

Conseil Attikamek-Montagnais (Attikamek-Montagnais council)

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November 27, 1980

Co-Chairmen

Special Joint Committee on the Constitution

of Canada

P.O. Box 1044

South Block

Parliament Buildings

Ottawa, Ont.

K1A 0A7

Dear Sirs:

Pursuant to our telegram of November 25 advising you that our organization of twelve American Indian communities wished to appear before your committee, we are enclosing herewith a brief on our position with respect to the Canadian constitution.

We hereby restate therefore our wish to be heard by your committee and keenly hope to receive a favourable response from you.

Yours very truly,

for: President of the CAM

Gaston McKenzie

assistant president

Encl.

cc: Mr. Delbert Riley

President of the N.I.B.

N I S H A S T A N A N N I T A S I N A N

(Our land, we love it and value it)

We, the Attikamek people of the Upper St-Maurice and mountain people of Lac St-Jean and the North Shore of the St. Lawrence are very familiar with our situation as dominated peoples by living daily with all its difficulties and humiliations. For the future of our peoples, culture and children, it is our duty to leave no stone unturned, and to use all of our energies to obtain the recognition of our native rights, our Indian rights and our rights as sovereign peoples, in order to build on this foundation an acceptable legacy for future generations. We know that we no longer have any choice; we must act using all the means at our disposal or willingly die out within the dominant society.

We find it humiliating and extremely unfair to have to bear the burden of proof and be called upon to demonstrate the nature of our rights and the extent of the damage caused to our territories and culture. This appears to us all the more depressing because we must always deal with institutions which are both judge and party in this case, especially when we know that it is first and foremost the interests of the white majority which prevail. The history of our domination has taught us that might almost always makes right. Despite this deplorable context, we continue to think that more and more representatives of the dominant group will accept that the rights of our minorities are as basic and equal as those of the majority. We will always continue to hope that the rules of the game will change in such a way as to include at least the commitments made formerly by your ancestors concerning our lands and their resources and

that we will not be bothered in any way by the whites. The courts of justice which your governments have established have taken little account of all of these commitments which have, nonetheless served as a basis in several respects for your institutions.

We would also like our cultural traditions to be taken into account in the development of these rules. Among other things, we do not understand why your jurists and legislators wish to take into account in their arguments and decisions only written law of European origin, while totally ignoring the principles of the unwritten law of the native American peoples. Nor do we understand why the concept of private ownership of land, which is yours, must take precedence over the concept of collective ownership, which is ours. Private appropriation of the land and its resources seems to us to be the foundation of a system based on the exploitation of man which our ancestors have traditionally rejected.

Moreover, it is very widely recognized that the territories which we have been occupying since time immemorial have never been the subject of any treaty or agreement. The Dorion report on the integrity of the territory of Quebec, the Malouf decision, the James Bay, Quebec North and Quebec North-East agreements and the testimony before the Standing Committee of the House of Commons on Indian Affairs respecting Bill C-9 all provide evidence of the existence of Indian rights which are "not extinct" in the case of the Attikameks, Montagnais and other Indian nations.

We, the Attikamek and Montagnais peoples, were sovereign at the time of the arrival of the first Europeans and their settlement on our lands.

We then enjoyed all the attributes of full and complete sovereignty: control and exploitation of territories and their resources, economic self-sufficiency, and political autonomy. We had our own institutions, language and culture, developed over millennia in immense harmony with the laws of nature. Even if we could be considered in the eyes of the whites to be primitive, backward and miserable peoples, we were so aware of the quality of our social and cultural system based on the equality of all that we have always refused to change it radically, to the great displeasure of missionaries, administrators and other entrepreneurs. It is, moreover, our refusal to be assimilated by the invaders and their refusal to understand our system of values and institutions which has brought us to a situation that has now become intolerable.

In spite of all the difficulties which we have known, despite the fact that we have been driven back and confined in narrow reservations, we have never renounced our sovereignty and our territories which our ancestors have occupied since time immemorial. Today, we think that the recognition of our sovereignty must be the foundation of the now urgent and necessary redefinition of our relations with the dominant society. This redefinition must be considered on the same basis as that related to the two other so-called founding peoples. In a word, drawing our strength from traditions extending over thousands of years, we wish to re-establish and reinforce our own cultural values in the institutional areas which concern us and wish to see included in the constitution of this country guarantees that can assure us that our native rights will be respected.

nant society which is insidiously under way and which is directly or indirectly encouraged by all the political, administrative and economic agents who deal with us. WE NO LONGER WISH TO BE CONSIDERED STRANGERS IN OUR OWN COUNTRY. We believe that our rights as the original inhabitants of a large part of the territory of this country permits us to make this choice. We also believe that the members of the dominant society must accept this choice. It appears to us that your acceptance of our choice proves to be one of the essential conditions for the establishment of durable relations between our different peoples. If multiculturalism is truly to be one of the fundamental features of Canadian society, the recognition of the cultural uniqueness of the American Indian certainly constitutes its cornerstone.

Beginning with the famous positions taken by Justice Marshall in the 1820s and 1830s through to the ones adopted much more recently by Justices Malouf and Berger, many opinions of jurists and rulings have reinforced the thesis of the native rights of American Indians. These rights have, moreover, been officially recognized by various American and Canadian governments at the times of various treaties, agreements, payments of compensation etc.. It is thus that Justice Berger writes with respect to the Canada of 1872 that "the principle of the recognition of the titles of the native peoples was deeply rooted in the policy and statutes of this new nation" (Vol. 1, p. 77). What has not always been clearly defined, however, at the time of these rulings, treaties or agreements is the nature of the aboriginal rights. On this question we are not in agreement with the restrictive concept adhered to by the representatives of the dominant society.

We state out loud that our aboriginal rights are rights of sovereignty, for how could it be otherwise when in our original native situation we enjoyed full economic, social, political, cultural and religious autonomy. We were the absolute masters of the lands and their resources, the lakes, the rivers and the forests, which ensured our survival in a total interdependence with nature. We do not think that the arrival of European strangers on our lands, even if those strangers were accepted up to a point by our ancestors, changed our situation as a people sovereign over our territories. Only armed conquest or our explicit consent to give up our rights for the benefit of the dominant society could have made us lose this sovereignty. Nothing of the kind has occurred. We know in fact that the position of the dominant society and its denial of our rights is based solely on relations of force. When the advantage of your numbers, arms and technology was not as marked as it has become in the last century, your attitude was quite different: we were allied nations each enjoying their own autonomy. Today, your situation of force and your fear of not having access to our lands and their immense resources makes you shrink from recognizing our sovereign rights. Why should white governments alone have all the rights to the lands and their resources, together with the economic and political control over them? If we, the American Indian people, are equal to you before the Creator of all things, we must be allowed to enjoy the same rights as you.

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Jurisprudence generally recognizes "at least" our usufruct rights over our ancestral lands. The famous case of St. Catherine's Milling and Lumber Company VS The Queen defines the Indian title as being a "personal

and usufructuary" right "dependant on the goodwill of the Sovereign". We categorically oppose this unilateral definition of our rights by the legislative and judicial apparatus of the dominant society. We oppose it all the more because it has always been interpreted in an improperly restrictive way, limiting our usufructuary rights to hunting, fishing and trapping alone on territories wrongly said to belong to the Crown. What's more, except for the trapping of fur-bearing animals, our supposed hunting and fishing rights are not even exclusive. The provincial government authorizes tens of thousands of so-called "sport" hunters and fishermen to catch game and fish on our lands. Moreover, the same government permits forest companies to level the forests, mining companies to dig their mine holes and Hydro-Quebec to flood vast areas of land. What remains for us after all of these white exploiters have passed through our lands and taken priority over us in using them?

We recognize in this concept of usufructuary rights a trap which inevitably culminates in private companies grabbing whichever resources on our lands appear the most profitable to them at a given point in time: forests, mineral deposits, the hydrographic system, wildlife. Justice Berger went as far as to recognize that native territorial rights could also include rights to underground resources. We think that the transposition of our rights of sovereignty into the present-day context concerns all of the resources of our territories and not only game and fish.

According to the written law of the dominant society, the aboriginal rights were in some way created by the Royal Proclamation of 1763 which also defined their territorial application. Even if it appeared very generous

toward us in the eyes of many, we do not recognize the validity of this unilateral decision on the part of the head of the colonial government of that time. The unilateral nature of this declaration and its subsequent imposition on the American Indian peoples appears to us to be based solely on colonial-type relations of force which obtained at that time and which constitute an obvious denial of the right of the peoples to self-determination. For the same reasons, we do not recognize the carving up of our territories done at the time of this unilateral declaration and which would have had the effect, according to some, of abolishing our aboriginal rights over a part of our lands. We do not think that a single person, even the King of England representing the then most powerful nation in the world, has the power to create or abolish at will the fundamental rights of sovereign peoples. That again is an abuse of power which is incompatible with the concept of equality among men and groups of men which is the foundation of our unwritten law.

The nature of our relationships to the land and its resources which is the basis of our Indian law proves to be fundamentally different from yours. Our legal principles are based primarily on the needs of the community and are designed to ensure equal access for all to the land and its resources. Hence the concern to preserve nature and ensure that its resources are constantly renewed for the benefit of our brothers and the greater well-being of future generations. We note that your law is based on principles completely contrary to ours: it must guarantee individual and corporate interests exclusive

p. 8 enjoyment of the land and its resources to the detriment of other members of the same group or society. It is not difficult to see that such a system

leads, on the one hand, to the abuse and squandering of renewable resources, and on the other hand, to a very inequitable distribution of the collective wealth. We do not wish to adopt this model of society; we prefer to encourage a community model of society in which collective rights have priority over individual rights.

Moreover, we will not accept that the non-utilization of certain parts of our ancestral lands for varying periods of time be used as an argument for limiting their nature or geographical size.

We cannot honestly be criticized for no longer using lands which were taken from us without our consent. Furthermore, industrial penetration into our territories, a brief history of which we will discuss later, has forced us to make substantial changes in our traditional subsistence activities. Because of our system of values which is totally different from yours, we have been the unconscious victims of these often brutal and rapid transformations. Our destiny has escaped us for a good length of time and to a large extent, and we have been the victims of all kinds of manipulations. We affirm today our desire to put an end to this situation and take our destiny into our own hands.

Finally, we reject the abolition of our territorial rights as the basic principle of any agreement between ourselves and the governments of the dominant society. During his inquiry, Justice Berger was able to see that the "recognition of rights, not their abolition" constituted the very basis of the demands of the native groups of the McKenzie valley (Vol. 1, p. 181). We share this view with respect to our rights. Moreover, the Human

Rights Commission of the province of Quebec expressed the following opinion on this question:

"(Translation): The Commission cannot accept the traditional procedure in Canada, which puts forth as a mandatory prior principle to any negotiations the abolition of the territorial rights of the Native Peoples."

. . .

"The principles and methods of negotiation with the Native Peoples must be systematically revised, notably with respect to territorial rights, and in order in particular to abandon the principle of the abolition of these rights as a mandatory precondition of any negotiation."

In the immediate future, therefore, we wish to work to have our aboriginal rights recognized by the dominant society and not to have them abolished. We think that the best way to respect our rights would be to entrench them clearly and precisely in the constitution, as has been done for every other law identified as belonging to the tradition and heritage of the country, and therefore of the constitution.

Ever since the Europeans set foot on our lands, our most basic rights have constantly been ridiculed by them. The very expression "discovery of the new lands" represents an insult to all the native peoples of America who had known these lands well and exploited them for millennia. The denial of the Other, his uniqueness and his rights has always been one of the characteristics of the self-conceit of the European peoples, believing themselves to be the carriers of the torch of the one true civilization and the one true faith.

From this ethnocentric perspective, our lands were to be conquered and our peoples civilized according to your system of values. Despite all your efforts to assimilate us into your civilization, we have been able to resist them successfully, while your occupation of our lands has remained limited to the St. Lawrence valley alone. But the fixed net fisheries and trade counters already represented the outposts which enabled you to penetrate further and further into our lands in order to seize control of them.

As early as the 18th century, the government of New France granted the monopoly in the fur trade and the exploitation of certain of our lands' resources, such as salmon and sea perch, by creating the King's Posts Trade, and by granting seigniorial rights over wide sections of the North Shore and fishing concessions to senior government officials and rich merchants. After the conquest, this monopoly in the fur trade and fixed net fishing was strengthened under the guidance of some English merchants, falling finally into the hands of the all-powerful Hudson's Bay Company at the beginning of the 19th century.

Until that time we had been able to preserve the use of most of our lands as well as our traditional activities and culture.

From that moment on, the large forest companies with which you are familiar exploited most of the best forest basins in our territories with no thought for tomorrow and without trying to preserve our trapping trails. Every year, dozens of square miles of game-filled forests are levelled using the clear felling method without any rational management of renewable resources. As a result, every year several of our trappers see their hunting territories

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laid waste, and must suffer the resulting severe economic disadvantages.

Beginning in the 1920s, more and more powerful hydroelectric plants and reservoirs with larger and larger capacities have been built on our lands, with never any concern for our traditional rights and activities. The irreparable damage caused by all of these hydroelectric developments has consequently affected profoundly our lifestyle and identity as hunting peoples. Many familial hunting territories which were formerly very productive have thus become almost unusable. The welfare of Hydro-Canadians rests in fact on our dispossession and misery.

All of the iron and other mines currently in operation are located on Indian territory. No more than in the case of previous industries have we authorized the setting up of these facilities on our lands. We are always the last hired and the first laid off by these companies. We are considered by them as strangers, pariahs on our own lands.

Finally, the practice of sport hunting and fishing on our territories authorized by the provincial government has led to several different systems for the appropriation of our wildlife resources by the members of the dominant society.

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The balance-sheet of the combined effects of all of the industrial, agricultural and sporting activities of the members of the dominant society on our territorial rights, economy and culture has still to be drawn up in detail, but here and now it appears evident that we are the victims of what you call with pride your "development". You have crushed us under the steam roller of your technological progress. You have ignored us as peoples and

individuals possessing rights equal to yours. You have invaded our territories and plundered our resources while ignoring our most basic right, that is to continue to live off our lands, if such is our desire. We have derived no benefits from your system of exploitation of the resources of our lands. In return for our resources, you have shown us only neglect and scorn.

Our economic, social and cultural situation is already so precarious that we cannot risk also losing the few advantages which are guaranteed us within Canada by the Indian Act. We are greatly worried by the political intentions of the present government of Canada and the manner in which it is proceeding. We do not wish to see our rights disappear in a possible patriation of the Constitution. Nor do we wish to disappear as a people. We wish to obtain the recognition of our aboriginal rights, that is to say the recognition of our territorial rights and our right to remain Indians and develop our own institutions and culture.

p. 13 After having warmly welcomed your ancestors onto our lands and suffered in return all the vexations which we have just described, the time has now come for us to demand justice and the recognition of our basic rights as peoples distinct from the dominant white society, Indian peoples and the first inhabitants of this country. The upshot of our demands is that you recognize our territorial rights as sovereign peoples and our right to control our own economic, social and cultural development. In light of this, our basic positions can be summarized in the following proposals:

- As autonomous peoples prior to the arrival of the Europeans, we wish to be recognized as founding peoples at least on the same

basis as the Anglophones and Francophones.

- As native peoples and descendants of the first inhabitants, we also ask that our rights of sovereignty be recognized on our lands.
- We want the economic foundation with which control of the exploitation of our lands will provide us to ensure our economic, social and cultural welfare for the generations to come.
- We wish to see our aboriginal rights entrenched in the Constitution.
- We wish to establish and control our political, social, economic, educational and cultural institutions.
- We wish to have a right of veto, as do the provinces, with respect to the institutions, laws and affairs which concern us.

In conclusion, we ask that you instill deeply in yourselves the meaning of the words appearing on the title page: NISHASTANAN NITASINAN
(Our lands, we love them and value them).