

**BRIEF**

**OF THE**

**GRAND COUNCIL OF THE CREES (EYYOU ISTCHEE) /**

**CREE NATION GOVERNMENT**

**TO THE**

**COMMITTEE ON INSTITUTIONS**

**NATIONAL ASSEMBLY OF QUÉBEC**

**ON**

**BILL 1, *QUÉBEC CONSTITUTION ACT, 2025***

**NOVEMBER 24, 2025**

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## I. INTRODUCTION

1. Fifty years ago, on November 11, 1975, the Cree, the Inuit, Québec and Canada signed the *James Bay and Northern Québec Agreement* (JBNQA). It was, and remains, a landmark as the first modern Indigenous treaty and land claim settlement agreement in Canada and Québec. It built on another landmark, the 1973 judgement in *Chief Robert Kanatewat v. James Bay Development Corporation*, which recognized that the Cree and the Inuit had legally enforceable rights in their territory and that Quebec had legally enforceable obligations towards them.
2. These two instruments are landmarks because they recognized that the Cree and the Inuit had rights that must be taken seriously. They put an end to the practice of ignoring these Indigenous peoples and their rights. They started a process, led at first by Premier René Lévesque and later by Premier Bernard Landry and successive Québec governments, of emerging recognition by Québec of the rights of Indigenous peoples.
3. This recognition embodied values of generosity and inclusion in relations with the Indigenous peoples of Québec. These values are expressed, in particular, in the “Fifteen Principles” of the Government of Québec (1983) and in the Resolution of the National Assembly on the recognition of aboriginal rights (1985), both adopted during the premiership of René Lévesque.
4. Now, 50 years after the signature of the JBNQA, the Government of Québec has tabled Bill 1, a proposed *Québec Constitution Act, 2025*. This proposed Constitution ignores the rights of Indigenous peoples (other than in a token preamble reference). In doing so, the proposed Constitution repudiates established Quebec policy of recognizing Indigenous rights, the legacy of Premiers Lévesque and Landry and of successive Québec governments. It proposes instead a retrograde return to the practice of ignoring Indigenous peoples and their rights, a practice that had rightly been consigned to the past.
5. The JBNQA treaty expresses a generous vision of partnership in governance and development between the original people of Eeyou Istchee, the Eeyou/Eenou, and Québec. With this treaty, the Cree accepted to share a place in Eeyou Istchee with Québec, which had been absent, in practical terms, from the Territory until then.
6. At the time of the JBNQA, the Cree made a strategic decision to work primarily with Québec in areas of its constitutional jurisdiction, including lands and resources, local and



regional government, health and education, justice and police, environmental protection, and hunting, fishing and trapping. In doing so, the Cree helped to consolidate Québec's presence in Eeyou Istchee through a partnership in governance and development.

7. The JBNQA was not just a transaction. The Cree saw it as the beginning of a relationship with Québec, a true partnership founded on mutual respect and collaboration. Over the first 25 years following the signature of the JBNQA, this vision was more often frustrated than fulfilled, largely due to lack of implementation of the JBNQA treaty promises. Relations between the Cree and Québec deteriorated to an impasse by the end of the century.
8. Then, in 2002, the Cree and Québec recommitted to their partnership with the *Cree-Québec New Relationship Agreement*, often called the *Paix des Braves*. This Agreement boldly restated the vision of partnership of the JBNQA. It committed the parties to work together to promote greater autonomy and responsibility for the Cree in their own development within Québec. The *Paix des Braves* marked a turning point in Cree-Québec relations, for the better. It embodied the spirit of reconciliation, long before that term gained wide currency.
9. The focus of the *Paix des Braves* is development. Several chapters are devoted to partnership between the Cree and Québec in the development of the forestry, energy and mining resources of Eeyou Istchee. The Cree assumed certain of Québec's JBNQA responsibilities for community and economic development. The Agreement settled many long-standing legal proceedings. And it created an innovative, high-level body, the Standing Liaison Committee, to strengthen political, economic and social relations between Québec and the Cree.
10. The *Paix des Braves* was followed ten years later by the *Cree-Québec Governance Agreement*. As its title suggests, its focus is the governance of the vast Eeyou Istchee James Bay Territory. It ended the exclusion of the Cree from governance of their ancestral territory. And it created a new and innovative partnership between the Cree, non-Indigenous local authorities and Québec in regional governance.
11. In this context, the failure of the proposed Constitution to affirm the aboriginal and treaty rights of the Indigenous peoples of Québec can only be seen as intended. This omission is very surprising, and alarming in its implication that the Indigenous peoples of Quebec do not have legally enforceable rights on an equal footing with other Quebecers. It relegates Indigenous peoples to second-class status, a treatment inconsistent with the very purpose



of a constitution. It turns away from reconciliation and inclusion in favour of exclusion and assimilation.

12. This result stems in part from the narrow mandate given to the Advisory Committee charged with developing recommendations for the proposed Constitution. It focuses on strengthening the distinctive identity, culture, language and values of the “Québec nation”, a term implicitly identified with the linguistic majority.
13. The Advisory Committee limited its analysis and recommendations to the subjects mentioned in the mandate and the related issues. The Committee therefore did not specifically address the relationship between the Québec State and the Indigenous nations, while noting that “it is of interest”. The Committee invited the Government to be mindful the importance of Indigenous issues when it came time to exercise its constitutional liberty and to affirm itself as a nation. The Government chose not to heed this invitation.
14. The proposed Constitution seems to envisage the Québec people and the Québec nation as a monolith, composed only of members of the majority language and culture. It therefore denies the rights of Indigenous peoples to their own self-determination as distinct peoples, with their own distinct cultures, languages and identities.
15. The proposed Constitution was produced by a small Advisory Committee, without significant input from the population at large. In particular, the Cree and the other Indigenous peoples affected by the proposed Constitution were not invited to help develop it. Had the Cree been invited, we would have contributed our perspective, gained from decades of intensive work on constitutional and governance issues. The Constitution belongs to all the people, yet important sectors were not involved in its development.
16. An exclusionary instrument is at odds with at least two fundamental purposes of a constitution: to unify all sectors of the population through the affirmation of shared principles and values, and to protect minorities from domination by the majority. The proposed Constitution meets neither of these objectives.
17. Instead of real inclusion of Indigenous peoples, the proposed Constitution would enshrine their exclusion from substantive rights and their “integration” into the majority culture. Instead of inviting unity through broadly shared values, the proposed Constitution would sow division by insisting on adherence to the values and culture of only one sector of society. While nominally affirming the rule of law and the separation of powers, it would restrict access to the courts through declarations of parliamentary sovereignty.



## II. CONTEXT

18. This brief considers the relationship between the proposed *Constitution of Québec* and the constitutionally protected aboriginal and treaty rights of the Cree of Eeyou Istchee. In doing so, it considers the nation-to-nation relationship between the Cree, as an Indigenous people, and the broader Québec society as the relationship has evolved over the past 50 years. It points out a number of serious issues with the proposed Québec Constitution.
19. The Cree have lived as an organized, self-governing nation in Eeyou Istchee for thousands of years, long before the Europeans came. The first European claim to the traditional territory of the Cree, Eeyou Istchee, was by the British Crown in the Royal Charter for incorporating The Hudson's Bay Company of 1670.
20. Québec's jurisdiction over the JBNQA Territory, including Eeyou Istchee and the Inuit traditional territory of Nunavik, only results from the Québec Boundary Extension Acts of 1898 and 1912. These laws transferred the Territory from Canada to Québec, but subject to and conditional upon Québec's fulfilment of its constitutional and legal responsibilities towards the Cree and the Inuit.
21. Québec's chief JBNQA negotiator, John Ciacca, made this point explicitly in his explanatory remarks on the Agreement to the National Assembly:

This Agreement has enabled us to accomplish two great tasks to which the government committed itself. *It enables us to fulfill our obligations to the native peoples who inhabit our north, and to affirm finally Quebec's presence throughout its entire territory.*

You may wonder at that last remark, and I can well imagine why. *It would be natural to assume that Quebec has always been fully exercising its powers and authority everywhere in its domain, that the structures of the state have made Quebec's presence felt everywhere within its boundaries. But that has not exactly been the case.* Let me begin by explaining the historical context.

As Honorable Members know, *Quebec reached its present boundaries by virtue of the Quebec Boundaries Extension Act of 1912*, when a vast area was transferred from the Northwest territories to the Province of Quebec. In addition to acquiring the territory, *Quebec assumed an obligation to settle such land questions and other claims as the native peoples might raise.*

[...]



*But there has been a cloud in this northern vision, and that cloud is the statute of 1912. The position of the native peoples was left unclear. It was our duty, the duty of the government of Quebec, to clarify their position. At the same time, we were in a position to remove any lingering possibility of dispute as to Quebec's rights to this vast territory. These considerations, moreover, formed part of the conclusions and recommendations of the Dorion Commission on the integrity of the territory of Quebec and I quote:*

*“That the Government of Quebec take without delay the necessary steps to honor the obligations towards the Indians that were assumed by the laws of 1912 concerning the extension of Quebec's frontiers; ....*

*“that the fulfillment of this obligation take the form of an agreement between the Government of Quebec and the duly mandated representatives of the Indian Bands of Quebec, confirmed by the government of Canada.”*

[Emphasis added]

22. As already noted, the JBNQA is the first modern Indigenous treaty and land claim settlement agreement in Québec and in Canada. It was signed by the Cree of Eeyou Istchee, the Inuit of Nunavik, Québec, Canada and Hydro-Québec, and it is recognized and affirmed by the *Constitution of Canada*.
23. The JBNQA was approved, given effect to and declared valid by a law of Québec, *the Act approving the Agreement concerning James Bay and Northern Québec*, and by a federal law, the *James Bay and Northern Québec Native Claims Settlement Act*. Both these Acts provide that they prevail over any inconsistent legislation applicable in the James Bay Territory.
24. The Grand Council of the Crees (Eeyou Istchee) and the Cree Nation Government represent the Cree Nation of Eeyou Istchee (James Bay, Québec) and all the Cree beneficiaries of the JBNQA.
25. The Grand Council of the Crees (Eeyou Istchee) (GCCEI) was established in 1974 and it is the Cree signatory of the JBNQA treaty. Its members are all the Cree within the meaning of the JBNQA; they number more than 21,000 persons.
26. The Cree Nation Government (CNG), formerly designated as the Cree Regional Authority, was established in 1978 pursuant to the JBNQA treaty and the *Act respecting the Cree Regional Authority*. Its members are the Cree of all the Cree communities of Eeyou Istchee



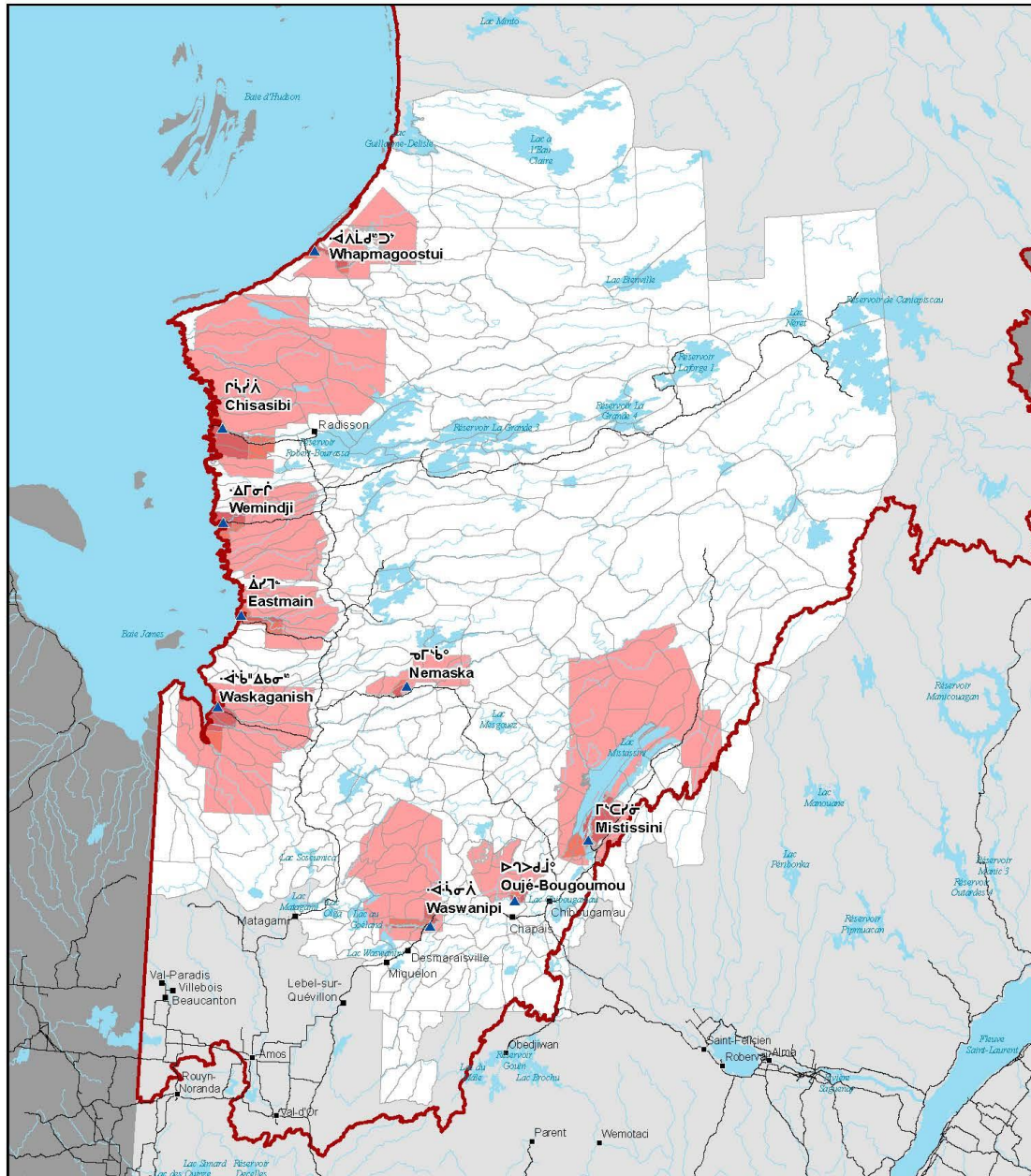
as well as the Cree communities themselves. The CNG is the “Cree Native Party” and the formal representative of the Cree beneficiaries for the purposes of the JBNQA.


27. The GCC(EI)/CNG have responsibility, as the Cree signatory and the Cree Native Party to the JBNQA treaty, respectively, for ensuring its proper implementation. They work with the Cree First Nations and other Cree bodies to promote and protect the aboriginal and treaty rights of the Cree of Eeyou Istchee.
28. The Cree First Nations of Eeyou Istchee exercise governmental jurisdiction over Cree Category I lands. They comprise the Cree Nations of Whapmagoostui, Chisasibi, Wemindji, Eastmain, Waskaganish, Nemaska, Waswanipi, Ouje-Bougoumou and Mistissini. In addition, the Cree communities of Washaw Sibi in Québec and MoCreebec in Ontario are seeking formal recognition as Cree First Nations.
29. The traditional Cree territory of Eeyou Istchee in Québec is shown on the map on the next page. It covers some 400,000 square kilometers, an area similar to that of each of the Nordic countries of Norway, Sweden and Finland.
30. The JBNQA defines three categories of land within this traditional Cree territory. Category I lands, where the Cree communities are located, cover about 5,500 square kilometers. Category II lands, where the Cree have exclusive rights to hunt, fish and trap, cover about 70,000 square kilometers. The balance of land is Category III, where the Cree share the regional government with the non-Indigenous local authorities through the Eeyou Istchee James Bay Regional Government.
31. The JBNQA treaty is a complex document, containing 31 chapters that address, for the Cree, a land regime; local and regional self-government; health and social services; education; justice and police; environmental and social protection; hunting, fishing and trapping rights; economic and community development; an innovative economic security program to support Cree traditional activities; a forestry regime, and more besides.
32. Even today, 50 years later, the JBNQA remains a model of far-sighted vision. For example, Chapter 22 established the first environmental impact assessment and review process in Québec, five years before the BAPE process. It created a number of joint Cree-Québec bodies with responsibilities for environmental and social protection and hunting, fishing and trapping. One such body, the Coordinating Committee established by Chapter 24, makes decisions on harvesting limits for large game that are binding on the Government.





# ᐃᓴ / ᐃᓴᓴ ᓄᓴᓴ ᐃᓴᓴ Cree Family Traditional Territories in Eeyou Istchee



▲ Cree Community	Category IA	<p>Projection: NAD 83 UTM Zone 18  Sources: CTA Cree Traplines (2024), MERN BIGDA 5M (2022), CIRNAC JBNQA (2023).  Disclaimer: This map is intended for consultation purposes only and the traplines boundaries shall not be interpreted as final or definitive.  Date: 2025-11-24.</p>  <p>ᐃᓴᓴᓴ ᐃᓴᓴᓴ ᐃᓴᓴᓴᓴ  Grand Council of the Cree Nation  Grand Conseil des Cris (Inuktitut)</p> <p>ᐃᓴᓴᓴᓴ  Cree Nation Government  Gouvernement des Cris (Inuktitut)</p>
■ Municipality/Locality	Category IB	
— Roads	Category II	
▭ JBNQA	Cree Traplines	

0 15 30 60 90 120 Kilometers



33. The Cree are governed by a special legal framework of traditional Cree laws, the JBNQA treaty and its implementing legislation, the *Cree-Québec New Relationship Agreement* (2002) (often called the *Paix des Braves*), the *Cree-Canada New Relationship Agreement* (2008), the *Cree-Québec Governance Agreement* (2012), the *Cree-Canada Governance Agreement* (2017), and the *Constitution of the Cree Nation of Eeyou Istchee*. The latter two instruments have been approved and given effect and force of law by the *Cree Nation of Eeyou Istchee Governance Agreement Act*.
34. Over the 50 years since the signature of the JBNQA treaty, Québec has adopted or amended more than 30 laws to give effect to the various chapters of the JBNQA. Over the same period, the Cree have signed some 100 major agreements with the Governments of Québec and Canada as well as with industry, a testament to Cree openness to partnership.
35. These agreements and laws create a unique constitutional and legal environment for the Cree Nation of Eeyou Istchee, one that must be respected in any proposed Québec Constitution.

### **III. THE CREE-QUÉBEC RELATIONSHIP – AN EVOLVING PARTNERSHIP**

#### **A. JAMES BAY AND NORTHERN QUÉBEC AGREEMENT**

36. The Cree story does not begin with the *James Bay and Northern Québec Agreement* of 1975, but it marks the start of the modern relationship of the Cree with Québec. In 1971, the Government of Québec announced the massive James Bay Hydroelectric Project. This enormous project would radically affect Eeyou Istchee and the traditional way of life of the Cree.
37. Yet, at the time, Québec did not consult the Cree or seek our consent. We were forced to take legal proceedings to defend our rights, our environment and our way of life. And so began a marathon court case that led, in November 1973, to the *Kanatewat* decision granting the Cree a temporary injunction to halt the James Bay Project. This decision recognized that the Cree and the Inuit had legally enforceable rights in their territory and that Quebec had legally enforceable obligations towards them.
38. This decision, although later reversed, brought Québec (and Canada) to the negotiating table. Over the next two years, intense negotiations took place between the Cree, the Inuit of Nunavik, Québec and Canada. These negotiations culminated in the signature on November 11, 1975 of the *James Bay and Northern Québec Agreement*.



39. The Cree negotiators of the JBNQA would be startled to read, in the Report of the Advisory Committee, that it was Québec that developed and signed the JBNQA, regulating its dealings with the Cree and the Inuit and establishing a new model for the James Bay Territory. This affirmation minimizes the creativity and determination of the Cree and Inuit negotiators that led, despite enormous obstacles, to the signature of the JBNQA within two years of the *Kanatewat* decision.
40. From the start, the Cree have seen the James Bay Agreement as a partnership between the Cree and Québec to share in the governance, development and economic wealth of Eeyou Istchee. This partnership was made possible when the Cree accepted in the Agreement to work primarily within the framework of Québec laws and institutions in Eeyou Istchee.
41. Today, 50 years later, the significance of this acceptance by the Cree to work closely with Québec is not always fully appreciated. But, at the time, it was a momentous decision. Many First Nations in Canada then insisted on maintaining virtually exclusive relations with the Federal Government, which they saw as the only representative of the “Crown”. Many still take this approach.
42. For the Cree to accept in 1975 to work with Québec laws and institutions was a radical departure from the customary practice of First Nations. The Cree Nation has received a good deal of criticism over the years for entering into this relationship with Québec, but that has not deflected us from our commitment to our relationship with Quebec.
43. This historic decision of the Cree opened the door to a mutually beneficial partnership with Québec. It made possible the peaceful development of the James Bay Project and other resource projects, with significant economic benefits for all of Québec.
44. With this by way of context, why did the Cree choose to exercise self-government largely within the framework of Québec’s laws and institutions?
45. First, it was the James Bay Hydroelectric Project that gave rise to the legal proceedings and then the negotiations leading to the JBNQA. This project was sponsored by Québec and its agents, Hydro-Québec, SEBJ and SDBJ. The Cree recognized that the sheer presence in Eeyou Istchee of this massive project and its long-term operation and impacts required the Cree to enter into a working relationship with Québec.
46. Again, much of the JBNQA deals with lands and resources, including water, energy, mining and forestry. These are matters of Québec jurisdiction under the Constitution of Canada, and the Cree recognized that it would be necessary to deal with Québec on them.



47. In the result, the Cree chose a hybrid regime for self-government and lands. The regime entailed exclusive Cree control of one part of our community lands, called “Category IA lands”, subject to federal jurisdiction. In order to secure control over additional community lands, the Cree accepted provincial jurisdiction over “Category IB lands”.
48. The Cree also sought a governance partnership with Québec over the more extensive Category II lands. This partnership was to be a first step toward Cree participation in the governance of “Category III lands”, the remainder of the territory of Eeyou Istchee.
49. The Cree were aware that the health, social and education services then provided by the federal government on Indian reserves generally fell below Québec standards. These sectors fell under provincial jurisdiction outside reserves. For the Cree to take control of health and social services and education in our communities through our own institutions, it would be necessary to work with Québec within the framework of its laws. The same rationale applied to securing Cree participation in the administration of justice and police services, both primarily areas of provincial jurisdiction.
50. Economic development in the James Bay territory was at the time the responsibility of the Société de développement de la Baie-James (SDBJ), a Québec state enterprise. That suggested the creation of a partnership with Québec for economic development for the Cree through a new entity, the James Bay Native Development Corporation, or SODAB.
51. All of these factors informed a more comprehensive vision for the Cree. We could see that Québec and its institutions, especially Hydro-Québec, SEBJ and SDBJ, were active on the ground and were there to stay. Québec had jurisdiction over many sectors of importance for the social, economic and political development of the Cree Nation.
52. The Cree therefore understood the strategic imperative to find a *modus vivendi* with Québec. It was this combination of factors that led the Cree to envisage a partnership with Québec to share in the governance, development and wealth of Eeyou Istchee, a partnership that could benefit us both.

## **B. PAIX DES BRAVES**

53. For some time after its signature, the promise of partnership of the JBNQA was not fulfilled. The 1980’s and 1990’s were a difficult time. Many disputes arose between the Cree and Québec, as well as with Canada. In essence, the Cree considered that the Governments were not living up to their commitments under the JBNQA.



54. By the year 2000, relations between the Cree and Québec had reached an impasse. There was almost no communication between them, and it was difficult to see how a relationship of trust could be restored.
55. When Premier Bernard Landry took office in March 2001, an opportunity arose to “reset” the relationship. He met with then Grand Chief Ted Moses and together they took the courageous step to turn the page and to reinvigorate the JBNQA partnership, through a “New Relationship Agreement”.
56. Negotiations were intense and confidential. They led remarkably quickly to the signature of an Agreement in Principle in October 2001, and then of the final Agreement in February 2002. This Agreement has come to be known as the *Paix des Braves*.
57. The *Paix des Braves* marked a turning point in relations between the Cree and Québec, for the better. It began a second chapter in this relationship that started with the *James Bay and Northern Québec Agreement*. It opened the way to a renewed partnership between the Cree and Québec in the governance and development of Eeyou Istchee.
58. This result was achieved through respect for certain key values and principles, as set out in the *Paix des Braves*. The first was a true Nation-to-Nation relationship between the Cree and Québec. This principle built on the 1983 “Fifteen Principles” and the 1985 Resolution by the National Assembly for the recognition of aboriginal rights in Quebec.
59. A second key principle was the need for mutual trust and respect to guide relations between the Cree and Québec. These could not just be words. The parties were emerging from a long period of conflict.
60. A third principle was self-government and accountability, as expressed in Chapter 2 of the *Paix des Braves*:

**2.3** This Agreement marks an important stage in a *new nation-to-nation relationship*, one that is open, respectful of the other community and that promotes a greater responsibility on the part of the Cree Nation for its own development within the context of *greater autonomy*.

[...]

**2.5** This Agreement has the following purposes:

- (a) The establishment of a new *nation-to-nation relationship*, based on the common will of the parties to continue the development of





the James Bay Territory and to seek the flourishing of the Crees and the Cree Nation within a context of growing modernization.

- (b) The assumption of *greater responsibility* on the part of the Cree Nation in relation to its economic and community development and, in so doing, the achievement of *increased autonomy* with a greater capacity to respond, in *partnership with Québec*, to the needs of the Crees;

[Emphasis added]

### **C. CREE-QUÉBEC GOVERNANCE AGREEMENT**

- 61. The *Paix des Braves* was followed in 2012 by the *Cree-Québec Governance Agreement*. As its title suggests, its focus is the governance of the vast Eeyou Istchee James Bay Territory. It ended the exclusion of the Cree from governance of their ancestral territory. And it created a new and innovative partnership in regional governance between the Cree, the non-Indigenous local authorities and Québec.
- 62. With the historical facts and background established, we can now turn to the reasons why the proposed Québec Constitution poses serious problems for the Cree Nation of Eeyou Istchee.

## **IV. ISSUES**

### **A. THE PROPOSED CONSTITUTION LACKS THE FUNDAMENTAL CHARACTERISTICS OF A CONSTITUTION**

- 63. Notwithstanding its title, the proposed *Québec Constitution Act, 2025* is an ordinary law of the Québec National Assembly that can be amended or repealed at any time by a simple majority vote in the assembly.
- 64. As a result, the proposed *Constitution of Québec* lacks the fundamental characteristics of a constitution. Such an instrument generally has a permanent status and acts as a supra-legislative framework for all other legislation. These permanent and supra-legislative characteristics of a constitution are generally reflected through strong impediments to amending the document, such as a special procedure (for example a multiplicity of approvals from different political bodies or a referendum) or the requirement for a super-majority (for example a 75% vote in a deliberative assembly). The proposed constitution has none of these characteristics.



65. None of these characteristics are to be found in the proposed *Constitution of Québec*. Thus, the proposed Constitution may be amended at any time by a simple majority vote in the National Assembly, like any other ordinary law. No super-majority or other safeguards are provided for the terms of this Constitution.
66. Sections 2 and 60 of the proposed *Constitution of Québec* purport to give it precedence over any inconsistent rule of law. Section 55 adds that the Constitution and the laws of the Parliament of Québec constitute the primary source of Québec law. However, these provisions may be overridden at any time and in regard to any law by a simple majority vote in the National Assembly.
67. This implicit right to override at any time and without justification any term of the proposed Constitution is expressly set out in section 16 of the *Constitution of Québec* with respect to the fundamental human rights found in sections 1 to 38 of the *Québec Charter of Human Rights and Freedoms*. These fundamental human rights may thus be suspended or overridden at any time, for any duration, and without justification, through a simple majority vote in the National Assembly.
68. In summary, the proposed *Constitution of Québec* is essentially an ordinary law which may be overridden and amended at any time by a simple majority vote in the National Assembly. The proposed Constitution has none of the fundamental characteristics of a true constitutional document. It is at odds with the very purpose of a constitution.

## **B. THE PROPOSED CONSTITUTION DISMISSES THE RIGHTS OF INDIGENOUS PEOPLES**

69. The proposed Constitution is dismissive of the rights of Indigenous peoples. It simply provides for the following three legally unenforceable and weakly worded “whereas” provisions in the preamble:

AS the Abenaki, Algonquin, Attikamek, Cree, Innu, Micmac, Mohawk, Naskapi, Wendat, Woloastiqiyik and Inuit nations exist within Québec;

[...]

AS, in exercising its constitutional jurisdiction, the Québec State recognizes the existing ancestral and treaty rights of the Indigenous nations of Québec;

AS the National Assembly recognizes the right for the First Nations and Inuit in Québec, descendants of the country’s first inhabitants, to maintain and develop their language and culture of origin ...



70. The first of these “whereas” clauses is simply a statement of sociological fact. As to the second “whereas”, its scope and meaning are unclear. It follows the language of section 35(1) of the *Constitution Act, 1982*, but only in part, by referring to “existing aboriginal and treaty rights”. However, it departs from section 35 in two key respects.
71. First, it refers to the “Indigenous nations”, rather than the “aboriginal peoples”, of Québec. The proposed Constitution refers variously to the “Québec people” and the “Québec nation”. It is difficult to understand why the proposed Constitution recognizes the “Québec people” but not the Indigenous peoples of Québec.
72. Second, although section 35 of the *Constitution Act, 1982* “recognizes and affirms” existing aboriginal and treaty rights, the “whereas” of the proposed Québec Constitution merely “recognizes” such rights, and in a non-enforceable preamble clause at that. Positive affirmation of these rights is nowhere to be found in the proposed Constitution.
73. As for the third “whereas”, it is premised on the “recognition” by the National Assembly of the right of Indigenous nations to maintain and develop their language and culture. However, the right to language and culture is not affirmed as an independent inherent right, but is rather made dependent on some form of recognition by the National Assembly, a recognition which could one day be withdrawn.
74. The proposed *Constitution of Québec* does not recognize or affirm for Indigenous peoples any rights to land and traditional activities, any right to self-government, or even their treaty rights (other than in the non-operative preamble).

#### **C. DEPARTURE FROM QUÉBEC’S HISTORICAL POLICY TOWARDS INDIGENOUS PEOPLES**

75. This omission is a marked departure from Québec’s consistent trend over more than 40 years towards greater recognition of the rights of Indigenous peoples. A word on this evolution is in order here.

##### **1. Fifteen Principles of Government of Québec, 1983**

76. Section 35 of the *Constitution Act, 1982*, recognizing the existing aboriginal and treaty rights of the aboriginal peoples of Canada came into force on April 17, 1982. The Government of Québec opposed the adoption of the *Constitution Act, 1982* (although for reasons unrelated to the question of aboriginal rights).





77. Less than a year later, on February 9, 1983, the Québec Council of Ministers, under the leadership of Premier René Lévesque, adopted its own “Fifteen Principles” recognizing important rights of the “aboriginal peoples” and aboriginal nations of Québec. Among these principles are the following:

1. Québec recognizes that the *aboriginal peoples of Québec constitute distinct nations, entitled to their own culture, language, traditions and customs, as well as having the right to determine, by themselves, the development of their own identity.*
2. It also recognizes the *right of aboriginal nations*, within the framework of Québec legislation, to *own and to control the lands* that are attributed to them.
3. These rights are to be exercised by them as part of the Québec community and hence *could not imply rights of sovereignty that could affect the territorial integrity of Québec.*  
[...]
6. The *aboriginal nations have the right*, within the framework of existing legislation, to *govern themselves* on the lands allocated to them.
7. The *aboriginal nations have the right to have and control*, within the framework of agreements between them and the government, such *institutions* as may correspond to their needs *in matters of culture, education, language, health and social services as well as economic development.*  
[...]
10. From Québec’s point of view, the *protection of existing rights also includes the rights arising from agreements between aboriginal peoples and Québec concluded within the framework of land claims settlement. Moreover, the James Bay and Northern Québec Agreement and the Northeastern Québec Agreement are to be considered treaties with full effect.*
11. *Québec is willing to consider that existing rights arising out of the Royal Proclamation of October 7, 1763, concerning aboriginal nations be explicitly recognized within the framework of Québec legislation.*
12. Québec is willing to consider, case by case, the *recognition of treaties signed outside Canada or before Confederation, aboriginal title, as well as the rights of aboriginal nations that would result therefrom.*



[...]

14. Were the Government to *legislate on matters related to the fundamental rights of the aboriginal nations* as recognized by Québec, it *pledges to consult them* through mechanisms to be determined between them and the Government.
15. Once established, such mechanisms could be institutionalized so as to *guarantee the participation of the aboriginal nations in discussions pertaining to their fundamental rights*.

[Emphasis added]

78. These principles still constitute the basis of the Government of Québec's action regarding Indigenous peoples, as reflected in the mission of the Secrétariat aux relations avec les Premières Nations et les Inuit. It is difficult to reconcile these principles with the complete absence in the proposed Constitution of substantive recognition of the aboriginal and treaty rights of the Indigenous peoples of Québec.

## **2. Resolution of the Québec National Assembly on the Recognition of Existing Aboriginal Rights**

79. On March 20, 1985, the Québec National Assembly, again upon proposal by Premier René Lévesque, recognized by resolution the existing aboriginal rights of the Indigenous nations of Québec as well as the rights set out in the both the *James Bay and Northern Québec Agreement* and the *North-Eastern Québec Agreement* (NEQA).
80. This resolution "... still today forms the basis of relations between Québec and aboriginal people." It is useful to recall its provisions here:

MOTION FOR THE RECOGNITION OF ABORIGINAL RIGHTS IN QUÉBEC:

That this Assembly:

Recognize the existence of the Abenaki, Algonquin, Attikamek, Cree, Huron, Micmac, Mohawk, Montagnais, Naskapi and Inuit nations in Québec;

*Recognize existing aboriginal rights and those set forth in the James Bay and Northern Québec Agreement and the Northeastern Québec Agreement;*

*Consider these agreements and all future agreements and accords of the same nature to have the same value as treaties;*



Subscribe to the process whereby the Government has committed itself with the aboriginal peoples to better identifying and defining their rights— a process which rests upon historical legitimacy and the importance for Québec society to establish harmonious relations with the native peoples, based on mutual trust and a respect for rights;

*Urge the Government to pursue negotiations with the aboriginal nations based on, but not limited to, the fifteen principles it approved on February 9, 1983, subsequent to proposals submitted to it on November 30, 1982, and to conclude with willing nations, or any of their constituent communities, agreements guaranteeing them the exercise of:*

- (a) *the right to self-government within Québec;*
- (b) *the right to their own language, culture and traditions;*
- (c) *the right to own and control land;*
- (d) the right to hunt, fish, trap, harvest and participate in wildlife management;
- (e) the right to participate in, and benefit from, the economic development of Québec;

*so as to develop as distinct nations having their own identity and exercising their rights within Québec;*

Declare that the rights of aboriginal peoples apply equally to men and women;

*Affirm its will to protect, in its fundamental laws, the rights included in the agreements concluded with the aboriginal nations of Québec; and*

Agree that a permanent parliamentary forum be established to enable the aboriginal peoples to express their rights, needs and aspirations.

[Emphasis added]

81. The proposed Constitution does not comply with either the letter or the spirit of this resolution, in particular, the paragraphs emphasized above. It purports to recognize the existing “ancestral” and treaty rights of the Indigenous nations of Québec, but it does so in the unenforceable preamble. It does not recognize the rights of Indigenous peoples to self-government, to their own identity or to land.
82. Contrary to the second and the penultimate paragraphs of the resolution, the proposed Constitution does not recognize or protect the aboriginal and treaty rights of the Cree Nation set out in the *James Bay and Northern Québec Agreement* and other agreements with Québec.



**3. *Act respecting the exercise of the fundamental rights and prerogatives of the Québec people and the Québec State***

83. These omissions mark a striking change from the positive recognition of aboriginal and treaty rights in the above *Act*, adopted in 2000 under Premier Landry's government:

**11.** In exercising its constitutional jurisdiction, the *Québec State recognizes the existing aboriginal and treaty rights* of the aboriginal nations of Québec.

**12.** The Government undertakes to promote the establishment and maintenance of harmonious relations with the aboriginal nations, and to foster their development and an improvement in their economic, social and cultural conditions.

[Emphasis added]

84. The “whereas” of the proposed Constitution recognizing aboriginal and treaty rights reproduces word-for-word the language of section 11 of the 2000 Act, with one key difference. Section 11 is found in the operative portion of the 2000 Act, but the recognition found in the “whereas” of the proposed Constitution is relegated to its non-operative preamble.

85. This discrepancy is the more striking in that the operative provisions of the proposed Constitution borrow extensively, often word-for-word, from the 2000 Act. For example:

- (a) Section 13, on the right of self-determination of the Québec people, is borrowed from section 1 of the 2000 Act;
- (b) Section 14, on the right of the Quebec people to freely decide the political system and legal status of Québec, is borrowed from section 2 of the 2000 Act;
- (c) Section 15, on the result of consultation by referendum, is borrowed from section 4 of the 2000 Act;
- (d) Section 17, on the will of the people as the source of the legitimacy of the State, is borrowed from section 5 of the 2000 Act;
- (e) Section 49, on the Government's duty to ensure the territorial integrity of Québec, is borrowed from section 9 of the 2000 Act.

86. It is curious, then, that while the proposed Constitution incorporates into its substantive provisions numerous rights of the “Quebec people”, implicitly identified with the linguistic



majority, it relegates the recognition of aboriginal and treaty rights to its non-operative preamble.

87. The absence of explicit recognition of aboriginal and treaty rights in the proposed Constitution (other than in the preamble) stands in sharp contrast with Québec's long practice in this regard. It is difficult to see it as other than a deliberate choice of the current Government to dismiss these rights. It suggests that one of the objectives of the proposed Constitution may be to attempt to weaken these rights.

**D. THE INDIGENOUS PEOPLES OF QUÉBEC MUST BE ACTIVELY INVOLVED IN CO-DEVELOPING ANY PROPOSED CONSTITUTION**

88. Many of the substantive issues with the proposed Constitution stem from the flawed process leading to its tabling. Bill 1 grew out of the *Report of the Advisory Committee on Québec's Constitutional Issues within the Canadian Federation*. This Committee was created by Québec decree with the following mandate:

[TRANSLATION] THAT this Committee be mandated to recommend measures to protect and promote the *collective rights of the Québec nation, to ensure respect for its distinct social values and its distinct identity, to guarantee respect for Québec's areas of jurisdiction, and to increase its autonomy* within the Canadian federation [...].

[Emphasis added]

89. This is a very narrow mandate. It focuses on strengthening the distinctive identity, culture, language and values of the "Québec nation". Throughout the proposed Constitution, the terms "Québec nation" and "Québec people" implicitly refer to the linguistic majority, tending to make the proposed Constitution an expression of identity politics.
90. The Advisory Committee limited its analysis and recommendations to the subjects mentioned in the mandate and the related issues. The Committee therefore did not specifically address the relationship between the Québec State and Indigenous nations, while noting that "it is of interest". The Committee invited the Government to be mindful of the importance of Indigenous issues when it came time to exercise its constitutional liberty and to affirm itself as a nation. The Government chose not to heed this invitation.
91. The proposed Constitution was produced by a small working group, without significant input from the population at large. In particular, the Indigenous peoples and cultural



communities much affected by it were not invited to contribute to its development. Had the Cree been invited, we would have contributed our perspective, gained from decades of intensive work on constitutional and governance issues.

92. The Constitution belongs to all the people, yet the people were not involved in its development, a defect noted by a number of Québec constitutional experts. For example, Professor Louis-Philippe Lampron, of the Faculty of Law of l'Université Laval, has expressed reservations about the process leading to the proposed Constitution (*La Presse*, November 17, 2025):

Ce projet de constitution, présenté par le ministre en octobre, a été rédigé « en catimini, avec des consultations ciblées, de manière extrêmement opaque » dit le professeur.

93. For a Constitution to have legitimacy, the people must take an active part in its development. This includes, in particular, the Indigenous peoples. Only in this way can a Constitution have the legitimacy to command the respect and adherence of all Quebecers.

#### **E. DECLARATION OF PARLIAMENTARY SOVEREIGNTY AND THE RULE OF LAW**

94. The *Constitution of Québec* and the related legislation do not explicitly purport, in and of themselves, to set aside section 35 of the *Constitution Act, 1982*, which recognizes and affirms the “existing aboriginal and treaty rights of the aboriginal peoples of Canada.” Nevertheless, they would establish a legal and institutional framework under which Québec might one day seek to weaken these rights.

95. More particularly, section 9 of the proposed *Act respecting the Constitutional Autonomy of Québec* provides for the potential immunization of Québec legislation from judicial review:

9. The Parliament of Québec may, if it considers it advisable, include a parliamentary sovereignty provision, on its own initiative or in response to a judicial decision, in any Act it enacts, without any requirement to contextualize or justify the provision.

No application for judicial review, based on a right or freedom referred to in such a parliamentary sovereignty provision, may be brought in order to have the Act or provision referred to in the parliamentary sovereignty provision declared inoperative.

96. Although this provision appears to refer to section 33 of the *Canadian Charter of Rights and Freedoms* (*Canadian Charter*), it potentially has a much larger scope and it includes no safeguards. Section 33 of the *Canadian Charter* allows a provincial legislature (as well



as the federal Parliament) to declare expressly that an act may temporarily operate notwithstanding certain provisions of the *Canadian Charter*.

97. However, this so-called “notwithstanding clause” only applies to the rights and freedoms set out in sections 2 and 7 to 15 of the *Canadian Charter*. It does not apply to section 35 of the *Constitution Act, 1982* recognizing and affirming aboriginal and treaty rights as this provision does not form part of the *Canadian Charter* and cannot be overridden through the notwithstanding clause of section 33 of the *Canadian Charter*.
98. Section 9 of the proposed *Act respecting the Constitutional Autonomy of Québec* is much broader, as it may be read as potentially immunizing any Act of the National Assembly from judicial review on any ground considered advisable by the Assembly, and without any need for contextualization or justification.
99. This extraordinary measure could potentially affect the aboriginal and treaty rights of Indigenous peoples, given that the proposed *Constitution of Québec* completely evacuates these rights from any substantive protection.
100. Further, this immunization from judicial review of Québec laws containing a “parliamentary sovereignty” provision contradicts two of the “founding principles” set forth in the proposed Constitution:
  18. The State is founded on the principles of democracy, parliamentary sovereignty, *the rule of law and the separation of powers*.[Emphasis added]
101. However, the very purpose of a declaration of parliamentary sovereignty under section 9 is to remove the statutory provision concerned from judicial scrutiny. This unbridled assertion of parliamentary sovereignty is the antithesis of the rule of law and the separation of powers between the executive, the legislative and the judicial branches of government.
102. Again, section 2 of the proposed *Constitution of Québec* provides that any of its terms “has precedence over any inconsistent rule of law” including, presumably, any aboriginal and treaty rights. Section 2 is strengthened by section 60, which states that, for the purposes of section 2, the *Constitution of Québec* prevails in particular over any Act containing a primacy provision, despite any condition prescribed in that provision.





103. This raises concerns as to the possible negation of the *Act approving the Agreement concerning James Bay and Northern Québec Agreement*, section 6 of which contains just such a precedence clause:

6. In case of conflict or inconsistency, this Act shall prevail over any other Act applicable to the territory described in the Agreement to the extent necessary to resolve the conflict or inconsistency.

Sections 2 and 60 of the *Constitution of Québec* pose the risk of erosion or sterilization of Cree treaty rights under the JBNQA.

104. Section 5 of the *Act respecting the Constitutional Autonomy of Québec* would restrict certain bodies from having recourse to the courts using Québec public funds to contest the constitutionality or validity of a legislative provision where the National Assembly declares that the provision “protects the Québec nation as well as the constitutional autonomy and fundamental characteristics of Québec.”

105. This provision raises the following concerns, among others:

- (a) The proposed Constitution acknowledges in the preamble that the Indigenous nations “exist within Québec” but it does not explicitly recognize them in its operative provisions;
- (b) The fundamental characteristics of Québec are identified as “the French language, the civil law tradition, State laicity and the model for integration into the Québec nation”;
- (c) Nowhere does the proposed Constitution affirm the aboriginal and treaty rights, the language, the identity or the culture of the Indigenous nations as “fundamental characteristics of Québec”. This is despite the recognition by the Advisory Committee of the presence for thousands of years of First Nations and the Inuit people on the territory as such a fundamental characteristic;
- (d) In the result, it is doubtful that a protective declaration under section 5 would extend to protection of the aboriginal or treaty rights of the Cree;
- (e) On the contrary, it is plausible that a protective declaration under section 5 would subordinate Cree rights to Québec legislation expressing “fundamental characteristics of Québec”, as explicitly identified in the proposed Constitution;





- (f) Moreover, such a declaration would preclude a subject Cree institution from using funds provided by Québec under the JBNQA treaty to contest a legislative provision of Québec “protected” under section 5;
- (g) The “protective declaration” mechanism is fundamentally at odds with the rule of law and the separation of powers affirmed by the proposed Constitution as founding principles of the State of Québec.

- 106. Again, section 17 of this Act would empower the Government of Québec, in case of federal intrusion into an area of Québec’s constitutional jurisdiction, to issue a directive to its “bodies” ordering, among other things, to refuse federal funding, to suspend or terminate agreements with a federal institution, as well any other conduct it considers appropriate.
- 107. Such a directive, if addressed to a Cree JBNQA body, would contravene Cree treaty rights to the tripartite relationship between the Cree, Quebec and Canada as well as to federal funding, both of which are essential, structural components of the JBNQA.

#### **F. INTEGRATION MODEL**

- 108. Section 30 of the proposed *Constitution of Québec* purports to provide constitutional precedence to the “integration model of the State”, which is “that for integration into the Québec nation”.
- 109. This echoes the recently adopted (2025) *Act respecting integration into the Québec nation (Integration Act)*, which would itself be amended under the proposed Bill 1 to provide that it “protects the Québec nation as well as the constitutional autonomy and fundamental characteristics of Québec”, thus conferring additional protection to its terms.
- 110. This “integration model” is troubling as, among other things, it aims to “integrate” into the “Québec nation” not only recent immigrants, but also all those forming part of “cultural minorities”, which presumably includes Indigenous peoples such as the Cree.
- 111. Sections 2 and 5 of the *Integration Act* are particularly telling as to the objective pursued towards “cultural minorities”:

2. The Québec State affirms and establishes the model for integration into the Québec nation. The model is based on the principle of reciprocity according to which integration into the Québec nation is a common objective and a commitment shared between the Québec State and all persons living in Québec, including immigrants and persons identifying with cultural minorities.



As a distinct host society, the Québec nation has its own integration model, which counters isolation and withdrawal into specific cultural groups. The model is distinct from Canadian multiculturalism.

The model is designated as “national integration”.

5. National integration is based on the following foundations:

(1) Québec culture is the common culture [...]

(2) French is the official and common language of Québec under the *Charter of the French language* (chapter C-11) [...]

[...] and

(6) *recognition of the paramountcy of laws over the various cultures, whether minority or majority, since the laws are drawn up by the democratic institutions that govern the Québec nation.*

[Emphasis added]

112. These provisions appear contrary to basic constitutional principles, including the rule of law, the separation of powers, the right of minorities to their distinct culture and identity, and their protection from potential oppression by the majority.
113. Moreover, these provisions would now have constitutional status and precedence under the proposed Québec Constitution, which would amend the *Integration Act* by inserting a “protection declaration” immunizing it from legal challenge by a body using public funds.
114. Here one must be mindful of the absence of any exemption from the “integration model” for Indigenous peoples, as well as the lack of substantive recognition of any aboriginal or treaty rights in the proposed Constitution. These are curious omissions given that it is Indigenous peoples who have an especially strong claim to the status of “distinct host societies.”
115. The assertion in section 5(6) of the “paramountcy of laws over the various cultures, whether minority or majority, since the laws are drawn up by the democratic institutions that govern the Québec nation” appears highly problematic.
116. On the one hand, the assertion is reductionist in its claim that the mere adoption of a law by the National Assembly compels recognition of its paramountcy over various cultures, “whether minority or majority.” Under the *Integration Act*, adoption of a law by the National Assembly is conclusive proof of its legitimacy, whatever its effect on the rights



of citizens, “whether minority or majority”. If that is the case, what is the need for a Constitution?

117. It is especially troubling that this assertion in the *Integration Act* would now, by virtue of a “protection declaration” under the proposed Constitution, escape legal challenge in large measure.
118. It is reasonable to conclude that the objective pursued in the *Integration Act* and the proposed Constitution is the “integration” of Indigenous peoples into the “Québec nation”, with little or no regard for their aboriginal and treaty rights or for their rights to self-determination and a distinct identity.
119. It is difficult, in fact, to see any real difference between, on the one hand, the “integration model” proposed in the draft Constitution and the *Integration Act* and, on the other, the discredited policy of forced assimilation imposed on Indigenous peoples across Canada in the 19<sup>th</sup> and 20<sup>th</sup> centuries.
120. This is especially concerning as the proposed legislation would not only include the “integration model” within the proposed *Constitution of Québec*, but it would also include it in the Canadian Constitution itself as an amendment to the *Constitution Act, 1867*. Section 10 of Part IV of Bill 1 would add the following new section to the *Constitution Act, 1867*:

**90Q.4** The integration model of the State of Québec is that for integration into the Québec nation, designated as “national integration”.

121. The proposed legislation thus seeks to amend the *Constitution of Canada*, presumably under the power of the province to amend its own constitution as permitted by section 45 of the *Constitution Act, 1982*, so as to include the Québec “integration model” in the *Constitution Act, 1867*.
122. This integration model appears bound to clash with section 15 (Equality Rights), section 27 (Multicultural Heritage) and section 35 (Rights of the Aboriginal Peoples of Canada) of the *Constitution Act, 1982*. The constitutional validity of these integration provisions of the proposed *Constitution of Québec* and related legislation appears doubtful.
123. This “integration model” is the more concerning in that the entire premise of the proposed Constitution is that there is a single, monolithic “Québec nation” or “Québec people”. Its



defining characteristic is its only common language, French, which “constitutes one of the foundations of the distinct identity and culture of the nation.”

124. This stands in contrast to the lack of recognition of the Indigenous nations of Québec as “peoples” in their own right, with their own identity and culture. It also highlights the absence of any explicit affirmation of the aboriginal and treaty rights of the Indigenous peoples of Québec.
125. In this context, the “integration model” suggests a mechanism of assimilation of Indigenous peoples into the dominant culture of the majority, giving rise to the concern that this is an implicit objective of the proposed Constitution.

#### **G. TERRITORIAL INTEGRITY**

126. The proposed *Constitution of Québec* purports to protect the territorial integrity of Quebec, based on the propositions, among others, that :
  - (h) “the territory of Québec is the historical homeland of the nation and constitutes its common heritage” (section 4);
  - (i) the “Québec people has, in fact and in law, the right to self-determination. It is the holder of the rights universally recognized under the principle of equal rights and self-determination of peoples”
  - (j) the “territory of Québec is indivisible [...]” (section 23).
127. It is difficult to understand the proposition that the traditional Cree territory of Eeyou Istchee forms part of the “historical homeland of the Quebec nation”. As noted at the start of this brief, Québec’s jurisdiction in Eeyou Istchee is relatively recent, and it is dependent on the terms of the JBNQA treaty.
128. It is ironic that the Government of Québec Government reserves to the Québec people the right to self-determination and to decide their political system and legal status, while refusing to recognize the same rights to the Indigenous peoples of Québec.
129. For the record, the Cree people form a Cree nation endowed with an internationally recognized right to self-determination together with all the rights associated with it.



130. The questions of territorial integrity and constitutional arrangements should be addressed if and when the need arises. For now, the Cree reserve our rights regarding these matters.

## **V. CONCLUSION**

131. Given the grave concerns posed by the proposed *Constitution of Québec*, it is difficult to see how it would be possible to move forward with it in its current form. Both the process and the substance of the Constitution are severely flawed. It should be withdrawn and this entire initiative should be reconsidered.

\* \* \* \* \*