

**PUBLIC CONSULTATION RESPECTING THE GOVERNANCE AGREEMENT  
AND CREE CONSTITUTION (FEBRUARY 1, 2017 – MISTISSINI)**

**ADDRESS AND COMMENTS PREPARED AND DELIVERED  
BY PHILIP AWASHISH**

**MISTISSINI, EYYOU ISTCHEE  
FEBRUARY 1, 2017**

## **PUBLIC CONSULTATION RESPECTING THE GOVERNANCE AGREEMENT AND CREE CONSTITUTION (FEBRUARY 1, 2017 – MISTISSINI)**

Kwayh missouweh – Grand Chief Matthew Coon Come, Executive Director Bill Namagoose, legal counsel and fellow members of the Eenu/Eeyou Nation.

I thank the Cree Nation Government/Grand Council of the Crees (Eeyou Istchee) and the Cree Nation of Mistissini for this opportunity to speak in the present public consultation.

With your permission I will speak in English in delivering my address and comments concerning the fundamental and important matter of Eeyou/Eenu governance.

My name is Philip Awashish. I am a Mistissini Eenu and a beneficiary of the *James Bay and Northern Quebec Agreement*. I am also a Commissioner on the Cree-Naskapi Commission.

In the early 1970s, I was one of the principal Cree negotiators for the Cree Nation of Eeyou Istchee in the negotiations leading to the signing of the 1975 *James Bay and Northern Quebec Agreement*...Canada's first modern day treaty. I am also an Eenu signatory to the *James Bay and Northern Quebec Agreement*.

I was present in the first ever meeting of the Eeyou/Eenu Chiefs here in Mistissini when they decided to oppose the first gigantic hydroelectric development project – the James Bay Hydroelectric Development Project- that was announced by Quebec in 1971 without consultation with the Eenu/Eeyou of Eeyou Istchee. The Eeyou/Eenu Chiefs also decided to act together as one people, one nation and one voice. This decision to act in unity as one people and one nation empowered the Eenu/Eeyou of Eeyou Istchee.

I have since then assisted, participated and witnessed the Eenu/Eeyou of Eeyou Istchee built their nation.

After centuries of denial of rights and exclusion from governance and decision-making regarding our people, communities and lands, we were actually and we still are in the process of reconstruction and rebuilding our nation. This process of reconstruction and rebuilding our nation will continue with the present and future generations of the Eeyou/Eenu people of Eeyou Istchee.

I was present and participated in the deliberations in 1973; when after a court victory and decision called the Malouf judgement recognized our rights, we decided to negotiate a treaty that would recognize and protect our rights and permit the construction, operation and maintenance of the hydroelectric development project known as Le Complexe La Grande (1975) within Eeyou Istchee.

This treaty became known as the *James Bay and Northern Quebec Agreement*.

Through the exercise of our rights we would rebuilt our nation. This nation-building is the spirit and intent of the *James Bay and Northern Quebec Agreement*.

So we, Eeyou/Eenou of Eeyou Istchee, rebuilt our nation by reclaiming our schools from Canada and assuming administration and responsibility for education. We took over the small nurse stations from the governments and constructed health clinics and other institutions for health and social services. We built new communities like Waswanipi, Nemaska, Chisasibi and Ouje-Bougoumou. We greatly improved the living standards of all the Cree communities through community and economic development. In summary, we reclaimed and exercised our right to be in control of our affairs and most important to govern ourselves.

Consequently one fundamental way of rebuilding our nation is through the exercise of our right to govern ourselves.

For the Eeyou/Eenou of Eeyou Istchee, there is no more basic principle in Eeyou/Eenou history and relations than a people's right to govern themselves and their territories in accordance with their traditions, values, goals and aspirations.

We, the Eeyou/Eenou of Eeyou Istchee, can trace our right to govern ourselves back as far as memory and oral history extend. The ultimate source of our right to be self-governing is the Creator. The Creator placed the Eeyou/Eenou on its own land we call Eeyou Istchee and gave the people the responsibility of caring for the land - and one another - until the end of time. In this manner, the right to be self-governing is an inherent right.

So the Eeyou/Eenou have exercised their responsibilities and rights. We have Eeyou/Eenou laws like the Eeyou Hunting Law and Eeyou/Eenou Eedouwin or the Eeyou/Eenou way of doing things.

However, we, the Eeyou/Eenou, have accepted the need for power sharing with Canada and Quebec. In return, we asked Canada and Quebec to accept that the right of Eeyou/Eenou self-government is not, and can never be, a gift from Canada and Quebec. The right is *inherent* in the Eeyou/Eenou people and our nationhood and was exercised for centuries before the arrival of European explorers and settlers. It is a right we never surrendered and now want to exercise it once more and rebuild our nation.

Therefore, we negotiated the recognition and protection of our rights including our right of self-government into our modern day treaty known as the *James Bay and Northern Quebec Agreement*. The continuity of our rights which are older than Canada and Quebec is a major and fundamental part of the bargain between Eeyou/Eenou of Eeyou Istchee, Canada and Quebec in the *James Bay and Northern Quebec Agreement*.

In particular, mutual recognition of coexisting and self-governing peoples is basic in any continuing relationships with Canada and Quebec.

Furthermore, Aboriginal peoples' right of self-government within Canada is acknowledged and protected by the constitution. I was with the late Grand Chief Billy Diamond when in 1982 he negotiated the recognition and affirmation of aboriginal and treaty rights in the *Constitution Act, 1982*.

I want to add that the Supreme Court of Canada in a decision rendered on May 14, 2010, states that the *James Bay and Northern Quebec Agreement* has "constitutional status as it qualifies as a modern treaty for the purposes of s. 35(3) of the *Constitution Act, 1982*." (*Quebec (Attorney General) v. Moses*, 2010 SCC 17, [2010] 1 S.C.C. 557)

The reconciliation of Eeyou pre-existing and inherent rights with the sovereignty of Canada has been, and continues to be, a major political, legal/constitutional and socio-economic challenge. Therefore, I will not discuss whether the existence and exercise of an inherent right can be derivative of federal authority.

However, we have the *James Bay and Northern Quebec Agreement*- a modern day treaty- and the Constitution of Canada that recognizes and protects our rights.

Section 9 (Local Government over Category 1A Lands), Section 11A (Cree Regional Authority) and other sections of the *James Bay and Northern Quebec Agreement* contemplate the exercise of our right of self-government.

Section 9 (Local Government over Category 1A Lands) of the *James Bay and Northern Quebec Agreement* provides that "there shall be recommended to Parliament special legislation concerning local government for the James Bay Crees on Category 1A lands allocated to them."

Consequently, pursuant to section 9 of the *James Bay and Northern Quebec Agreement*, the Eeyou/Eenou and the Government of Canada discussed the terms and provisions of the special legislation concerning local government for the James Bay Crees. This special legislation- the *Cree-Naskapi (of Quebec) Act*-was enacted by Parliament and assented to on June 14, 1984.

In 1973-75, I was the principal Eeyou negotiator in the negotiations with Canada for Section 9 (Local Government over Category 1A Lands) of the *James Bay and Northern Quebec Agreement*.

In 1975 to 1984, I was the principal Eeyou negotiator in the negotiations and discussions with Canada for special legislation concerning local government for the James Bay Crees on Category 1A lands contemplated in Section 9 of the *James Bay and Northern Quebec Agreement*. This special legislation is the present *Cree-Naskapi (of Quebec) Act* which was enacted by the Parliament of Canada in 1984 and it did take nine (9) years of negotiations and discussions with Canada.

In this process we killed and buried the controversial and intrusive *Indian Act* which governed almost all aspects of Aboriginal life including a limited and supervised local

government regime for “Indians” across Canada. We ended and eliminated the application and authority of the *Indian Act* over us and replaced it with the *Cree-Naskapi (of Quebec) Act*.

The *Cree-Naskapi (of Quebec) Act*, 1984, is the first legislation in Canada to provide some recognition of Aboriginal self-government. It redefines the relationship between the Government of Canada and the Cree and Naskapi peoples.

Consequently, the Eeyou/Eenou of Eeyou Istchee exercise their right to govern themselves through their inherent rights and the rights under the *James Bay and Northern Quebec Agreement*, its enabling legislation such as the *Cree-Naskapi (of Quebec) Act*.

In recent times, the practice to negotiate the exercise of the right of Cree governance between Canada, Quebec and the Crees of Eeyou Istchee has become the trend and norm. Consequently, the Eeyou/Eenou of Eeyou Istchee now have new relationship agreements and governance agreements with Canada and Quebec. However we must not forget that these new relationship agreements and the subsequent governance agreements were the results and outcome of disputed sections of the *James Bay and Northern Quebec Agreement*. The Eeyou/Eenou had initiated many court proceedings against Quebec and Canada for breaches of certain important sections of the *James Bay and Northern Quebec Agreement*. We achieved a settlement over the disputed sections through these new relationship agreements and subsequent governance agreements. Consequently, these agreements were meant to be an innovative way and means to implement these important and disputed sections of the *James Bay and Northern Quebec Agreement*. Most important these agreements have advanced Eeyou governance.

The *Agreement concerning a New Relationship between the Government of Canada and the Cree of Eeyou Istchee* of 2008 sets out a process for negotiations leading to a *Cree Nation Governance Agreement* and a Cree Constitution. These negotiations have now been completed.

The Grand Council of the Crees (of Eeyou Istchee)/ Cree Nation Government are currently conducting consultations with the Cree beneficiaries, Cree First Nations and other Cree stakeholders on the final drafts of the Governance Agreement and the Cree Constitution. The Governance Agreement must be formally approved by resolution of each of the Cree First Nations and of the Cree Nation Government as well as by the Government of Canada before it is signed. Once these steps are completed, the Governance Agreement will take effect when the federal legislation approving it takes effect.

I understand that the federal legislation approving the Governance Agreement will replace the *Cree-Naskapi (of Quebec) Act*. And I understand that this new federal legislation will become the special legislation referred to in Section 9 of the *James Bay and Northern Quebec Agreement*. Consequently, Section 9 of the *James Bay and Northern Quebec Agreement* will be amended accordingly by a Complementary Agreement. This is appropriate as Section 9 of the *James Bay and Northern Quebec*

*Agreement* is a fundamental section pertaining to our right of self-governance and qualifies as an integral part of our modern treaty for the purposes of s. 35(3) of the *Constitution Act, 1982*.

With great interest, I have read the final drafts of the Governance Agreement and the Cree Constitution.

As I understand these final drafts, the purpose of the Governance Agreement and Cree Constitution is to strengthen Cree self-government on Category IA lands in the context of the *James Bay and Northern Québec Agreement*. I hope this purpose is achieved as one fundamental way of rebuilding our nation is through the exercise of our right to govern ourselves in the context of the *James Bay and Northern Quebec Agreement*.

However, we have exercised our right to govern ourselves in the context of the *James Bay and Northern Quebec Agreement* since 1975 and its enabling legislation for Section 9 - the *Cree-Naskapi (of Quebec) Act*- since 1984. We have also exercised our inherent right to govern ourselves. We have gained much experience and lessons on governing ourselves.

I hope we have and can built on our experiences and lessons on Eeyou/Eenou governance.

As an example, since 1984 when the *Cree-Naskapi (of Quebec) Act* was enacted and in force, Eeyou/Eenou local governments have been hindered in decision-making by certain quorum provisions of the *Cree-Naskapi (of Quebec) Act*. Certain quorum requirements for decision-making are too high to be practical and efficient. To some extent, this problem may be dealt with through the Cree Constitution. However some problematic quorum provisions remain in the Governance Legislation and subsequently will be repeated in the new federal governance legislation. As an example, paragraph 13.4 of Chapter 13 (Cession by Cree First Nations) of the Governance Agreement provides that a cession of part of Category 1A land requires the approval of the electors of the Cree First Nation in a referendum in which at least sixty-five percent (65%) of the electors of the Cree First Nation vote in favour of the cession. This is the same quorum provision of section 144 (1) of the *Cree-Naskapi (of Quebec) Act*. The Cree Nation of Mistissini has had great difficulties with this particular high quorum requirement in the cession of part of its Category 1A land for the benefit of the Ouje-Bougoumou Eenouch.

The Governance Agreement contains new provisions such as:

- a) law-making instead of by-laws;
- b) change in duties of the Cree-Naskapi Commission;
- c) powers of the Cree Nation Government to make laws respecting solemnization of marriage, matrimonial property, Cree language, culture and heritage;
- d) fiscal relations and funding arrangements such Cree Own Source Contribution (OSR);
- e) implementation and dispute resolution processes; and

f) application of the *Canadian Charter of Rights and Freedoms*.

The discussions and negotiations with Canada, in 1975 to 1989, to get the Cree-Naskapi Commission into the *Cree-Naskapi (of Quebec) Act* were long and difficult. The Government of Canada did not want the Cree-Naskapi Commission. I do not think that the Government of Canada was ever pleased with the reporting duties of the Cree-Naskapi Commission.

The Cree-Naskapi Commission established by section 158 of the *Cree-Naskapi (of Quebec) Act* presently has a duty to prepare biennial reports on the implementation of this Act and the Agreements to the Minister who shall cause the report to be laid before each House of Parliament. The present Act requires that this report be prepared in English, French, Cree and Naskapi. The legislative requirement that the biennial report be prepared in Cree gives special status and recognition for the Cree language. No other First Nation apart from the Naskapi of Quebec enjoys such status and recognition in federal legislation. So far, the Commission has prepared fifteen (15) biennial reports on the implementation of the *Cree-Naskapi (of Quebec) Act*, *James Bay and Northern Quebec Agreement* and *Northeastern Quebec Agreement*. These biennial reports have benefitted the Eeyou/Eenou in ensuring the implementation of the Act and the *James Bay and Northern Quebec Agreement*. These biennial reports have informed the federal government on the issues and concerns of the Eeyou/Eenou of Eeyou Istchee. Furthermore, these biennial reports have informed the Eeyou/Eenou on the responses of the Government of the Canada to the Cree issues and concerns.

The Governance Agreement changes the duties of the Cree-Naskapi Commission so that the Commission will no longer be required to produce such biennial reports. However, the Governance Agreement provides that the Cree-Naskapi Commission shall, with respect to the Crees, investigate any representation submitted to it relating to the implementation of the Governance Agreement and the Cree Constitution. Furthermore, during the period of development of the Governance Legislation, the Crees and Canada shall examine in collaboration with the Naskapi Nation of Kawawachikamach the role of the Cree-Naskapi Commission provided for in Part XII of the *Cree-Naskapi (of Québec) Act*.

The provisions in the Governance Agreement regarding authority to make Cree laws instead of bylaws and elimination of the requirement for Ministerial approvals of Cree laws are positive for the exercise of Eeyou/Eenou self-government. Indeed we will be moving forward and closer to full internal self-determination if we do not have seek and require approval of our laws from external authorities.

My reading of the draft of the Cree Constitution tells me it is a Cree Constitution regarding the exercise of the Cree right of self-government in relation to the administration and internal management of the Cree First Nations and the Cree Nation Government on Category 1A Land. As an instrument of Cree self-government, the present draft Cree Constitution requires additional provisions regarding our inherent

authority and right to govern ourselves in a manner consistent with Eeyou/Eenou Eedouwin (our way of doing things), Eeyou values and principles. In this regard, the making of Cree law is much more than the making of Cree law under the Governance Agreement. In addition, Eeyou governance extends beyond Category 1A Lands. (Perhaps we need a separate Constitution for certain matters such traditional governance of Indoh-hoh Istchee (Eeyou/Eenou governance of hunting territories), Eeyou governance of Category II Lands and Eeyou participation in the regional governance of Category III Lands.) However, Eeyou values and principles such the sacred teachings of love, trust, respect, courage, honesty, wisdom, humility and truth should be mentioned as integral and fundamental to Eeyou/Eenou life in the present draft of the Cree Constitution. And most important, a Cree Constitution should be a living document that will honour our past, respect our present and guide our future.

I understand that the Governance Agreement is neither a treaty nor a land claim agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*. Consequently, I hope that Section 9 ((Local Government over Category 1A Lands) of the *James Bay and Northern Quebec Agreement* can be amended to include certain fundamental provisions of the Governance Agreement so that these provisions qualify as an integral part of our modern treaty for the purposes of s. 35(3) of the *Constitution Act, 1982*.

I want to conclude, as I have said, the spirit and intent of the *James Bay and Northern Quebec Agreement* was and still is to rebuild our nation through the recognition, protection and effective exercise of our rights. The obligations of Canada and Quebec to the Crees were meant to be ongoing and perpetual. Based on my own experiences and observations, I know that Canada and Quebec want to cap their financial obligations and negotiate a fixed term of so many years and expect releases of their obligations from the Crees.

I hope that the new relationship agreements and the recent Governance Agreement will be implemented in a manner that will ensure continuity of the exercise of our rights and ensure the continuation of acceptable fiscal arrangements and proper nation to nation relations between Eeyou/Eenou of Eeyou Istchee, Canada and Quebec.

Meequetch!

**Philip Awashish**  
**Mistissini, Eeyou Istchee**  
**February 1, 2017**

