

**BILL C-28: AN ACT TO AMEND
THE CREE-NASKAPI (OF QUEBEC) ACT**

Mary C. Hurley
Social Affairs Division

4 May 2009
Revised 15 June 2009



Library of
Parliament
Bibliothèque
du Parlement

**Parliamentary
Information and
Research Service**

LEGISLATIVE HISTORY OF BILL C-28

HOUSE OF COMMONS

Bill Stage	Date
------------	------

First Reading:	27 April 2009
Second Reading:	7 May 2009
Committee Report:	15 May 2009
Report Stage:	26 May 2009
Third Reading:	26 May 2009

SENATE

Bill Stage	Date
------------	------

First Reading:	27 May 2009
Second Reading:	4 June 2009
Committee Report:	9 June 2009
Report Stage:	9 June 2009
Third Reading:	10 June 2009

Royal Assent: **11 June 2009**

Statutes of Canada **S.C. 2009, C. 12**

N.B. Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

Legislative history by Michel Bédard

CE DOCUMENT EST AUSSI
PUBLIÉ EN FRANÇAIS

CONTENTS

	Page
BACKGROUND	1
A. The James Bay and Northern Québec Agreement	2
B. The <i>Cree-Naskapi (of Quebec) Act</i>	3
C. Implementation of the James Bay and Northern Québec Agreement	4
1. La Paix des Braves	5
2. The New Relationship Agreement	6
D. The Situation of the Oujé-Bougoumou Crees	7
DESCRIPTION AND ANALYSIS	8
A. Cree Regional Authority (Clauses 2, 9, 10–14, 22–24, 26, 28–31, 33(1))	9
1. Defining Cree Regional Authority (Clauses 2, 9)	9
2. Administrative and Consequential Amendments, Coming Into Force (Clauses 10–14, 22–24, 26, 28–31, 33(1))	10
B. Oujé-Bougoumou Crees (Clauses 1, 3–5, 7–8, 15–21, 25, 27, 32, 33(2))	11
1. Definitions, Incorporation, Coming Into Force (Clauses 1, 3, 33 (2))	11
2. Vesting of Assets, Transition, Non-beneficiaries (Clauses 4–5, 7–8)	12
3. Residence, Access and Other Land-related Rights (Clauses 15–21)	13
COMMENTARY	13



CANADA

LIBRARY OF PARLIAMENT
BIBLIOTHÈQUE DU PARLEMENT

BILL C-28: AN ACT TO AMEND
THE CREE-NASKAPI (OF QUEBEC) ACT*

Bill C-28, An Act to amend the Cree-Naskapi (of Quebec) Act, was introduced in the House of Commons on 27 April 2009. The legislation implements Canada's undertakings under agreements seeking to resolve long-standing issues under the 1975 James Bay and Northern Québec Agreement (JBNQA). In the 1992 Oujé-Bougoumou/Canada Agreement, Canada committed to remedy the non-inclusion of the Oujé-Bougoumou Crees in the JBNQA and the 1984 *Cree-Naskapi (of Quebec) Act*. The 2008 Agreement Concerning a New Relationship Between the Government of Canada and the Cree of Eeyou Istchee reiterated that undertaking and committed Canada to amend the Cree-Naskapi statute to provide the Cree Regional Authority with by-law powers in the region akin to those exercised on a local basis by individual Cree bands⁽¹⁾ under that Act.

Bill C-28 was considered by the House of Commons Standing Committee on Aboriginal Affairs and Northern Development on 14 May and was adopted by the House unamended on 26 May 2009. The legislation was introduced in the Senate on 27 May, was considered by the Standing Senate Committee on Aboriginal Peoples on 9 June and was similarly adopted without amendment on 10 June 2009. Bill C-28 received Royal Assent on 11 June and enters the statute books as S.C. 2009, c. 12.

BACKGROUND

The following paragraphs outline selected developments related to the JBNQA so as to place Bill C-28 in context.

* Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

(1) Use of the term “band” in this document reflects its usage in both the JBNQA and the Cree-Naskapi legislation. The Cree communities designate themselves as “Nation” or “First Nation.”

A. The James Bay and Northern Québec Agreement

In 1973, facing the inevitability of massive hydro-electric development in their traditional territories, the Crees of Eeyou Istchee⁽²⁾ (Cree homeland in the James Bay region of Quebec) and the Northern Québec Inuit Association entered into negotiations with the Quebec and federal governments, Hydro-Québec and the Société d'énergie and Société de développement de la Baie James. Their objective was to mitigate the impact of development on their respective populations by securing recognition and protection of certain rights and benefits, including certain governance rights. Negotiations culminated in the 1975 signing of the JBNQA,⁽³⁾ Canada's first comprehensive land claim agreement, now constitutionally protected as a modern treaty pursuant to section 35 of the *Constitution Act, 1982*. In it, the Crees ceded, released and surrendered "all their Native claims, rights, titles and interests ... in and to the land in the Territory and in Québec"⁽⁴⁾ in exchange for defined rights and benefits. The Agreement was ratified by the Quebec Assemblée nationale in 1976,⁽⁵⁾ and by Parliament in 1977.⁽⁶⁾

Among the JBNQA's numerous chapters, the following aspects are worth noting for present purposes:

- Members of eight recognized *Indian Act* Cree bands, persons of Cree ancestry recognized as members by one of these Cree communities or persons of Cree ancestry residing in the Territory were eligible for enrolment as beneficiaries under the JBNQA (para. 3.2.1).
- The JBNQA's land regime defined three categories of land. Category I lands were further divided into Category IA lands totalling 1,274 square miles that were "set aside for the exclusive use and benefit of the respective James Bay Cree bands" under "the administration, management and control of Canada." Category IB lands, comprising a lesser area, fell under Quebec jurisdiction,⁽⁷⁾ as did the far more extensive Category II lands on which the

(2) The Grand Council of the Crees (Eeyou Istchee) was incorporated federally in 1974 on a not-for-profit basis and mandated by the Cree Chiefs to proceed with negotiations on their behalf.

(3) Government of Quebec, *James Bay and Northern Québec Agreement and Complementary Agreements*, Les Publications du Québec, Québec, 1998, http://www.collectionscanada.gc.ca/webarchives/20071125190010/http://www.ainc-inac.gc.ca/pr/agr/que/jbnq_e.pdf.

(4) *Ibid.*, section 2.1.

(5) *An Act Approving the Agreement Concerning James Bay and Northern Québec*, S.Q. 1976, c. 46, R.S.Q. c. C-67.

(6) *James Bay and Northern Quebec Native Claims Settlement Act*, S.C. 1976-77, c. 32, R.S. c. J-0.3.

(7) In 1978 Quebec's Assemblée nationale enacted *An Act Respecting the Land Regime in the James Bay and New Québec Territories*, S.Q. 1978, c. 93, R.S.Q. c. R-13.1. In accordance with para. 5.1.2 of the JBNQA, section 18 of that Act provided for the allocation and transfer, by order in council, of "the administration, management and control of the Category IA lands ... to the Government of Canada for the exclusive use and benefit of the local governments."

James Bay Crees⁽⁸⁾ had exclusive hunting, fishing and trapping rights, as well as rights of participation in the management of those activities (Section 5).⁽⁹⁾ The JBNQA set out detailed descriptions of the Category I and II lands of each recognized Cree band (Section 4).

- Section 9 of the JBNQA committed to the introduction of federal legislation “concerning local government for the James Bay Crees on Category IA lands allocated to them,” and listed numerous mandatory components of that legislation. They included incorporation of each band; establishment of band councils, with by-law-making and regulatory powers equivalent to those under the *Indian Act*; powers of taxation; residence on and access to Category I lands; defined powers related to land use; band council powers related to protection of natural resources; the general powers of the Minister of Indian Affairs and Northern Development to supervise the administration of Category I lands; and other powers incidental to the exercise of local government. Until the enactment of this new federal legislation, the *Indian Act* would continue to apply to Category IA lands of the Cree bands.
- For purposes of local government over Category IB lands, the JBNQA provided for the incorporation of each recognized Cree community as a public corporation within the meaning of the Quebec *Code civil* (Section 10).⁽¹⁰⁾
- The JBNQA also required the further combined incorporation of the Cree communities under Quebec law as the Cree Regional Authority (CRA).⁽¹¹⁾ Section 11 defined the CRA council’s membership and its administrative powers, including powers of appointment to bodies established under the JBNQA; coordination and administration of programs on Category I lands, if delegated by the bands or their corporations; giving of consent under the JBNQA on behalf of the James Bay Crees; and making of corporate by-laws. The JBNQA did not provide for the exercise of regional government authority by the CRA equivalent to that exercised locally by individual bands.

B. The *Cree-Naskapi (of Quebec) Act*

In 1984, in keeping with its commitments under Section 9 of the JBNQA and section 7 of the 1978 Northeastern Quebec Agreement with the Naskapi, Parliament adopted the *Cree-Naskapi (of Quebec) Act* (CNQA).⁽¹²⁾ The CNQA provided for the exercise of local

(8) This usage reflects the collective term used in the JBNQA.

(9) Category III lands are public provincial lands on which the James Bay Crees exercise certain defined rights.

(10) See *The Cree Villages and the Naskapi Village Act*, S.Q. 1978, c. 88, R.S.Q. c. V-5.1, which provides for the constitution of eight Cree villages as municipalities and details the extent to which they are subject to the provincial *Cities and Towns Act*.

(11) *An Act Respecting the Cree Regional Authority* was enacted by the Assemblée nationale in 1978, S.Q. 1978, c. 89, R.S.Q. c. A-6.1.

(12) *Cree-Naskapi (of Quebec) Act*, S.C. 1984, c. 18, R.S. c. C-45.7, <http://laws.justice.gc.ca/en/ShowFullDoc/cs/C-45.7///en>.

government powers and other rights of the James Bay Crees and the Naskapi, and set up a system of land management for their Category IA lands, that is, those areas under federal jurisdiction.⁽¹³⁾ Under the Local Government heading, the CNQA incorporated the eight Cree bands recognized by the JBNQA (Part I, section 12),⁽¹⁴⁾ and set out their by-law-making powers over Category IA lands (section 45) in administrative matters; regulation of buildings for public safety; health and hygiene; public order and safety; environmental protection; pollution prevention; taxation for local purposes; a broad range of local services; roads and transportation; operation of businesses; and parks and recreation. Other headings include Part IV regarding bands' financial administration; Part V governing residence on and access to Category IA lands; Part VI concerning the rights of bands, Quebec and others in relation to Category IA lands; Part VIII on the disposition of interests in Category IA lands and buildings; and Part XVI regarding policing. Bill C-28 includes amendments to each of these parts.

The CRA currently plays a limited role under the CNQA. Part XII of the CNQA, establishing the Cree-Naskapi Commission to oversee and report on implementation of the legislation, does provide for appointment to the Commission on the CRA's recommendation, and requires the Minister of Indian Affairs to provide a copy of the Commission's biennial report to the CRA.

C. Implementation of the James Bay and Northern Québec Agreement

Unlike comprehensive land claim agreements concluded after 1984, the JBNQA did not contain or require a plan for its implementation, or provide for a dispute resolution mechanism. The decades since its ratification have been marked by chronic Cree grievances related to implementation that "often resulted [in] confrontations and conflicts over the failure of Canada and Quebec to honour and respect their commitments, responsibilities and obligations to

(13) The *Northeastern Quebec Agreement* also established different categories of land for the Naskapi. The CNQA refers to the Category IA land of the Naskapi as Category IA-N land. The Naskapi are not directly affected by Bill C-28 amendments and are not discussed further in this document.

(14) They are the Great Whale River Band, now the Whapmagoostui First Nation; the Chisasibi Band, now the Cree Nation of Chisasibi; the Wemindji Band, now the Cree Nation of Wemindji; the Eastmain Band, now the Cree Nation of Eastmain; the Waskaganish Band, now the Waskaganish First Nation; the Nemaska Band, now the Cree Nation of Nemaska; the Waswanipi Band, now the Cree First Nation of Waswanipi; and the Mistassini Band, now the Cree Nation of Mistissini.

the Crees under certain terms and provisions of the JBNQA.”⁽¹⁵⁾ Numerous legal proceedings undertaken by the James Bay Crees over this period have also related to implementation. Disputes and conflicts over implementation have covered a broad range of substantive and process concerns.⁽¹⁶⁾

1. La Paix des Braves

Negotiations between the Crees and the Quebec government to resolve outstanding implementation issues led to the conclusion of the February 2002 Agreement Concerning a New Relationship Between le Gouvernement du Québec and the Crees of Québec (2002 Agreement, also known as the Paix des Braves).⁽¹⁷⁾ Notable aspects of this comprehensive, 50-year, multi-billion-dollar agreement⁽¹⁸⁾ include its provisions for the James Bay Crees to assume defined provincial and Hydro-Québec obligations related to community and economic development under Chapters 28 and 8 of the JBNQA (Chapter 6) and for Quebec to fund the Crees for carrying out those responsibilities (Chapter 7).⁽¹⁹⁾

(15) 2008 Report of the Cree-Naskapi Commission, p. 24, http://www.creenaskapicommission.net/2008/eng/2008_report.html.

(16) The Cree-Naskapi Commission’s enumeration of sources of conflict, as also chronicled in its previous reporting of Cree submissions, includes interpretation of key terms in and the term of the JBNQA, its territorial application, funding of Cree local government and the CRA, Cree governance, policing, housing, community and economic development, funding and programming of education, health and social services, forestry, environmental protection and hydro-electric development; *ibid.*, pp. 24–25.

(17) *Agreement Concerning a New Relationship Between le Gouvernement du Québec and the Crees of Québec*, 2002, http://www.autochtones.gouv.qc.ca/relations_autochtones/ententes/cris/entente-020207_en.pdf.

(18) In other chapters, the 2002 Agreement outlined collaborative mechanisms for the development of mining, forestry and hydro-electric resources (Chapters 3–5); measures to address outstanding legal proceedings (Chapter 9); Cree consent for the construction of one hydro-electric project described in the JBNQA and for the carrying out of a second major project; and a dispute resolution mechanism (Chapter 12).

(19) Measures outlined in Chapters 6 and 7 were repeated in Annex A of the 2002 Agreement setting out the text of Complementary Agreement 14. This Complementary Agreement also repealed the JBNQA’s Chapter 28 provisions related to the James Bay Native Development Corporation, and replaced them with measures committing the province to enact legislation creating a Cree Development Corporation dedicated to the economic and community development of the James Bay Crees. Legislative measures to comply with this undertaking, enacted in 2002, are not yet in force. See *An Act to Ensure the Implementation of the Agreement Concerning a New Relationship Between le Gouvernement du Québec and the Crees of Québec*, S.Q. 2002, c. 25, R.S.Q. c. M-35.1.2.

2. The New Relationship Agreement

In 2004, Canada and the Grand Council of the Crees (Eeyou Istchee)/CRA⁽²⁰⁾ similarly entered into negotiations to address unresolved implementation issues and, in February 2008, signed the 20-year Agreement Concerning a New Relationship Between the Government of Canada and the Cree of Eeyou Istchee (2008 Agreement).⁽²¹⁾

Reflecting Cree aspirations to exercise broader governance powers, Chapter 3 of the 2008 Agreement describes a two-phased approach to governance. It involves (1) defining the CRA's by-law-making authority through amendments to the CNQA, in order to enhance the Authority's capacity to assume defined federal responsibilities under the JBNQA; and (2) describing a process for negotiations toward a Governance Agreement and related legislation, as well as possible consequential amendments to the JBNQA and the CNQA to establish "a Cree Nation Government with powers and authorities beyond the scope of the CNQA."⁽²²⁾ In accordance with the first phase, section 3.3 describes the numerous specific amendments agreed to by the parties, which are set out in Bill C-28 and reviewed under the Description and Analysis heading below.

Federal responsibilities to be assumed by the CRA as set out in Chapter 4 of the 2008 Agreement include limited post-detention responsibilities related to the administration of justice⁽²³⁾ (JBNQA, para. 18.0.29e) and g)); establishment of Cree Associations (JBNQA, section 28.4); the federal portion of joint Canada–Quebec obligations regarding trapping (JBNQA, para. 24.3.24); support of Cree associations (JBNQA, sections 28.5–28.7), training programs, job recruitment and placement (JBNQA, para. 28.9.1 and .2); and community services

(20) According to the Grand Council of the Crees, although the Grand Council (the James Bay Crees' political structure) and the CRA (its administrative structure) are distinct legal entities, their direction, membership and governing structures are identical and they operate in practice as one organization. The 20-member Grand Council/CRA consists of a Grand Chief and Deputy Grand Chief elected at large, the Chiefs of nine Cree communities, including Oujé-Bougoumou, and an additional representative from each community.

(21) *Agreement Concerning a New Relationship Between the Government of Canada and the Cree of Eeyou Istchee* (also known as the Chrétien-Namagoose Agreement), 2008, <http://www.ainc-inac.gc.ca/al/ldc/ccl/agr/croei/agrn-r-eng.pdf>.

(22) *Ibid.*, para. 3.1a).

(23) Subsection 92(14) of the *Constitution Act, 1867*, gives the provinces exclusive jurisdiction over most aspects of the "Administration of Justice."

such as essential sanitation and fire protection (JBNQA, para. 28.11.1 and .2).⁽²⁴⁾ Chapter 6 stipulates that federal funding totalling \$1.4 billion is in consideration of the assumption of these federal responsibilities, as well as the resolution of grievances and litigation, and costs related to participation of the Grand Council/CRA in consultations and negotiations on Cree Nation governance.⁽²⁵⁾

It is worth noting that the 2008 Agreement does not amend the JBNQA or the CNQA and is not a treaty within the meaning of section 35 of the *Constitution Act, 1982* (sections 2.2, 2.5).

D. The Situation of the Oujé-Bougoumou Crees

The Oujé-Bougoumou Crees, although a distinct group with traditional territory within the greater Eeyou Istchee, lost their land base and became dispersed after being subjected to a series of forced relocations related to mining and forestry development, beginning in the 1920s. Unlike other Cree communities, the group had not been recognized as a “band” under the *Indian Act* and, at the time of negotiations leading to the JBNQA, its members were registered as members of the Mistissini band “for economic and administrative reasons.”⁽²⁶⁾ As a result, the Oujé-Bougoumou Crees, although beneficiaries of the JBNQA, were not recognized as a band with entitlement to Category I and Category II lands in their own right under the JBNQA; their entitlement was calculated as included in Mistissini lands. Similarly, the Oujé-Bougoumou Crees were not included in the federal CNQA implementing local government on Category IA lands for recognized Cree bands.⁽²⁷⁾

The group has long sought redress for its exclusion from both regimes, which has been acknowledged as a critical outstanding issue in a succession of agreements with federal and provincial governments dating back 20 years. The 1989 Oujé-Bougoumou Agreement with

(24) Chapter 6 of the 2002 Agreement with Quebec also lists a number of these sections as CRA-assumed provincial responsibilities.

(25) Other chapters of the 2008 Agreement are concerned with, *inter alia*, the resolution of claims and grievances (Chapter 5), litigation and related legal matters (Chapter 7), the creation of a Cree–Canada Standing Liaison Committee (Chapter 8) and dispute resolution processes (Chapter 9).

(26) *2000 Report of the Cree-Naskapi Commission*, Chapter 3, “Local Eeyou (Cree and Naskapi) Government.”

(27) The historical information in this paragraph is based on successive reports of the Cree-Naskapi Commission, which may be consulted at <http://www.creenaskapicommission.net/info.htm>.

Quebec, reduced to its essence, provided for partial financial and technical support for the construction of a village for the group at an agreed-upon site, and set the objective of eventual allocation to the Oujé-Bougoumou Crees of specific amounts of Category I and Category II lands, pending settlement with Canada and negotiations regarding a land transfer with the Crees of Mistissini.⁽²⁸⁾ Under key provisions of the 1992 Oujé-Bougoumou/Canada Agreement, Canada committed to provide the bulk of funding for the Oujé-Bougoumou village, and to recognize the Oujé-Bougoumou Crees as a distinct legal entity and the ninth Cree band under both the JBNQA and the CNQA, with entitlement to Category I and Category II lands as set out in the 1989 Agreement. To this end, Canada and the Crees undertook to amend both the JBNQA (through a Complementary Agreement)⁽²⁹⁾ and the CNQA.

In the 2002 Agreement, Quebec and the Crees agreed “to allow the definitive settlement of the transfer of lands between Oujé-Bougoumou and Mistissini” (section 10.4). Schedule G to the Agreement set out a settlement framework for the transfer of lands between Mistissini and the Oujé-Bougoumou Crees, including the development of a schedule for completion of a Complementary Agreement to the JBNQA.⁽³⁰⁾ The 2008 Agreement between the James Bay Crees and Canada commits the parties to sign the Complementary Agreement for the establishment of the Oujé-Bougoumou Band and its Category I land as soon as possible, and reiterates the commitment of the 1992 Oujé-Bougoumou/Canada Agreement to amend the CNQA.

DESCRIPTION AND ANALYSIS

Bill C-28’s amendments to the CNQA consist of 33 clauses which, as the foregoing review illustrates, address two distinct subject matters: enhancement of the CRA’s powers of governance on the one hand, and inclusion of the Oujé-Bougoumou Crees in the CNQA regime on the other. This paper considers selected significant elements of each of the bill’s components together.

(28) A 1989 Memorandum of Understanding between Quebec and the Mistissini Cree made the completion of any such transfer contingent on the resolution of specific concerns of the Mistissini group.

(29) The 2006 Edition of the JBNQA contains 18 complementary agreements on various issues between or among the various signatories to the JBNQA. The majority involve the James Bay Crees.

(30) Schedule G refers to the severing “from the Mistissini Category I and Category II lands those lands originally allocated on the basis of the Oujé-Bougoumou Cree population then registered as members of the Mistissini Band as of November 11th, 1975” (section 2).

A. Cree Regional Authority (Clauses 2, 9, 10–14, 22–24, 26, 28–31, 33(1))

As previously mentioned, at present the CRA does not feature prominently in the CNQA. Bill C-28 amendments to the CNQA are intended to reflect those agreed to by the parties in Chapter 3 of the 2008 New Relationship Agreement, with a view to enhancing the CRA's authority under the legislation.

1. Defining Cree Regional Authority (Clauses 2, 9)

Sections 6 and 8–9 of the CNQA set out a general framework for the exercise of an individual band's by-law-making authority under the legislation, limiting its reach to each band's Category IA land and specified Category III land, and providing that band by-laws may prohibit activities and are not covered by the federal *Statutory Instruments Act*. Under Bill C-28, new sections 9.1 to 9.3 mirror these provisions for the CRA, with the significant distinction that the potential reach of its by-laws extends to all Category IA land (clause 2).

The CNQA defines the objects of a band (section 21), sets out its by-law-making powers (section 45), related process requirements (sections 52–54) and procedures for challenges to by-laws (sections 55–57). Bill C-28 amendments do not modify these provisions, but rather introduce analogous measures for the CRA in new Part I.1, which also sets out additional provisions agreed to in the 2008 Agreement for implementing the CRA's regional regime. New sections 62.01 to 62.06 are of particular significance (clause 9).

- Section 62.01 defines the objects of the CRA to include acting as a regional government on Category IA land; regulation of essential sanitation services, housing and buildings used for regional governance; use and administration of moneys and other assets; and promotion of the welfare, culture and traditions of Cree band members.⁽³¹⁾
- Section 62.02 acknowledges the CRA's broad authority to assume any federal responsibilities *agreed to by Canada*, whether in the JBNQA "or any other agreement or in any federal Act or that are in relation to any program of the Government of Canada." The 2008 Agreement currently provides for the transfer of the specific responsibilities outlined above,⁽³²⁾ while this provision has a potentially much wider scope, conditional on the parties' agreement.

(31) The last two objects have near-equivalents in the 1978 Quebec legislation creating the CRA; see para. 6(d), (e) and (m) of *An Act Respecting the Cree Regional Authority*.

(32) Section 4.10 of the 2008 Agreement provides that, subject to specific undertakings regarding implementation of certain assumed federal responsibilities, the CRA has discretion to implement them "in the manner, according to the priorities, in the timeframes and to the extent it deems appropriate."

- The CRA’s regional by-law-making authority listed in section 62.03 includes (a) regulation of housing and regional governance buildings for purposes of protecting public health and safety; (b) essential sanitation services and related health and hygiene; (c) establishment and operation of fire services; and (d) environmental protection and pollution prevention. Standards in by-laws under section 62.03 must “meet or beat” provincial and federal standards dealing with the same subject matter.⁽³³⁾
- Section 62.05 provides that in the event of conflict between a CRA by-law and a band by-law, the former prevails to the extent of the conflict. Where the standards in a band by-law have a more stringent effect than those of the corresponding CRA by-law, provisions related to the more stringent standards prevail to the extent of their conflict with the CRA by-law.
- Under section 62.06, CRA powers under the CNQA do not affect the rights and benefits of Inuit or Naskapi beneficiaries under the JBNQA, the Northeastern Quebec Agreement, any other agreement between those groups and Canada or Quebec, or any undertaking by Canada or Quebec. Similarly, CRA powers do not affect the rights and benefits of the Naskapi Band, Naskapi beneficiaries or the Inuit of Fort George under the CNQA.⁽³⁴⁾
- Sections 62.07 through 62.3 essentially replicate, for CRA by-laws, existing provisions of the CNQA related to process and challenges to band by-laws.

2. Administrative and Consequential Amendments,
Coming Into Force (Clauses 10–14, 22–24, 26, 28–31, 33(1))

Most remaining Bill C-28 amendments related to the CRA pertain largely to administrative matters, or are incidental to the generally enhanced scope of CRA involvement in governance. For instance, Bill C-28 amends provisions of the CNQA dealing with bands’ financial administration in order to ensure greater CRA involvement and oversight (clauses 10–14). The bill replaces the CNQA’s current provision related to policing of Category IA land (section 194) with one stipulating that, in the event the CRA establishes a regional police force under the Quebec *Police Act*, it will have enforcement jurisdiction over the territory described in

(33) Under section 62.04, CRA by-laws must be adopted at a public meeting of the CRA called in accordance with the governing provincial legislation by means of a resolution supported by a majority of the CRA’s Council.

(34) The community of Fort George, a permanent village with Cree and Inuit inhabitants founded in the 19th century and located on Fort George Island in the La Grande River, was relocated by the Quebec government at the time of the James Bay Hydro-Development Project. The JBNQA recognized the Cree community of Fort George (renamed Chisasibi) as well as the Inuit community of Fort George, and allocated Category I and Category II lands to each, south of the 55th parallel. This feature distinguishes the land allocation of the Inuit of Fort George from those of the other remaining Inuit communities, all north of 55. Under the CNQA, the Inuit of Fort George enrolled as JBNQA beneficiaries (section 2) are deemed members of the Chisasibi Band for prescribed purposes, may vote in Chisasibi Band elections (section 19) and have access to that Band’s Category IA land (section 105).

that Act (clause 28).⁽³⁵⁾ It adds a provision requiring that Cree bands obtain CRA approval prior to entering into a policing agreement with Quebec or other specified bodies (clause 29).

Bill C-28 amendments related to the CRA come into force on a day or days to be fixed by order of the Governor in Council (clause 33(1)).

B. Oujé-Bougoumou Crees (Clauses 1, 3–5, 7–8, 15–21, 25, 27, 32, 33(2))

Leaving aside key provisions discussed immediately below dealing with definitions and incorporation, amendments related to the Oujé-Bougoumou Crees are not intended to effect substantive changes to the operation of the legislation. They aim to integrate the group into the CNQA regime, while reflecting the particular features of its accession to that regime, that is, through a complementary agreement to the JBNQA rather than under the original JBNQA.

1. Definitions, Incorporation, Coming Into Force (Clauses 1, 3, 33(2))

Section 2 of the CNQA currently defines “band” and “Cree band” to include those incorporated by section 12 of the Act, that is, the eight bands recognized under the JBNQA. Bill C-28 expands that definition to include “the Oujé-Bougoumou Band referred to in section 12.1” (clause 1). It is this provision that establishes a new legal entity and the ninth Cree band, incorporating the “collectivity known as the Crees of Oujé-Bougoumou” with the legal designation of “Oujé-Bougoumou Band” (clause 3). Bill C-28’s definition of the “Oujé-Bougoumou Complementary Agreement” makes it clear that the realization of this term is contingent upon the Agreement’s completion, since it is the Agreement itself that provides for incorporation of that collectivity (clause 1). According to officials at the Department of Indian Affairs, the Agreement is nearing completion. Following its approval,⁽³⁶⁾ additional measures are required prior to the setting aside of Category IA land for the Oujé-Bougoumou Crees by order in council. The coming into force of all Bill C-28 amendments related to the Oujé-Bougoumou Crees will coincide with completion of this process, that is “on the day on which ...

(35) Under section 10.3 of the 2008 Agreement, Canada and the CRA undertook to conclude a tripartite agreement replacing Section 19 of the JBNQA on “Police (Crees)” to provide for a Cree Regional Police Force. This agreement was to have been signed “prior to or contemporaneously with” the 2008 Agreement.

(36) Section 4 of the 1977 *James Bay and Northern Québec Native Claims Settlement Act* authorizes the Governor in Council to approve agreements made pursuant to the amending provisions of the JBNQA.

[the] land is set aside” (clause 33(2)).⁽³⁷⁾ When the amended definition in section 2 and new section 12.1 do take effect, all references to “band” or “Cree band” in the CNQA will apply to the incorporated Oujé-Bougoumou Band.⁽³⁸⁾

2. Vesting of Assets, Transition, Non-beneficiaries (Clauses 4–5, 7–8)

Section 13 of the CNQA provided for the termination of the eight *Indian Act* Cree bands, and the vesting of all their existing rights, interests, assets and liabilities in the newly incorporated “successor” bands created by the legislation, as required by the JBNQA. Similarly, new section 13.1 terminates the Oujé-Bougoumou Eenuch Association (Association) – the existing federally incorporated entity with governance authority – and vests its existing assets and liabilities, as well as those of the collectivity of Oujé-Bougoumou Crees, in the new incorporated Oujé-Bougoumou Band (clause 4).⁽³⁹⁾ New sections 58.1 and 60.1 are concerned with continuity of governance for the Oujé-Bougoumou Crees during the transition to the CNQA regime; the Association’s existing Board of Directors becomes the council of the new Band for the remainder of their term in office, and its existing by-laws remain in force for a year (clauses 7–8).

The CNQA made special provision, in section 18, for members and electors of the former *Indian Act* Cree bands who were not beneficiaries under the JBNQA to continue as members and electors of the successor bands for prescribed purposes. Bill C-28 replaces section 18 to ensure members of the collectivity of Oujé-Bougoumou Crees with status under the *Indian Act* at the time of incorporation remain members of the new Band for the same purposes (clause 5).

3. Residence, Access and Other Land-related Rights (Clauses 15–21)

Sections 104 and 105 of the CNQA define who may reside on, occupy and gain access to Category IA land of the eight Cree bands. Similarly, sections 113–117 describe those entitled to exercise mineral, subsurface, mining rights and pre-existing rights on that land – and

(37) Email communications, 1 and 4 May 2009.

(38) It is worth noting that under section 2.8 of the 2008 Agreement, no additional federal funding will be available to settle “additional costs which may be associated with the recognition and establishment of any new Cree band.”

(39) Related amendments ensure that personal or movable property that becomes the Band’s property by way of section 13.1 and that was purchased by Canada is, like the personal and movable property of the other recognized bands, both tax-exempt (clause 25) and exempt from seizure (clause 27).

the manner of, and compensation obligations arising from, that exercise – largely by reference to the date of the signing of the JBNQA on 11 November 1975.⁽⁴⁰⁾ Bill C-28 amends or replaces the relevant portions of these measures in order to provide for similar entitlement in similar circumstances with respect to the Category IA land of the Oujé-Bougoumou Band, by reference to the date of the coming into force of the anticipated Complementary Agreement under which the land becomes Category IA land. By way of example, if, prior to 11 November 1975, the Province of Quebec granted an exploration permit to the Société de développement de la Baie James (SDBJ) for land that later became Category IA land under the JBNQA, the SDBJ may continue to use that land for exploration and exploitation purposes (section 114). Under new section 114(1), the SDBJ may continue to use the Category IA land of the Oujé-Bougoumou Band for exploration if the provincial permit for that land predates the coming into force of the Oujé-Bougoumou Complementary Agreement (clauses 15–21).

COMMENTARY

Bill C-28 does not appear to have received any media attention. It is generally considered a non-controversial piece of legislation that addresses a particular context and, as anticipated, appears not to have attracted the attention of unaffected individuals or groups.

In their 5 May 2009 appearance before the House of Commons Standing Committee on Aboriginal Affairs and Northern Development, members of the Cree-Naskapi Commission mandated to report on implementation of the CNQA expressed support for the two series of amendments set out in Bill C-28. At the same time, Commissioners underscored both their long-standing recommendation that a number of additional and non-contentious amendments to CNQA provisions related to local government are also required, and their hope that protracted delays in this regard might be avoided.

(40) Section 117 also provides for the continued exercise of rights granted prior to 11 November 1975 and other rights on Category IA land that were in effect upon the coming into force of Part VI of the CNQA. Bill C-28 makes the necessary amendments to provide for the continued exercise of analogous rights on Oujé-Bougoumou Category IA land that are in effect upon their coming into force (clause 21).