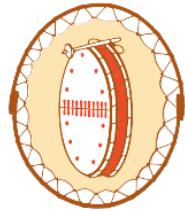




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Grand Council of the Crees (Eeyou Istchee)  
Grand Conseil des Cris (Eeyou Istchee)

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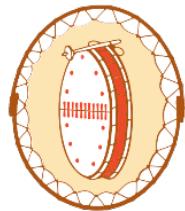
**KEYNOTE ADDRESS  
BY  
GRAND CHIEF DR. ABEL BOSUM  
AT THE QUEBEC MINES CONVENTION**

***“Banking on Rights: The Business Case for Recognizing Indigenous Rights”***

[QUEBEC CITY – NOVEMBER 21, 2018]



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Good morning, Bonjour, Wachiya, Kwey.

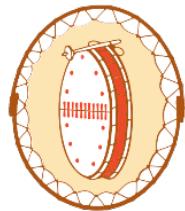
It is a pleasure to be here with you today to share what I consider to be very important lessons based on the history and experiences of the Cree Nation of Eeyou Istchee in northern Quebec in our relationship with the mining industry. To provide a context for understanding that relationship, I would like to take you on a brief journey highlighting the essential moments and key events in the evolution of the Cree Nation since the early 1970's.

Since that time, we have gradually and incrementally arrived at a point where we are on the brink of becoming the major economic and political force in Eeyou Istchee—our traditional territory in northern Quebec, an area of over 400,000 square kilometers, or two-thirds the size of France. Eeyou Istchee includes the lands on the eastern shore of James Bay and south-eastern Hudson Bay, as well as the lakes and the rivers that drain into them.

During this period of time, the Cree Nation has also gone from a context in which the notion of aboriginal rights or Indigenous rights was just an empty concept. It was essentially an empty box with no substance and no



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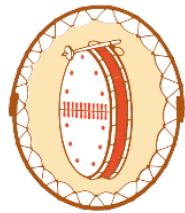
content—legally or practically. We have gone from that period of time to a place now where our rights have been substantially recognized and those rights are consistent with international instruments such as the *U.N.*

*Declaration on the Rights of Indigenous Peoples* and our own Canadian Report of the Royal Commission on Aboriginal Peoples. That journey has brought us to a point where we have a very special relationship with those who propose to carry out resource development—including mining—on our traditional territory. We are now at a point where we are best thought of, not as stakeholders, not as another interest group, but as “rights holders”, and more importantly, as investors. We are investors because we are providing access to the land upon which, and underneath which, many of the resources are present, and which are of interest to resource developers.

We see ourselves now as investors—not only in providing access to resources on our traditional territory—but also potentially in a financial sense as well. And like all investors we enter into any project discussions and any relationship with the expectation of a reasonable return on our investment. In anticipation of this role that we play within our traditional territory, a number of years ago we developed our Cree Mining Policy, a document



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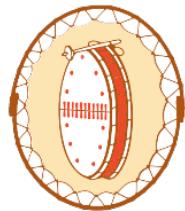
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which lays out the conditions under which we are prepared to engage with potential mineral developers, and our expectations with respect to a range of key issues for us, including employment, contracting, training, environmental protection and financial returns. It has been our experience that once the process is well-defined, once the relationship between project proponents and ourselves is clear, then there is a high degree of certainty that a project enjoys. This certainty has a financial value as it results in an investment climate where the ambiguities related to indigenous territorial claims have been dealt with, and our relationship with proponents becomes one of "partnership". We have to date entered into a number of agreements with mining companies which have embodied these factors, and by and large, the process and the results have been very much appreciated by the proponents of mining projects. But more about this later.

Now, for the historical context. Quebec's intentions to develop the resource potential of our lands was thrust upon us in the early 1970's. At that time, Quebec announced its plans to proceed with the James Bay Hydroelectric Project—a project which at the time was the largest hydroelectric project in the world. Even though it would be built entirely within our traditional



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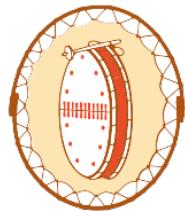
territory, this project was announced without consulting us and without obtaining our consent. In fact, we only learned about it over the radio.

The prevailing ideological underpinning of this approach towards Indigenous peoples by both resource developers and governments was the concept of *terra nullius*, that is, the belief that the territories in question were uninhabited and, therefore, were open for acquisition. According to this ideology, there could be no legal impediment to development initiatives that would require discussions or consultations with the Indigenous peoples who occupied the lands in question, or to obtain their consent. Indigenous people were simply squatters, without rights.

The Cree Nation refused to accept this premise. We took legal action, seeking an injunction to stop the James Bay Hydroelectric Project from going forward. In a surprisingly progressive decision at the time, Justice Malouf of the Quebec Superior Court granted our injunction. He found that the damages that we would suffer if the project were permitted to continue would cause serious harm to our culture and way of life that could not be adequately compensated. A week later, however, the Court of Appeal



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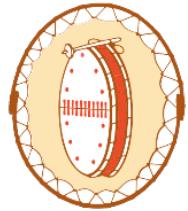
overturned this decision, allowing the project to continue. But Justice Malouf's confirmation that we did have rights in respect of our traditional territory compelled Quebec and Canada to negotiate with us. The result was the *James Bay and Northern Quebec Agreement*, or JBNQA, signed in 1975.

When Section 35 was included in the Canadian Constitution, recognizing and affirming existing aboriginal and treaty rights, the JBNQA was recognized to be more than just a contract between the Crees and the governments--it was recognized as a constitutionalized Treaty that has the force of law behind it, and it is now part of the legal foundation of this country.

The JBNQA established and affirmed a number of key elements that would set us on the path to our own form of nation-building, including: a partnership between the Cree Nation and the Province of Quebec in the future development of the territory; a measure of self-governance for our communities and for our Nation involving local and regional administration, health, education, policing and justice; a regime to ensure the remediation of the social and environmental impacts of future development projects; the



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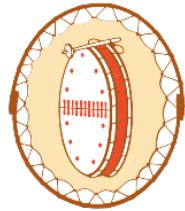
protection of our traditional way of life; and support to realize our economic development potential.

However, both the Federal and Provincial governments were largely absent when it came to implementing the *Agreement*. Commitments were not fulfilled, promises were not kept and the initial spirit and vision of the Agreement that we had fought so hard for was soon ignored and often flatly denied.

Over the course of the next two-and-a-half decades, we initiated legal actions and led public campaigns to redress these failures. We also strongly opposed further hydroelectric development projects on our traditional territory. These projects, in the late 1980's and early 1990's, were once again planned without our consent and without our involvement. We maintained the view that our connection with our traditional lands is fundamental to our identity as a people and to our culture. Projects which did not include our participation and which did not obtain our explicit, prior and informed consent would be actively opposed. Since then, of course, the



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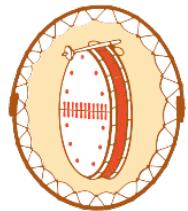
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requirements for consultation and accommodation have become law in Canada.

Quebec's attempts at secession in the mid-1990s led to additional challenges for the Cree Nation. Quebec believed that, if it seceded from Canada, our traditional lands would remain in an independent Quebec. Once again, we were not consulted. We held the view that our Treaty, the JBNQA, was a multi-party agreement and no one party could unilaterally change it without the consent of the other parties. So, we mounted a major challenge to Quebec's secession claim in order to protect our own rights. We even held our own referendum, in which over 96% of our people voted "no", affirming that we did not consent to the Quebec government separating the James Bay Crees and Cree territory from Canada in the event of a "yes" vote in the Quebec referendum. As a "People" under international law we declared our right to self-determination. We would not be passed back-and-forth like pieces of furniture between various governments without our consent. We took this fight all the way to the Supreme Court of Canada. So persuasive was our argumentation during those turbulent times, that many of our



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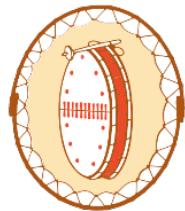
arguments were utilized by Canada in the Supreme Court reference case on Quebec secession.

After years of struggles, legal battles and public campaigns which were both national and international in scope, we finally secured additional agreements with each major level of government. Eventually, both Quebec and Canada came to understand, once again, that we were serious about our rights and that we would challenge any initiative which did not respect and acknowledge our rights. In 2002, we signed the historic "Paix des Braves", or "Peace of the Brave", with Quebec, and in 2007, we signed the "New Relationship Agreement" with Canada. These "nation-to-nation" agreements enabled us to re-establish and re-build our relationships with each government on a new and more equitable footing.

The historic "Paix des Braves" provided the mechanism for Quebec to meet a number of its unfulfilled obligations under the original *James Bay and Northern Quebec Agreement*. This agreement focused on economic development. It recognized and affirmed that development taking place on our traditional lands requires our explicit consent and our involvement. This



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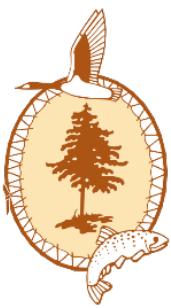
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requirement for “Cree consent” has now become the “new normal” for all economic development projects within Eeyou Istchee.

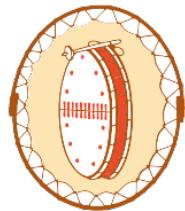
The “New Relationship Agreement” was concluded with Canada in 2007. The purpose of this agreement was to transfer substantial Federal responsibilities under the JBNQA to our regional Cree Nation Government and to our communities, along with the financial resources to carry them out.

With these agreements in place with both levels of government, we have begun to express in very tangible ways what it means to have a “Nation-to-Nation” relationship. Our new agreements have been explicitly characterized in these terms. Simply put, these agreements affirm our authority to govern ourselves and our affairs, and our entitlement to participate in economic development in our territory.

However, progress, when it comes to Indigenous rights, rarely proceeds in a straight line. In 2001, precisely at the time that we were finalizing negotiations of the “Paix des Braves”, Quebec passed legislation which had the effect of transferring critical powers over land use planning and resource



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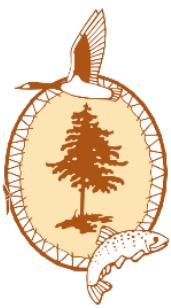


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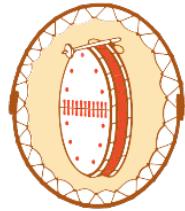
management to the non-Native municipalities located in the southern part of our region. This legislation, which was passed with little fanfare or media attention, excluded the Crees, despite the fact that we form the majority of the territory's population and despite the fact that, through our traditional hunters, we occupy the territory in its entirety.

This situation was not tolerable. It was contrary to the basic notion of democratic representation and contrary to even a basic understanding of human rights. We characterized this legislation as a form of "apartheid" in which a minority white population was given powers over the lands occupied by a majority aboriginal population. It was only over the course of the following few years that we gradually became aware of the full effects of this legislation when small-scale development projects began to appear rather brazenly throughout our territory, without our being informed in advance and without our consent.

Then, in 2008, former Premier Jean Charest announced the Plan Nord, or "the Northern Plan", an ambitious plan for the accelerated development of natural resources located largely within our traditional territory. The Northern Plan would see an investment of some \$80 billion over a 25-year



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period to support and facilitate the development of natural resources in the North.

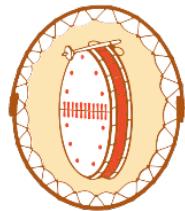
In 2009, we met with then-Premier Charest to discuss both issues—governance of the territory and the Northern Plan.

We told him that the governance of the North needed to be fixed in a very fundamental way. We told him that economic development and governance are closely tied together. If a governance regime is not aligned with demographic, legal and social realities then there is a danger that important players could be excluded from accessing the benefits associated with any economic development undertakings. This is a recipe for social unrest and represents a genuine obstacle to resource development. Without the inclusion of the Cree Nation in the governance of the territory, we could not support the Plan Nord. Indeed, we would actively oppose it with the same intensity with which we opposed both the hydroelectric projects of the 1980's and 90's and Quebec's position on our lands in the context of its possible secession from Canada.

We agreed to undertake negotiations to change the governance regime in northern Quebec, and to develop a governance approach which would be



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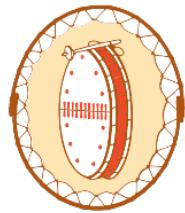
based on our “inclusion”. After two-and-a-half years of intensive negotiations, in 2012 we signed an historic *Governance Agreement*.

Pursuant to this Agreement, the Cree Nation Government has assumed responsibility for the land use planning processes and resource management functions previously exercised by the Province of Quebec over a territory of approximately 70,000 square kilometers of our traditional territory. At the same time, a new regional government was created which exercises land use planning powers over a territory of approximately 300,000 square kilometers. This new regional government is comprised of representatives of our Cree communities as well as representatives of the non-Native municipalities in the region. Together, we are developing new approaches for addressing a wide range of common issues within Eeyou Istchee, and in the context of the recognition of our Indigenous rights.

Our recent history over the past nearly fifty years has been all about a unique kind of nation-building which has been based on our insistence on the acknowledgment and the respect for our Cree rights, our Indigenous rights and our human rights. We have incrementally and progressively put into place all the necessary tools for our nation, our communities and our



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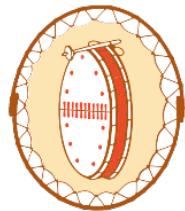
people to thrive in health and security. We have been laying the foundation for the long-term sustainability of our young Indigenous Nation, and we are putting into place the mechanisms by which we will once again become "masters of our own homes".

Now that we have largely secured the proper implementation of our treaty; now that we are taking our proper place in the democratic governance of our territory; now that our right to full participation in the development of our traditional territory has been properly recognized; and now that the concept of "Cree consent" and the importance of "social acceptability" of projects has become a mainstay for development in the our territory, we are ready to become full and active participants in the rational, orderly and sustainable development of the resources on our ancestral lands.

We are demonstrating, with the new reality we are fashioning, that the acknowledgement of indigenous rights is not inconsistent with development. On the contrary, we believe that to understand and to embrace these rights is a necessary condition for the rational and sustainable development of the resources within the territories of Indigenous peoples. The Cree Nation has



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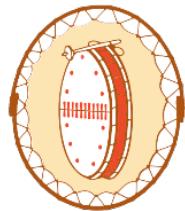
demonstrated that natural resource development can be done in a spirit of dignity, honour, cooperation and harmony.

In our own way, over the last four-plus decades, we in Eeyou Istchee have carried out our own “quiet revolution”. It is our belief that, taken together, all our incremental gains represent nothing short of a revolution. With the *James Bay and Northern Quebec Agreement*, the “Paix des Braves”, our “New Relationship Agreement” with Canada and our *Governance Agreement* with Quebec, we have maintained our traditional relationship with the land and we have ensured that the land will continue to sustain us in this contemporary context. It is a revolution not only in terms of the tangible mechanisms, processes and structures of governance, but also, a revolution in thinking about Indigenous rights, and a revolution in creating new relationships on the ground.

For Canada as a whole, there now exists an unparalleled opportunity to redress the historic exclusion of Indigenous peoples. The opportunity is there for everyone to get right the important mix between rights, governance and development.



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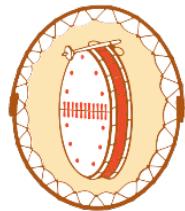
We in Eeyou Istchee have dispelled a persistent myth in Canada that aboriginal peoples represent an obstacle to development. The perpetuation of this myth has prevented natural resource and economic development on Indigenous territories from transitioning towards a model that includes our participation, and acknowledges Indigenous rights in a manner that can result in “win-win” arrangements.

The idea that Indigenous people want their rights recognized for the sole purpose of creating an obstacle to development is a myth that is perpetuated by those who do not want to see change of any kind. As the original inhabitants of this land, we have a vested interest in what happens on the land. In many places across Canada our Indigenous peoples still practice the traditional hunting and fishing activities that we have done for centuries. Our relationship to the land is sacred because we know it is the resources on the land that we rely upon for our survival, and we know instinctively that we must have a respectful relationship with the land.

At the same time, we have families and we have responsibilities to provide for our families, and we need to find ways in a contemporary world, and in



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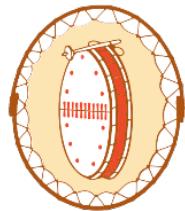
the context of a contemporary economy, to do that. The assertion of our rights is the way in which we can ensure our futures and ensure the survival of our people and our cultures. The assertion of our rights is about inclusion. Since the arrival of Europeans on this land, we Indigenous peoples have been subjected to colonialism and its consequences. Our treaties have been misinterpreted and often used against us. We have been subjected to efforts to assimilate us, to remove us from our traditional lands, and to take the “Indian” out of us through the Indian Residential School System.

When we insist that our rights be recognized, it is for the purpose of pointing out and highlighting our exclusion from, among other things, the benefits that our traditional lands can provide. It is about insisting to be included and benefiting from the development taking place on our lands.

It is our experience in northern Quebec that when those rights are recognized, that when we are included in both the development and the governance of our traditional lands, then it is possible to create win-win situations for all those concerned—for industry, for government, and for



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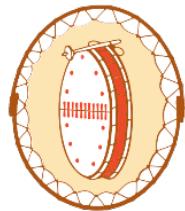
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Indigenous peoples. What we have found is that once industry, whether it is in the field of energy, mining, forestry or tourism, understands that the recognition of Indigenous rights creates a high level of "certainty" regarding the development of proposed projects, then there are significant benefits to companies operating on our traditional land. The rules are clear, the procedures are clear, all parties have a clear role to play, agreements are negotiated which address community concerns, and the potential for projects to be de-railed because of Indigenous claims are minimized, and development can proceed in a much more rational and orderly fashion. And, of course, this is all good for creating a healthy investment climate, and ultimately, it is good for business.

So, this is our recent history, and this is where we have gotten to. As all of you know, northern Quebec, similarly to many parts of northern Canada, is an important focus of the mining industry. There are rich deposits of a wide range of industrial and commercial minerals which can be exploited and yield very significant economic returns. On the basis of our rights being recognized and confirmed, we established our "Cree Mining Policy" which lays out the procedures which a mining proponent must follow in order to



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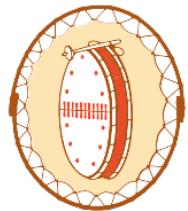
obtain our permission, and eventually formal provincial authorization, for the project to proceed. This policy has led to our concluding a number of agreements which we refer to as "Impacts and Benefits Agreements" involving our respective communities, our Cree Nation Government and the project proponents.

In these cases, once the rules are clear, there has been not only willingness, but also appreciation, on the part of mining companies for the clarity of the process and the resulting partnerships with our communities. All of our IBA's have resulted in win-win situations, and we believe that this is the way of the future.

Every region of the country, of course, has its own set of particular circumstances, and the ways in which the recognition of Indigenous rights will be translated into concrete benefits for Indigenous communities will perhaps look a bit different from location to location. But the essence of our experiences in northern Quebec can be replicated elsewhere. Indigenous rights are real and they can be expressed in tangible ways that will improve the lives of our people in their communities, while at the same time, creating



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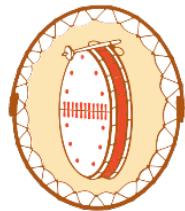
a spirit and an atmosphere of harmony, all of which far outweighs the costs of doing nothing.

What we have done in northern Quebec is to find that right mix of Indigenous rights, governance and development which has proven to lead to a significant lessening of adversarial confrontations in the context of development projects, to an increased partnerships and harmony in our region, to an improvement in the lives of our people, and to much better relations with governments.

I would suggest to you that Canadians, largely as a result of the Report of the Truth and Reconciliation, are ready for a new paradigm in their relationship with Indigenous peoples. They have finally begun, through many civil society forums, to have the kinds of dialogues with Indigenous peoples that would lead to support for a radically new way of relating to our First Nations and other Indigenous communities. Prime Minister Trudeau and a number of his cabinet ministers have shown a very good understanding of the kinds of changes that need to occur. And, the full implementation of the *U.N. Declaration on the Rights of Indigenous Peoples*



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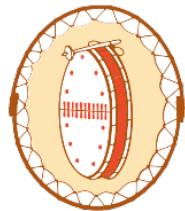
is an excellent starting point. The Report of the Truth and Reconciliation Commission also highlighted that the *Declaration* provides an excellent framework for reconciliation.

Governments and industry should make room for such a paradigm shift with a clear understanding that this is the right path to follow to achieve reconciliation. And, neither governments nor industry should be fearful. What we have demonstrated in our corner of northern Quebec is that it is possible to recognize and give practical expression to Indigenous rights without the sky falling and without governments “giving away the farm”. What we have shown, in fact, is that such an approach is, in the end, in everyone’s best interests.

To Indigenous communities I would say that this is the time to be alert to opportunities and to seize them when they appear. On the Indigenous side, I think we also sometimes need to let go of fears. We have become used to resisting, used to calling out the hidden agendas, used to mistrust, and used to government initiatives that come from a colonial agenda. There may be a time soon when we need to look beyond those blinders and see the



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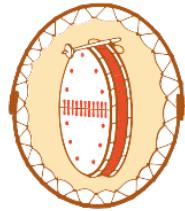
possibilities in opportunities. We need to be ready to say 'yes'. But by saying 'yes', it doesn't mean that we shut off our brains or that we stop looking at proposals with a critical eye. It means, on the Indigenous side, that we have to be ready to go beyond our own rhetoric and be ready to create something new when the opportunities present themselves.

So, in conclusion, I would just say that there is a greater cost to industry in trying to pretend that Indigenous rights do not exist than there is in rolling up our sleeves and hammering out workable arrangements that work for everyone. It is also the honourable thing to do, and it is about being on the right side of history....and, of course, it is good business.

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### **Abstract:**

*By reviewing the history of the Cree Nation of Eeyou Istchee (northern Quebec) over the course of the past forty-five years, Dr. Bosum describes the evolution of the political development of this young Indigenous Nation. From a time when the notion of Indigenous rights was essentially an empty box, the Cree Nation has subsequently put into place all the essential pieces of Indigenous nation-building and has laid the foundation for a healthy and prosperous future for the First Nations that comprise this emerging Indigenous collectivity. By grounding its political actions on fundamental human rights, Indigenous rights and Treaty rights, the Cree Nation is now poised to become the major economic and political force within its traditional territory and to engage with industry on a more level playing field thus ensuring more orderly and effective approaches to resource development. At the same time, a unique form of regional governance has been established which provides for collaboration and cooperation between Cree First Nations and neighboring non-Indigenous communities in order to address common concerns and interests.*