

**Presentation to the Cree-Naskapi Commission  
by the  
Department of Indian and Northern Affairs  
on the implementation of the Cree-Naskapi Act**

/ Dept. of Indian and Northern Affairs

[S.l. : s.n.], 1986

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DEPARTMENT OF INDIAN AND NORTHERN AFFAIRS  
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OF THE  
CREE-NASKAPI ACT

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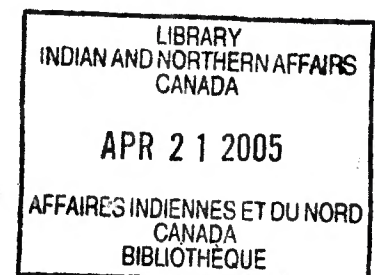
October 1986

IMPLEMENTATION OF THE CREE-NASKAPI (OF QUEBEC) ACT

INTRODUCTION

Thank you Mister Chairman for the opportunity to review with you the department's activity in the implementation of the Cree-Naskapi Act. Our involvement with this Act stems from the James Bay and Northern Quebec Agreement which was Canada's first major modern land claim settlement to be finalized. The Agreement, signed November 11, 1975, details a unique scheme for environmental management and the political, social, cultural, economic development of the James Bay and Northern Quebec territory and its people.

On January 31, 1978, the Naskapi Band of Schefferville, together with the other signatories of the James Bay Northern Quebec Agreement, signed the Northeastern Quebec Agreement, an agreement similar to the JBNQA. It provides the Naskapis with many benefits and amended the James Bay and Northern Quebec Agreement to integrate the Naskapis into many of the regimes that had been established by it.



In February 1984, Cabinet approved a submission seeking authority to present to the House of Commons the Cree-Naskapi (of Quebec) Act in fulfillment of Canada's obligation pursuant to Section 9 of the James Bay and Northern Quebec Agreement and Section 7 of the Northeastern Quebec Agreement. Discussions between the federal, Cree and Naskapi parties with respect to the Act had been initiated in 1976 to jointly develop the Act, and the Act represents, I believe, the positive efforts of all three parties. This legislation transfers the responsibility for most local matters to new entities, the Cree and Naskapi Band Corporations. It also ensures their legal capacity as Indian Governments in terms of operation within their own jurisdictions, interaction with other governments, contracting or taking legal action. In doing so, this Act replaces the Indian Act.

The Cree-Naskapi (of Quebec) Act is significant because it is the first Indian Self-Government legislation, and its implementation will serve as an important lesson for future self-government legislation.

The government's role in the implementation of the Act in the past two years has focussed on three areas -

the full establishment of the Cree-Naskapi Commission; the preparation of the regulations under the Act that are presently required for its proper functioning; and the finalization of the funding regime to enable the local governments to carry out their responsibilities under the Act. Although the ultimate responsibility for implementation in these three areas rests with the federal government, the Crees and the Naskapi have actively participated and have influenced the results. This is, of course, an appropriate correlate of the self-governing powers for which the Act provides. By the same token, as you can appreciate the federal government's role in implementation is limited. The fundamental implementation of the Act rests essentially with the 9 local governments and the members of the communities themselves.

#### Cree-Naskapi Commission

As the Commission is fully aware, the Commission was established by the Part XII of the Act. Although the proclamation bringing the legislation into force provided for the Commission to come into being on 1 December 1984, it was only on 30 September 1985 that the Cree Regional Authority and the Naskapi Band submitted to the Department their recommendations for

Commissioners. By early December, the present Commissioners had all confirmed their willingness to serve on the Commission, and on 6 February 1986 the Commissioners were appointed by Order in Council (P.C. 1986-6/378).

On 30 January 1986 Treasury Board approved \$1.916 million (constant dollars) for the Commission over a 5-year period. The funding was to be provided to the Commission through contribution agreements. To date the 1985-86 and 1986-87 contribution agreements have been signed.

On 24 April and 23 June 1986 the Naskapi Band and the Cree Regional Authority recommended that the head office of the Commission be changed from Val d'Or to Ottawa. An Order in Council (P.C. 1986-2059) dated 11 September 1986 effected this recommendation.

#### Regulations

The Act empowers the Governor in Council to enact regulations on a wide range of specific subjects, and also provides him with general regulatory power to

prescribe anything required to carry out the purposes and provisions of the Act.

To date, regulations have been adopted with respect to long-term borrowing, the Inuk of Fort George observer and the form of the instrument of land cessions. In each case, representatives of the bands have actively and fully participated in the preparation of the regulations, an arrangement which is again consistent with self-government and which we would fully expect to continue.

#### Cree-Naskapi Long-Term Borrowing Regulations

After the Act came into force, on 14 March 1986, an Order in Council (P.C. 1985-793) put into place interim long-term borrowing regulations under section 98 of the Act to authorize the bands to make long-term housing loans under the National Housing Act.

The regulations were of an interim nature, designed only to address the immediate needs of the communities to continue making long-term loans for housing purposes. They were replaced with comprehensive long-term borrowing regulations on May 1, 1986 by Order in Council P.C. 1986-1050.

Form of Instrument of Cession Regulations

These regulations prescribe the Instrument of Cession form that is required under paragraph 146(b) of the Act to be executed in the case of a cession of Category 1A or 1A-N lands to the Province of Quebec.

The regulations were adopted on November 21, 1985 by Order in Council P.C. 1985-3398.

Inuk of Fort George Observer Regulations

The Cree community of Chisasibi includes a number of Inuit families. Under the Act, these Inuit ("Inuit of Fort George") are deemed, for a number of purposes, to be members of the Chisasibi Band.

Subsection 36(2) of the Act makes special provision for them to have an Inuk present as an observer at the meetings of the Chisasibi Band Council for any period during which there is no Inuk elected to the Council. The regulations respecting the manner of selection and term and tenure of the office of the observer were adopted on August 13, 1986 by Order in Council P.C. 1986-1837. They are based on the Inuit of



Fort George's preferred method of selection which was provided to the Department on 29 March 1985 by Makivik Corporation.

#### Future Regulations

Other regulations still remain to be enacted. The most important of these are the Cree-Naskapi Land Registry Regulations under section 151. They provide for the establishment and maintenance of a system for the registration of the rights and interests in the lands and buildings on the 1A and 1A-N lands of the bands. The regulations were approved by the Minister on 16 October 1986, and are awaiting Governor in Council approval.

The Cree-Naskapi Band Election Regulations under subsection 67(1) are presently being pre-examined by the Department of Justice. The Cree-Naskapi Band Expropriation Regulations under section 151 and the Instrument of Succession Regulations under section 177 are both in the final drafting stage. Some initial work has been done on the Cree-Naskapi Band Meeting and the Band Referenda Regulations under subsection 87(1).

The regulations respecting the application of provincial laws to long-term third party rights under

subsection 11(1) and the regulations respecting taxation under subsection 45(4) have not been considered by either the federal government or the bands to be priorities. They have yet to be developed.

#### Funding

The Cabinet document, dealing with the Act, was developed jointly with the Crees and Naskapis. It included, as an annex, a description of the funding relationship that would apply.

A Treasury Board submission which requested the authority to implement the new funding arrangement was prepared at the same time as the Act moved through Parliament. On 1 August 1984 the Treasury Board gave its approval for the special grant, the development of an adjustment formula and other matters related to the federal subsidy for the bands under the Cree/Naskapi (of Quebec) Act. The then Minister signed a Statement of Understanding on 9 August 1984 which confirmed the funding approach and which set out a program whereby other funding could be considered for inclusion in the grants and certain administrative matters could be concluded. The operations and maintenance grant was

established as a "base-year" figure of \$11.8 million, to be adjusted in future years by the development of a formula.

The proposed formula was negotiated with Crees and Naskapis and submitted to the Treasury Board for consideration in February 1986. The formula, as proposed, called for a funding increase of \$1,697,000 for 1985-86.

On February 13, 1986 the Treasury Board decided to defer consideration of a formula as they wanted this to be reviewed by the Department. The Board did however approve an interim increase of \$836,665 and an increase to the 1986-87 base of \$346,341 for band employee fringe benefits. A \$399,429 surplus for operations owed by the bands to Canada for 1985-86 was eliminated without prejudice to other year's treatment of similar surpluses.

The Board did not approve a requested retroactive increase for employee fringe benefits dating back to the 1985-86 fiscal year and it deferred consideration of the housing maintenance subsidy for Great Whale River Band, under the Northern Housing Program. Also,

the Board refused to augment the base by \$1,875,143, which amount represents the revenue shortfall experienced by the Cree bands in their billings to Quebec institutions.

Let me explain why there is a revenue shortfall. The grant of \$11.8 million to the Crees and Naskapis approved by the Treasury Board for inclusion in the 1984-85 base year meets part of the expenditure requirements of the Bands. The total requirement had been forecasted at \$17.7 million. The difference was to be made up by revenues generated by the Bands by user fees and by other means. Two items were not contemplated, which have resulted in a substantial shortfall in local revenues:

- i) The Cree School Board and the Cree Regional Board of Health and Social Services were unable to obtain budget approval from Quebec for payment of \$1,251,583 which had been expected in 1984-85 as their share of user fees.
- ii) Certain businesses in the territory are economically marginal, Band Councils have

determined which of these are considered necessary to the communities and have agreed to charge these at the subsidized rate for utilities.

The Government's position as expressed by the Treasury Board on 1 August 1984 is that the liability of the Federal Government would not be increased if the revenues or recoveries did not materialize. For this reason, the Board refused the request.

The question of the formula for the adjustment of the Cree and Naskapi subsidy grants was still left unresolved. Because the formula is extremely important, Treasury Board Ministers requested that the Minister of INAC develop alternative formulae and return to them for approval. This was done in June 1986 after consultation with the Crees.

At that time, Treasury Board approved a significantly adjusted version of the formula submitted to it. The funding formula was approved with volume adjustments based on year over year changes in Cree population and the price adjustments based on year over year increases

in the Consumer Price Index. The application of the formula retroactively to 1985/86 and 1986/87 yielded an increase of \$1,804,362 for the two years.

The Board did not approve a requested annual economic development contribution of \$200,000 proposed to compensate for the Cree businesses revenue shortfall or the \$938,687 general contribution for education and health user fees. It considered that these items should be addressed within the context of other James Bay and Northern Quebec Agreement implementation issues in the mediated negotiation process recently approved by Cabinet.

The 1986-87 Base Subsidy eligible for application of the formula for incremental funding for next year was \$14,592,790.

The Department attempted to resolve the issue of the Great Whale River subsidy by flowing funds to the Band under a contribution agreement with the Cree Regional Authority. This agreement would have provided the needed funding on the condition that the Crees recognize that this is the last matter concerning program application to be discussed before the five

year review in 1989. The Crees refuse to accept this condition.

In September, 1986 the Department informed the Crees that the funding representing the adjustments from the 1984-85 base would only be provided to them if they signed an agreement accepting the formula. The Crees have refused to accept the decision of the Treasury Board and want it substantially amended.

A total picture of the Crees and Naskapi O&M funding is provided in the chart under Annex A to this presentation.

The operations and maintenance funding is not provided to the Crees under the authority of a formal agreement. In the first two years of Cree-Naskapi Act O&M funding, the department flowed 75% of the operations & maintenance grant at the beginning of the fiscal year (April 1) and the remaining 25% on receipt of the audited financial statement for the previous year. This administrative procedure is a carryover from a letter signed by the then Minister dated 7 July 1984 in which he states among other things that "In future years, 75% of approved funding levels will be paid at the start of the year subject only to

Treasury Board authorization. Twenty-five percent of approved funding for any one year will be held back until accountability requirements under the Act respecting the full payment for the previous year have been met." A Treasury Board Submission considered 1 August 1984 approved terms and conditions jointly drafted by the Cree that states in part "... and twenty-five percent is disbursed after the accountability requirements of the act have been met".

However, the Cree, Naskapi and federal negotiators, feeling a need for greater certainty in respect to timing, but not wishing to impose many conditions on the grant, agreed upon a timeframe for departmental payments. As a result article 1a of the subsequent Statement of Understanding governing the implementation of funding arrangements was written. It states that "The payment schedule agreed upon was: Seventy-five percent of the total was to be disbursed at the beginning of the fiscal year and twenty-five percent was to be disbursed at the beginning of the fourth-quarter." The Statement of Understanding was finalized by the negotiators on 25 May 1984 prior to the Treasury Board decision and prior to the Minister's letter of 7 July 1984. It was subsequently signed by



the Grand Chief of the Crees, the Chief of the Naskapi Band and by the federal Minister on 9 August 1984. The Government of Canada does not recognize this as a fully binding undertaking. However, it is the most recent document.

This year \$11.8 million was approved in main estimates for the O&M grant of the Crees and Naskapis. To date we have flowed 10.9 million which represents more than 75% of the 1984-85 base-year.

In past years there has generally been some surplus of funds available to the Department at this time of year to enable us to make the final payment. However this year the decision of the Government to manage its expenditures very tightly combined with the fact that an agreement, had been signed after main estimates had been submitted, covering the provision of electricity to the Wemindji band meant that if we followed the procedures of the past two years, we would exceed our Parliamentary authority. We therefore will follow the authorities to the letter and must await Supplementary Estimates which Parliament will be considering, to give a total authority of \$15.7 million for this year's adjusted operations and maintenance grant. Our

Minister has already provided assurances to the Cree that our commitments will be met by the date stipulated in the memorandum of understanding.

The government is honouring all of its funding commitments under the Cree-Naskapi Act and will continue to do so.

The financial agreements reached through negotiations with the Crees and Naskapi have far reaching effects on self-government. While our community-based self-government policy includes the possibility of a variety of financial arrangements, several of the features of Cree-Naskapi Act financing are likely to appear in many self-government financial settlements. These include:

- Funding flows to bands by unconditional grant in the O&M and Capital areas.
- Funding base levels are negotiated between the bands and government in the O&M area.
- O&M subsidy levels were established on a needs basis and took into account the generation of local revenues, the situation was not constrained by existing internal departmental policy.

- O&M funding agreements are for a period of five years and are binding on both parties. Capital funding is also on a five year basis, though grant payment began only in the second year. The amount of the grant is calculated on a fair share basis.
  
- Annual adjustments for price/volume for O&M are made through the mechanism of formula, negotiated with the Indian governments.

CONCLUSION:

In closing Mister Chairman, we are pleased with the overall results of the Cree-Naskapi (of Quebec) Act. The nine bands are truly established and operating as self-government units. There have been growing pains and they are not likely all cured yet, but the general effect has been positive. I believe that a review of the various sections in the Act and the status of their implementation, which I have attached to this presentation—as Annex B, demonstrate the extent of work that has been done to accomplish the intentions of the Act.

Thank you.

THE DEPARTMENT OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT  
 IMPLEMENTATION OF THE CREE/NASKAPI (OF QUEBEC) ACT  
 OCTOBER 1986

	Section of Act	Item	Status of Implementation
1.	10	General power of Governor in Council to make regulations for any purpose related to implementing the <u>Act</u> .	a) 'Instrument of Cession' - article 146 b approved: Nov. 21, 1985  b) Deed Form article 77 - being drafted.
	11(1)	Regulations concerning the application of Provincial law to lease-hold interests on 1A and 1A-N lands	Not yet drafted
2.	13	Inventory of rights, obligations and liabilities of <u>Indian Act</u> Cree bands and Naskapi band vesting in <u>Cree-Naskapi Act</u> Cree bands and Naskapi band, transfer of real property, transfer of trust funds, abolishment of Indian act band lists.	Trust fund transfer completed 1985, property transfers to be done on request on a case by case basis, Indian Act band lists abolished 1985.
3.	22(2)	Monitoring of possible commercial activities of Cree and Naskapi bands conflicting with Act.	Done each year as part of review of financial statements.
4.	36(2)	Regulations re Inuk observer on council of Chisasibi Band.	Approved by Governor in Council: August 13, 1986.
5.	60	Inventory of by-laws of <u>Indian Act</u> Cree Bands and Naskapi Band continued in force.	Done - 1985.
6.	45(4)	Regulations of Governor in Council re band's power of taxation.	Not yet drafted.

	Section of Act	Item	Status of Implementation
7.	66	Approval of election by-laws.	Completed for all bands 1984-1986.
8.	67(1)	Regulations re elections.	Draft under examination by Dept. of Justice.
9.	87(1)	Regulations re special band meetings and referenda.	being drafted
10.	90(4)	Reception of Copies of Band Budgets.	ongoing
11.	93(2)	Auditor-Appointment by Minister in cases of band inaction.	Not required to date (October, 1986).
12.	94	Annual auditor's report of band accounts reception of the report.	Report received from all bands each year after March 31.
13.	98	Regulations re long-term borrowing.	Approved by Governor in Council: May 1, 1986
14.	100	Appointment of Administrator by Minister in cases of serious financial disorder.	Power invokled by Minister for Naskapi Band: Feb. 14, 1986, and in force until: Feb. 14, 1987
15.	113-115	Inventory of mineral rights granted prior to November 11, 1975.	ongoing
16.	117(1)	Inventory of rights in Category 1A lands granted by Quebec prior to November 11, 1975.	ongoing as part of land registry

	Section of Act	Item	Status of Implementation
17.	117(3)	Inventory of rights in Category 1A lands or buildings situated thereon granted by Minister or <u>Indian Act</u> Cree band prior to 3 July 1983; replacement by band.	ongoing as part of land registry
18.	117(5)	Inventory of Category 1A lands or buildings situated thereon in possession or occupation of third parties with explicit consent of <u>Indian Act</u> Cree band and Naskapi band prior to 3 July 1984; grant by band of equitable right or interest.	ongoing as part of land registry
19.	156	Expropriation Regulations	being drafted
	145(3)		
20.	151	Regulations of Governor in Council re land registry system	Submitted to Governor in Council: October, 1986
21.	158(1)	Establishment of Commission	Done in 1985
		- Members recommended by CRA and Naskapi band	Done in 1985
		- appointed by Governor in Council	Done in 1985
	(2)	Designation of Chairman by Governor in Council	Done in 1985
	160(6)	Determination of remuneration of Commission members by Governor in Council.	Done in 1985
	161	Head office of Commission elsewhere than in Val d'Or designated by Governor in Council on recommendation of Cree Regional Authority and Naskapi band.	established at Ottawa 1985

	Section of Act	Item	Status of Implementation
	162(1)	Staff of Commission hired with approval of Treasury Board.	Done 1985
	(2)	Renumeration of staff fixed by Commission with approval of Treasury Board.	
	(4)	Appropriation of money for renumeration of Commission members and staff by Parliament.	Done 1985
		Administrative support for the Commission.	ongoing
22.	198(1)	Determination of penalty for contravention of regulation.	Appended to each regulation as required.
23.	53(3) (plus: 39, 41, 45, 46, 47, 48, 66, 82, 86, 90, 94, 102, 199)	Reception of band by-laws.	ongoing
24.	N/A	Development of base year funding levels for Cree Bands and Naskapi Band	Done 1984
25.	N/A	Provision of other funding in ways compatible with the operations grant.	Approved by Treasury Board: Capital Funding July 31, 1985 Pension increase February 13, 1986 Write-off of deficit for 1985/86 February 13, 1986

	Section of Act	Item	Status of Implementation
26.	N/A	Development of Annual Funding Adjustment Formula	Approved by Treasury Board: June 26, 1986 - not yet accepted by Cree
27.	N/A	Establishment of means for the provision of Ministerial guarantees for housing loans for the Cree and Naskapi Bands/ establishment of new terms and conditions under the Appropriate Act.	Approved by the Governor in Council May 16, 1985
28.	N/A	Translation of the Act into Naskapi and Cree.	1st draft complete.



## CREE-NASKAPI O&amp;M FUNDING

<u>O&amp;M Grants</u>	<u>1984 - 85</u>	<u>1985 - 86</u>	<u>1986 - 87</u>		<u>1987 - 88</u>
			<u>Currently Agreed</u>	<u>Subject to Formal Agreement</u>	
Base	11,830,467	11,830,467	11,830,467		11,830,467
Interim increase		836,665			
Base adjustment:					
core funding		661,620	661,620		661,620
fringe benefits			346,341		346,341
Formula adjustment				1,754,362	2,976,478
Total	11,830,467	13,328,752	12,838,428	1,754,362	
			14,592,790		15,814,906
Wemindji (electricity)	--	--	1,100,000		1,100,000