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The Superior Court of Quebec declares the Canadian Environmental Assessment Act violates Cree rights under the JBNQA

NEMASKA, EEYOU ISTCHEE - In a lengthy decision rendered upon a motion submitted by the Grand Council of the Crees (Eeyou Istchee) and the Cree Regional Authority, the Honorable Nicole Bédard of the Quebec Superior Court has declared the Canadian Environmental Assessment Act inapplicable to Northern Quebec.

In this decision, the Superior Court reaffirms the prevalence of the treaty with the Crees, the 1975 James Bay and Northern Quebec Agreement (JBNQA), over any incompatible federal or provincial laws, and the Court confirms the constitutionally protected right of the Crees to "fully participate ... in the management, control and regulation of the development of the territory."

Since the CEA Act does not recognize the special status of the Crees and does not use the impact on Cree rights as the basis for the assessment of development projects, the Court has declared it inapplicable in Northern Quebec and in violation of the constitutionally affirmed JBNQA.

"We are extremely satisfied that the Court has agreed with us that the CEA Act violated our treaty right" declared Grand Chief Matthew Mukash. The Grand Chief added "This decision strongly reaffirms the principle of the prevalence of our treaty rights in the James Bay territory, as well as our guaranteed participation in the management, control and regulation of all development throughout the territory."

The GCCEI/CRA had asked not only that CEAA be

declared inapplicable, but also that the federal assessment and review process provided for under the 1975 JBNQA be substituted therefore. The federal review process under the JBNQA had been set aside by the Federal Court of Appeal in 1993 with regard to hydroelectric development in the territory, and the GCCEI/CRA was seeking that this be examined again by the Court. The Quebec Superior Court has however decided not to overturn the previous 1993 decision of the Federal Court of Appeal on this matter. The GCCEI/CRA intends to maintain its position that both federal and provincial assessment processes provided for under the JBNQA apply to development projects in James Bay and will be seeking a decision to this effect before the Quebec Court of appeal.

Nevertheless, the decision released on Friday vindicates the Crees' long standing position that the CEA Act did not take into account their treaty rights and was therefore in contradiction with the JBNQA. Though requested to correct this situation many times through negotiations, the federal authorities had rather decided to impose CEA on the Crees in disregard of the terms of the treaty. The Court has now ordered Canada to respect the terms of the treaty.

This decision does not affect the on-going review of the Eastmain 1A - Rupert Diversion Project as this is being carried out under a special agreement among the Crees, Canada and Quebec. This agreement calls for a review to be carried out under the CEA that also takes into account the provisions related to the protection of the Crees, their way of life and economy, under Section 22 of the James Bay and Northern Quebec Agreement.

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