prevention* purposes (sections 127 and 128 of the *Forest Act*). However, Quebec assumes the forest fire fighting costs, which can be considerable and vary from year to year (section 128 of the *Forest Act*).

Likewise, contributions may also be assessed on the holders of Timber Supply and Forest Management Agreements for the protection of the forest against destructive insects and cryptogrammic diseases (sections 147.1 and 147.4 of the *Forest Act*). However, the Ministry of Natural Resources reimburses all or some of the expenses related to the implementation of a protection plan (sections 147.4 and 147.6 of the *Forest Act*).

It is ironic that, as the province has abdicated almost all of its responsibility to manage public forests to private forestry companies, the Government of Quebec offers generous stumpage fee rebates to the companies for assuming this responsibility. This is striking because the province has justified to the people of Quebec the seemingly wholesale give-away of the public forest by noting that the companies now assume a greater role and cost in management of the forests and pay higher stumpage fees. The decreased management costs for the government and the stumpage fees paid, plus the employment created by forestry jobs, are portrayed to the public as the costs that companies bear for long-term guaranteed access to public wood. However, upon closer examination it looks as if the province has simply contracted much of the responsibility of managing public forests to the same companies who have been granted long-term access to those public forests. In this sense the people of Quebec are subsidizing these companies twice—first through low stumpages fees, portions of which are eligible for rebate, and then through investment in silviculture measures to ensure that the companies will have a renewing timber supply for decades to come.

As expounded upon in the excerpt on the following page, this subsidization, amounting to hundreds of millions of dollars, provides a few select companies operating unsustainably on

Quebec's public lands with an unfair advantage over other wood producers who may be operating in a more socially or environmentally sustainable manner.

### Quebec's Private Wood Producers Say They Can't Compete

"Quebec wood producers claim that the provincial Quebec Government is exposing them to unfair competition by selling public forests for fees representing a mere 60% of the average price they can get for wood. "There is no way we can compete", commented Jean-Claude Nadeau, president of the Fédération des producteurs de bois du Québec (FPBQ).

In Quebec in 1999, the forestry industry harvested over 37 million cubic metres of [public] wood for which it paid slightly more than \$400 million in fees to the government. But the government keeps less than 10% of this amount. Most of the fees are returned to the forestry industry by means of subsidies for the development of logging roads or replanting activities, or are used in the ongoing operation of the forestry system. The [provincial] government's net revenue for these activities amount to a meager \$35 million.

The Union des producteurs agricoles (UPA) is denouncing this "scandalous system" for managing public forests, as well as public funds, by which the government receives a net income equivalent to \$1 per cubic metre...On the other hand the forestry industry earns an estimated \$14 billion from these activities.

According to the calculation system for setting fees to be paid by the forestry industry to the government, the FPBQ believes that "the price of wood from the public forests should be based upon the price paid by owners of private forests".<sup>34</sup> (emphasis added)

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<sup>34</sup> Bruno Bission, "Bouchard Government Accused of Selling Off Public Forests: Quebec wood producers subject to unfair competition" in *La Presse* (Montreal: Wednesday April 5, 2000), p. A22.

## 7. Forestry and International Human Rights

Forestry operations in territories used and occupied by indigenous peoples must take into consideration the constraints imposed by international human rights law.

Human rights bodies have approved instruments which set standards with specific application to the rights of indigenous peoples (e.g., ILO Conventions 107 and 169) and are presently engaged in drafting additional standards. Furthermore, United Nations treaty compliance bodies have recognized that existing instruments of general application may be invoked for the protection of the rights of indigenous peoples (e.g., CCPR/C/79/add. 105 of 7 April 1999).

Thus there are internationally imposed standards which apply to the economic, social and cultural rights of indigenous peoples as well as to their civil and political rights.

The treaty compliance bodies have specifically invoked common Article 1 of the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights* as it applies to indigenous peoples. This article requires respect for the right of self-determination, and states (par. 2):

All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its *own* means of subsistence. [emphasis added]

There are two distinct human rights issues addressed in the above citation. First is the economic provision that a people may freely benefit from the wealth of natural resources which derive from their own territory. Obligations created through international agreements may not be invoked to impose conditions upon the exercise of the right of a people to benefit from the natural wealth of their land. Thus the *North American Free Trade Agreement*, for example, may not be invoked to prejudice the right of the Crees to benefit from the natural resources in Eeyou

Istchee. This would also apply to future mechanisms related to the trade of softwood lumber between Canada and the U.S.A.

Second, there is the stringent and absolute prohibition against any act which serves to deprive a people of their *own* means of subsistence. This is of crucial importance to peoples who gain their subsistence through hunting, fishing, and gathering.

Clearly, where economic activities are permitted that deprive a people of their traditional means of subsistence, this international covenant is being violated. In the case of clear-cut forestry operations, where wildlife populations that are an essential part of the Cree traditional diet are disrupted and displaced, there is a clear violation of the international covenants, and the government that permits such operations stands in contravention of its international obligations.

Violations of the *International Covenant on Civil and Political Rights* are enforceable through an Optional Protocol that has been signed by certain countries, including Canada. Various other grievance procedures apply to other human rights violations. Violations of internationally recognized and protected human rights are both illegal and immoral. They stigmatize the governments and companies that perpetrate or permit them.

## **8. Conclusion**

Throughout this brief we have shown that the forestry industry in Quebec, and the legislation and policies that support it, are unsustainable and unfair. They are unfair to competitors, in awarding near-perpetual access to large tracts of public forest for little more than the investment costs of a processing mill. They are unfair to the people of Quebec, in returning to the public coffers only a fraction of the value of the public forests. They are unfair to any companies willing to operate under a more socially and environmentally sustainable system. When the forest is valued for

more than its timber products, the cost of doing business faces upward pressure. Quebec's current regime ensures that such pressure is not felt within its borders.

Finally, Quebec's forestry industry is unfair to the Cree people who must contend with extensive clear-cutting, habitat loss, the loss of fish and game stocks and, ultimately, economic and cultural displacement.

It is our belief that Americans do not knowingly wish to buy Canadian forestry products with the environmental, social and human rights costs discounted in the price. Nor do they wish to bring about downward pressure on environmental laws in the U.S.A. through the purchase softwood lumber from Canada. Yet that is the legacy of these products.

The Grand Council of the Crees (Eeyou Istchee) maintains that the Government of Canada must resolve these issues prior to the finalization of any new agreement on softwood lumber trade. A future trade agreement must recognize the Treaty rights and human rights of the Cree people, and must reward, not punish, environmentally sustainable forestry practices of competitors.

We urge the Office of the U.S. Trade Representative, in its discussions with its Canadian counterpart, to insist on resolution of these issues. We urge you to pressure for the elimination of unfair advantages to those select companies benefiting from Quebec's unsustainable forestry regime. Finally, we urge you to assist in upholding the human rights of the Cree people by insisting that the Government of Canada no longer tolerate current violations of these rights.