
Notes for the Associate Secretary-General of Aboriginal Affairs, Mr. Pierre H. Cadieux

**During a series of conferences in
New England**

**“Quebec Relations with Aboriginal People:
Toward a New Partnership for the Twenty-First Century”**

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(The spoken version takes precedence)

INTRODUCTION

Salutation of dignitaries present

Ladies and Gentlemen:

I would like to thank you for your presence, as well as your interest regarding Aboriginal affairs in Canada, and particularly in Quebec. Aboriginal issues occupy and will continue to occupy a dominant place in domestic diplomacy of governments worldwide for years to come.

Therefore, it is with pleasure that I share with you today an overview of Quebec's relations with Aboriginal nations. Progress made by Quebec in the matter has led us to develop a new type of partnership due to recent jurisprudence in Aboriginal rights cases, which has required governments to adapt accordingly.

In order to understand the importance of this challenge, we must review the history of our relations till today. Firstly, I will address some of the legal and political phases that have fuelled the debates. I will then focus on La Paix des Braves Agreement signed between Quebec and the Cree Nation, and conclude with the two major ongoing negotiations between Quebec, Canada, the Inuit and Innu Nations.

ABORIGINAL NATIONS PROFILE

At this time, I would like to give you the general picture of the Aboriginal nations of Quebec in all their diversity. The Aboriginal population is approximately 82,000 people, which represents 1% of Quebec's total population, which is spread across 1,667,926 km² of land and are divided amongst 55 communities. There are ten Aboriginal nations and one Inuit nation. Most of them are located in Northern Quebec, far away from the large urban centres.

Most Aboriginals live on reserves, that is, areas of land provided by the Canadian government for their exclusive use. Generally, a band council made up of a Chief and advisors govern these reserves. By virtue of the Indian Act of 1876, the Government of Canada is jurisdictionally responsible for the Aboriginals. In Quebec, eight out of ten nations are subject to this Act. However, the Cree and Naskapi nations have a different legal agreement since the signing of the James Bay and Northern Quebec Agreement in 1975 and the Northeastern Quebec Agreement in 1978. They are therefore covered by the Cree-Naskapi Act.

On the other hand, approximately 10,000 Inuits residing in some 14 northern villages have never been subjected to the Indian Act. Since the signing of the James Bay and Northeastern Quebec Agreement,

they have chosen to remain under the jurisdiction of Quebec. Therefore, in Inuit communities, one can easily notice many similarities in public institutions such as municipalities and school boards found elsewhere throughout Quebec.

The Nations also differ from one another due in large part to their geographic location. The Aboriginals who live in Southern Quebec close to the cities live a more urban lifestyle. The challenge in keeping their Aboriginal identity is therefore much greater; for example, preserving their language encounters many obstacles. In the Northern regions, the Aboriginal nations live a more traditional way of life and engage in natural resource-related activities such as hunting, fishing and trapping. Aboriginal languages are usually more used although it is decreasing from one generation to the next.

The economic development ability of a nation or community may also vary in terms of proximity to markets, access to road networks and level of education. Since the beginning of the 1960s, we have observed a strong demographic growth among the Aboriginals and Inuits. Currently, within Aboriginal communities in Canada, the 15 to 19 year age group is the one that increased the most. As a result, the Aboriginal nations are greatly concerned about economic development and job creation for their up and coming youth. Not to

mention that across Canada, it is expected that during the next 10 years, the Aboriginal workforce will increase twice as fast as the overall workforce in the country. Moreover, approximately 25% of the Aboriginal population in Quebec resides outside the communities due mainly to financial and demographic reasons.

Contemporary Aboriginal nations of the 21st century will be faced with the challenge of ensuring a brighter future for generations that follow. The Quebec government, with a view of developing its territory for the entirety of its citizens, looks forward to doing so in harmony and with respect for differences in each group. It is therefore essential to establish methods and tools that promote Aboriginal socio-economic growth.

LEGAL AND POLITICAL DEVELOPMENTS IN ABORIGINAL AFFAIRS

Several major legal and political milestones have taken place in Canada since the 18th century that have propelled the issue of Aboriginal rights to the forefront, providing us with the opportunity to better define and understand the nature of these rights.

From the British Colonial Period to the Indian Act

1763. This document was an official recognition of Aboriginal rights which existed on the land and which continued to exist thereafter. These rights were not issued, nor granted; but these rights were officially recognized and everyone had to respect them. Moreover, under the British colonial period, the Aboriginal nations referred to the Royal Proclamation of 1763 to ensure that their land entitlements were met.

But in the years that followed the Conquest, the law of the mightiest, which was of course that of the British conquerors, prevailed. It changed the underlying relationship from one of coexistence to that of subordination, domination and imperialism strengthened by a distorted sense of superiority.

In 1867, when Canada was created by the British North America Act, the "Indians" and the lands reserved for them became a topic of

federal legislative jurisdiction. Under this jurisdiction, the Parliament of Canada regulated the status of the Indians making them privileged citizens to protect them from the Non-Aboriginals by, for example, reserving their land on which they exclusively could live. This of course eliminated the chances for Aboriginals to exchange their land for alcohol or other desired objects, in other words for a mere pittance. Deprived of the right to dispose at will, the Canadian Government took charge of some of the areas of their lives such as tax exemption and land use. But, unfortunately, the situation did not evolve much since. On the contrary, the Aboriginal nations became second-class citizens in a Canadian society. In Quebec, it took nearly a century before the Aboriginals reacted.

The Emergence of a Collective Aboriginal Conscience

It was really in the early 1970s that the situation began to change, as economic development projects compelled the Aboriginal nations to defend their rights. At that time, the Quebec government had undertaken hydroelectric projects in Northern Quebec, an area inhabited by the Cree and Inuit peoples, who let their objection be known.

At about the same time, on the Canadian front, the Calder decision recognized Aboriginal territorial rights, without however clearly

defining the nature of these rights. Nonetheless, this marked the beginning of a series of Supreme Court decisions that fostered an attitude of conciliation from the historically paternalistic discourse.

The Modern era of Aboriginal Affairs

For Quebec, 1973 marked the beginning of the modern era of relations with Aboriginal nations. At that time, Superior Court Judge Albert Malouf reviewed a legal claim from Aboriginal nations concerning hydroelectric development in Northern Quebec. He suggested a negotiated settlement, which ultimately led to the signing of the James Bay and Northern Quebec Agreement in 1975. This agreement allowed the Quebec Government to develop the vast resources of the territory in exchange for monetary compensation and the recognition of many rights. However, the Agreement stipulated the extinguishment of Aboriginal rights on the territory, and offered "treaty rights" to signatory Aboriginal nations. It must be noted that the Government of Canada also signed the Agreement.

In the amendment to the Canadian Constitution in 1982, the Government of Canada introduced, in the first paragraph of article 35 of the Constitution Act, the recognition of existing Aboriginal rights that were not extinguished by a treaty or otherwise. Since then,

nowhere in Canada can Aboriginal rights be legally extinguished unilaterally or in a discretionary manner.

In 1983, Quebec was the first Canadian province to adopt principles that support the recognition of Aboriginal Nations and confirm the necessity of establishing harmonious relations with them. Two years later, in 1985, the National Assembly (of Quebec) adopted resolutions that officially recognized ten Aboriginal nations and one Inuit nation. Quebec thus recognized the right of Aboriginal nations to their culture, language, traditions, as well as the right to hunt, fish, trap, and to participate in the management of wildlife and economic development. Even though the Government of Quebec did not explicitly mention the term "Ancestral rights", it was a pioneer in defining the nature of these rights.

Major Decisions of the 1990s and 2004

The Supreme Court of Canada rendered five decisions during the 1990s and in 2004 which paved the way to the modern agreements that we have today.

In 1996, the Van der Peet decision defined Ancestral rights as protected by the Canadian Constitution in the following manner: "an activity must be an element of a practice, custom or tradition that

existed prior to contact with European society and is integral to the distinctive culture of the Aboriginal group claiming the right.”

In 1997, the Delgamuukw decision defined the Aboriginal title for the first time since the adoption of the Constitution Act of 1982. This title is defined as a collective right that permits the exclusive use and occupation of land that can be used for purposes not limited to hunting, fishing and trapping. This title arises from the exclusive and continuous occupation by an Aboriginal nation prior to European sovereignty.

In 1999, the Marshall decision established that Aboriginal nations could fish all year round without a permit to provide for necessities. However, the decision does not generally recognize a right to trade for financial gains, and it also stipulates that this right is subject to regulation.

Most recently, in November 2004, the Supreme Court of Canada confirmed the right of Aboriginal nations to the protection of their environment, even in the absence of evidence of Ancestral rights and Aboriginal title. The two decisions rendered in the Taku River and Ha da cases confirmed that governments in Canada have an

obligation to consult Aboriginal nations on natural resource development activities prior to undertaking any developments.

This evolution in the jurisprudence led to a number of negotiations which resolved differences between the rights of Aboriginals and the ones of provincial governments with respect to territorial development.

Modern Quebec and Aboriginal Rights

In Canada, Aboriginal rights are very real, but the effects and manners in which these rights are exercised still remain to be defined. In the absence of agreements that frame these rights, effects and manners of the exercise of Aboriginal rights remain uncertain and could become a source of tension. Such uncertainty can be costly in terms of social or economic development for society.

A quick glance at past history shows us that court-imposed remedies are not the best solution. The legal process can take many years and cost millions of tax dollars. Moreover, the decisions often prompt the parties involved to resolve their differences through negotiation.

In the last decade, the Quebec government has favoured the path of negotiation. This approach is in many ways the foundation of modern

partnerships that we enjoy today, such as La Paix des Braves Agreement. The Paix des Braves Agreement is a settlement reached out of court in a case stemming from Cree dissatisfaction with the implementation of the James Bay and Northern Quebec Agreement in 1975 and forestry development on the land concerned.

THE PAIX DES BRAVES AGREEMENT

This 3.5 billion canadian dollar 50-year Agreement is a comprehensive political and economic agreement establishing a nation-to-nation relationship between Quebec and the Cree nation. It also enables the Cree nation to take responsibility of their own development, and increases the participation of Cree nation in economic growth and development in the region of Northern Quebec.

Principles of The Paix des Braves Agreement

With this historic agreement, the parties agreed to an approach based on four principles:

- respect for Cree values, traditional way of life as well as the preoccupation for sustainable development of both parties;
- Greater Cree autonomy and self-determination regarding their economic development;
- Establishment of a partnership between Quebec and the Cree nation; and
- Mutual cooperation for the systematic follow-up of the agreement and settlement of disputes through dialogue and mediation.

Benefits of The Paix des Braves Agreement for Quebec

The question that begs to be asked, and rightly so, is, "What did Quebec gain from this agreement?" Based on the established partnership, the government is now expanding its development of natural resources in the James Bay region. By doing this, the implementation of new hydroelectric projects and a new form of forestry have become possible.

With regards to hydroelectric development, it should be mentioned that The Paix des Braves Agreement kicked off the large-scale hydroelectric projects, Eastmain-1 and Eastmain-1-A/Rupert. These two megaprojects represent a 4-billion Canadian dollar investment and work creation of some 10,500 direct and indirect jobs over a 9-year period. These projects, once completed, will produce over 1,200 megawatts (MW), that is, an increase of 15% of gross electrical production of Quebec.

Benefits of The Paix des Braves Agreement for the Cree nation

Breakthroughs have taken place due to The Paix des Braves Agreement. For example, the Cree nation and the Crown Corporation Hydro-Quebec have agreed to jointly conduct various environmental

impact studies and activities related to certain projects and to guarantee jobs for Crees and contracts for Cree businesses.

With regards to forestry activities, the parties reached an agreement on implementing harmonized measures of logging and traditional Cree activities. To do this, the agreement provides the creation of a Cree-Quebec Council on forestry and joint working groups. Quebec also agreed to provide an annual volume of 350,000 m³ of wood to Cree businesses.

Finally the Quebec government has committed itself to pay the equivalent of \$70 million Canadian dollars per year until the term of the agreement, which I repeat is 50 years. This amount will enable the Cree nation to manage part of Quebec's commitments agreed to in the James Bay and Northern Quebec Agreement on economic and community development. Furthermore, the agreement foresees a possible increase of this amount beginning in 2005, in accordance with increases in forestry, mining and hydroelectric production on the James Bay territory.

A Long-term Partnership

The crucial point here is that The Paix des Braves Agreement is not solely to settle legal issues, but rather reflects a common interest of having a long-term vision of economic and community development which is mutually beneficial. From this perspective, Quebec looks forward to becoming a true partner of the Aboriginal nations.

However, just like any human achievement, Quebec's challenge is to change its way of addressing problems that arise along the way and increase effectiveness in the implementation.

The Paix des Braves Agreement has brought about a new partnership while allowing for changes in the Agreement in order to adapt to current and future realities.

THE SANARRUTIK AGREEMENT AND NEGOTIATING A FORM OF GOVERNMENT IN NUNAVIK

In 2002, we were able to reach another important partnership agreement this time between Quebec and the Inuits referred to as the Sanarrutik Agreement. This collaboration is another significant breakthrough with respect to nation-to-nation partnership. I would also add here that the Inuits had signed the Northeastern Quebec Agreement in 1978.

Signing of the Sanarrutik Agreement

The Sanarrutik Agreement, signed in 2002, is similar to that of The Paix des Braves Agreement since the objectives and sectors of activity set out in the Agreement focus on similar issues. This 25-year Agreement will help foster a better partnership, making way for greater autonomy and for the Inuits to manage their own economic and community development. Quebec and the Inuits will work closely together in order to develop the hydroelectrical, mining and tourism potential of the Northern Quebec region known as Nunavik.

I would like to highlight the key elements of this agreement which are:

- A mutual desire to cooperate to provide the necessary infrastructure for economic development and job creation;

- The development of Nunavik's potential energy resources while respecting the environment and sustainable development;
- Greater Inuit autonomy and self-determination regarding their economic and community development;
- Improving public services and infrastructures by funding important projects; and
- Streamlining and increasing funding efficiency to Nunavik's supramunicipal organization and to the Northern villages.

As with The Paix des Braves Agreement, the challenge of the Sanarrutik Agreement also lies in its implementation.

Nunavik Self-government

If the Sanarrutik Agreement established a new partnership with the Inuits, the negotiation of a form of government in Nunavik will further strengthen this relationship. The most interesting fact here is that Canada and Quebec have agreed to undertake negotiations far beyond government policy norms. Thus, the two levels of government and the Inuits are currently working to create a form of government in Nunavik that will reflect the aspirations of the northern population and will blend in with the federal and provincial jurisdictions.

A potential Agreement-in-Principle will layout the key points of the merging of public institutions and will contribute to rapid development and more unified public services in the region. Once completed, this agreement will provide a broader decision-making freedom for the Inuits, as well as for all other citizens of Nunavik. This Agreement-in-Principle should be concluded early next fall.

A non-ethnic government model will offer Nunavik residents the possibility of reaching political and administrative autonomy. For Canada and Quebec, this negotiation is an example of innovative collaboration in Aboriginal affairs. It gradually establishes a partnership relation based on a greater autonomy in Nunavik.

COMPREHENSIVE TERRITORIAL NEGOTIATIONS WITH THE INNU

Another important negotiation, involving the two levels of government, is underway which encompasses the comprehensive territorial negotiations with the Innu. In March 2004, after more than 20 years, the three parties proceeded to the signing of an Agreement-in-Principle, which will serve as a basis for the negotiation of a treaty.

The treaty that the parties hope to enter into during the next two years, will be of a new kind. It will explicitly recognize all Aboriginal rights such as Ancestral rights, Aboriginal title, and the inherent right of self-government. However, what remains unsaid is, that these rights will only produce effects if the treaty puts forth the manner in which they will be exercised. Needless to say, the objective sought by signing a treaty is to bring about the political and legal framework required for the development of the economy and natural resources of the two regions, which have a population of nearly 200,000.

From this standpoint, Canada and Quebec, as well as the Innu communities have determined four objectives to be reached within this negotiation, which are:

- recognizing Innu Aboriginal rights;
- establishing effects and manner in which Innu rights are to be exercised;

- establishing opportunities for the Innu to work towards greater self-determination and autonomy; and
- creating a harmonious interaction between Quebec and Innu rights.

Establishing a Regional Consultation Process

This negotiation, contrary to earlier Cree and Inuit negotiations, does not aim at extinguishing rights, but rather to determine its implementation. The eventual treaty will provide Innus with a form of government on a territory to be shared with Non-Aboriginals. This of course has created a wave of concern for Non-Aboriginals. To overcome this problem and to reassure the populations in the Saguenay-Lac-Saint-Jean and Côte-Nord regions, the Quebec government constituted a team whose mission consists in informing the population of the Saguenay-Lac-Saint-Jean and Côte-Nord regions regarding ongoing discussions and in letting them know that they can put forward their own concerns and interests at the negotiating table. To facilitate their participation, a regional consultation process has been set up for their benefit. This is a first of its kind in Aboriginal affairs in Canada, and I would like to briefly outline how it works.

The regional consultation process, which is already underway, has three phases:

- In phase one, elected representatives and regional organizations will discuss topics that concern them;
- In phase two, regional team representatives will report the comments and proposals received from the population; and
- Thirdly, decisions taken at the negotiating table will be made public to the regions.

With the ongoing goal of reassuring the regional populations concerned, a broad information and awareness campaign has been implemented. Since the establishment of the regional consultation process, Quebec has deployed a range of communication tools, such as commercials, an information brochure, electronic journal and information letter from the minister responsible, which will enable citizens to better monitor the development of negotiations and to understand their impact.

What must be understood is that, to ensure a harmonious development of Aboriginal affairs, it is essential that communication and the participation of citizens form part of the negotiation process. This observation is even more true when the coexistence between Aboriginal nations and Non-Aboriginals characterizes the socio-economic picture of certain regions.

NEW PARTNERSHIP: QUEBEC OUTLOOK

In conclusion, it is interesting to note that, in fact, it was the courts who paved the way to signing modern agreements in Canada and Quebec. The accomplishment of partnerships based on recognition of Aboriginal rights, as well as introducing a dialogue of mutual respect and understanding, is a milestone that we have successfully reached.

Today, negotiations are not conducted in order to merely establish monetary compensation for mercantile purposes. That's a given. From this point on, it is imperative that we establish win-win partnerships, in the spirit of The Paix des Braves Agreement that will benefit society while promoting the development and respect of the Aboriginal nations as well as their rights.

Consequently, Quebec has taken it upon itself to accompany the development of Aboriginal nations and establish business ties to mutually benefit each party. It's with this outlook that Quebec intends to renew its socio-economic contract with the Aboriginal nations.

INDEX OF ACTS AND DECISIONS

1867: Constitution Act, 1867, Government of Canada

1867: Indian Act, Government of Canada

1973: Calder Decision, Supreme Court of Canada

1973: Malouf Decision, Quebec Superior Court

1982: Constitution Act, 1982, Government of Canada

1996: Van Der Peet Decision, Supreme Court of Canada

1997: Delgamuukw Decision, Supreme Court of Canada

1999: Marshall Decision, Supreme Court of Canada

2004: Taku River and Ha da Decisions, Supreme Court of Canada