



**PROPOSAL FOR AN AGREEMENT-IN-PRINCIPLE
WITH THE FIRST NATIONS
OF MAMUITUN AND NUTASHKUAN**

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EXECUTIVE SUMMARY

Reconciling Aboriginal rights and the sovereignty of the Crown is one of the challenges that Canada will have to meet over the coming decades. Comprehensive land claims and self-government are examples of the matters to be negotiated. This paper reviews the most important parameters in respect of one of these initiatives, the “Proposal for an Agreement-in-principle of General Nature Between the First Nations of Mamuitun and Nutashkuan and the Government of Québec and the Government of Canada.” More specifically, the subjects addressed include the background to the Proposal for an Agreement-in-principle in Canada and Quebec, the most important provisions of that agreement, the debates that have arisen regarding it and the steps that remain to be taken before a final agreement is concluded.



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PROPOSAL FOR AN AGREEMENT-IN-PRINCIPLE WITH THE FIRST NATIONS OF MAMUITUN AND NUTASHKUAN

INTRODUCTION

The “Proposal for an Agreement-in-principle of General Nature Between the First Nations of Mamuitun and Nutashkuan and the Government of Québec and the Government of Canada” (hereinafter the “Proposal for an Agreement-in-principle”), which was released in June 2002, is the second attempt in 400 years to settle the Aboriginal rights of the Innu in Quebec.⁽¹⁾ The Proposal for an Agreement-in-principle deals with, *inter alia*, recognition of ancestral Aboriginal rights, self-government and the question of territory. It will serve as a basis for the negotiation of a final agreement. This paper provides historical background to the Innu claims, a brief overview of the main provisions of the Proposal for an Agreement-in-principle, and an outline of some of the debates that have arisen out of it.

BACKGROUND

There are about 16,000 Innu or Naskapi-Montagnais living in the eastern Quebec-Labrador peninsula. They are divided into 11 bands, and make up ten villages in Quebec and two in Labrador. The Innu were traditionally a nomadic people who lived mainly in northeastern Quebec and Labrador. They subsisted by hunting, trapping, harvesting and fishing, a way of life that required them to travel over a large territory: about 400,000 km², or about a quarter of Quebec. The Innu call that territory Nitassinan (“our land”). The boundaries of Nitassinan “are, on the north, the Caniapiscou reservoir; on the east, Labrador; on the south, the St. Lawrence River, and on the West, Mauricie” [translation].⁽²⁾ The end of the 19th and the early 20th centuries witnessed the advent of sedentarization and increased colonization of the Innu.

(1) The first attempt led to the framework agreement signed with the Council of the Atikamekw and Montagnais in 1988.

(2) Sylvie Joly and Esther Lapointe, “Les Innus : Des négociations qui changeront l’Histoire,” *Zone Libre*, 14 December 2001 (<http://www.radio-Canada.ca/actualite/zonelibre/01-12/innus.html>).

The Innu communities began to organize politically in the 1970s. In 1975, the Conseil des Atikamekw et des Montagnais (CAM) was founded to represent the rights and interests of those communities in dealings with the provincial and federal governments. In 1977, the CAM unsuccessfully opposed the ratification of the James Bay and Northern Quebec Agreement because it affected overlapping land claims. Following that defeat, the CAM submitted a comprehensive land claim to the federal government. Negotiations between the Government of Quebec and the CAM began in 1979, and the federal government joined in 1982. A framework agreement relating to the work plan and timetables for the negotiation process was reached in 1988, and followed in 1989 by an agreement governing interim measures, which terminated in 1991. The Atikamekw withdrew from the CAM in 1993. In 1994, Jacques Parizeau's government in Quebec made a unilateral proposal to the CAM, which rejected it. The organization ceased to exist that year, and the torch was taken up by the various tribal councils that existed at the time.

From that point onward, Canada and Quebec had to negotiate with three organizations rather than one: the Assemblée Mamu Pakatatau Mamit or Mamit Innuat (representing the communities of Unamen Shipu, Pakua Shipu and Ekuanitshit), the Conseil tribal Mamuitun (representing the communities of Mashteuiatsh, Betsiamites, Essipit, and Uashat mak Mani-Utenam),⁽³⁾ and the Council of the Atikamekw Nation (representing the Atikamekw communities of Manawan, Opitciwan and Wemotaci). At the time, the communities of Matimekosh-Lac John and Nutashkuan (represented by Mamit Innuat in 1982)⁽⁴⁾ no longer participated in the talks.

In 1997, Mamuitun tabled a proposal for an Agreement-in-principle. After much bargaining, that proposal led to agreement on a "Common Approach" in early 2000, which was released in July 2000. "[W]ithout having any legal effect, [the document] is designed to define the main elements to be used as a basis for the drafting of an Agreement-in-principle that will lead to a Final Agreement concerning the rights of the Innu on the territory of Quebec."⁽⁵⁾ The topics address in the "Common Approach" include: Innu land rights, self-government, financial and socio-economic arrangements, and the question of certainty. In November 2000, the Nutashkuan

(3) In 1998, Uashat mak Mani-Utenam withdrew from Mamuitun.

(4) Nutashkuan joined the Mamuitun process by ratifying the common approach of July 2000.

(5) Canada, Quebec and Mamuitun Tribal Council, *Common Approach*, released on 6 July 2000. (http://www.ainc-inac.gc.ca/nr/prs/m-a2000/00147_e.PDF).

First Nation joined the bargaining table with the Mamuitun Tribal Council. On 21 December 2001, based on the provisions of the “Common Approach,” the final text of the “Proposal for an Agreement-in-principle of General Nature Between the First Nations of Mamuitun and Nutashkuan and the Government of Québec and the Government of Canada” was agreed to.

The negotiators for the parties initialled the document and recommended to their respective governments that it be ratified. The federal and provincial governments are currently studying the terms and conditions of the Proposal for an Agreement-in-principle. At present, the precise status of the process of ratification of the Proposal for an Agreement-in-principle by the band councils is not known.

With respect to the claims by Mamit Innuat, the talks that were held led to agreement on a comprehensive approach in April 2001, dealing with, *inter alia*, land and financial issues. The next step is for an agreement-in-principle to be signed.

The Council of the Atikamekw Nation ratified a Tripartite Political Accord in 1997. Quebec, Canada and the Council of the Atikamekw Nation are currently negotiating an Agreement-in-principle.

PROPOSAL FOR AN AGREEMENT-IN-PRINCIPLE

The Proposal for an Agreement-in-principle put forward by the Mamuitun Tribal Council and the Nutashkuan First Nation deals primarily with the question of territory, recognition of Aboriginal rights and title, self-government, and financial and socio-economic arrangements. Talks on this scale have not been undertaken in Quebec since the James Bay and Northern Quebec Agreement was signed in 1975, and have not been undertaken in Canada since the Nisga’a Final Agreement in 2000. If a final agreement is reached, it will be the second modern tripartite land claims treaty to be concluded in Quebec.

The Proposal for an Agreement-in-principle consists of a preamble and 19 chapters. The following pages provide an outline of the principal provisions of that document, and are not intended to be an exhaustive analysis. It must be noted that some provisions of the Proposal for an Agreement-in-principle are intentionally vague. They will be clarified in the final negotiation process. We would note that the Proposal for an Agreement-in-principle is somewhat general and that it will provide the framework for negotiations toward a future final agreement on the Mamuitun and Nutashkuan First Nations’ land claims.

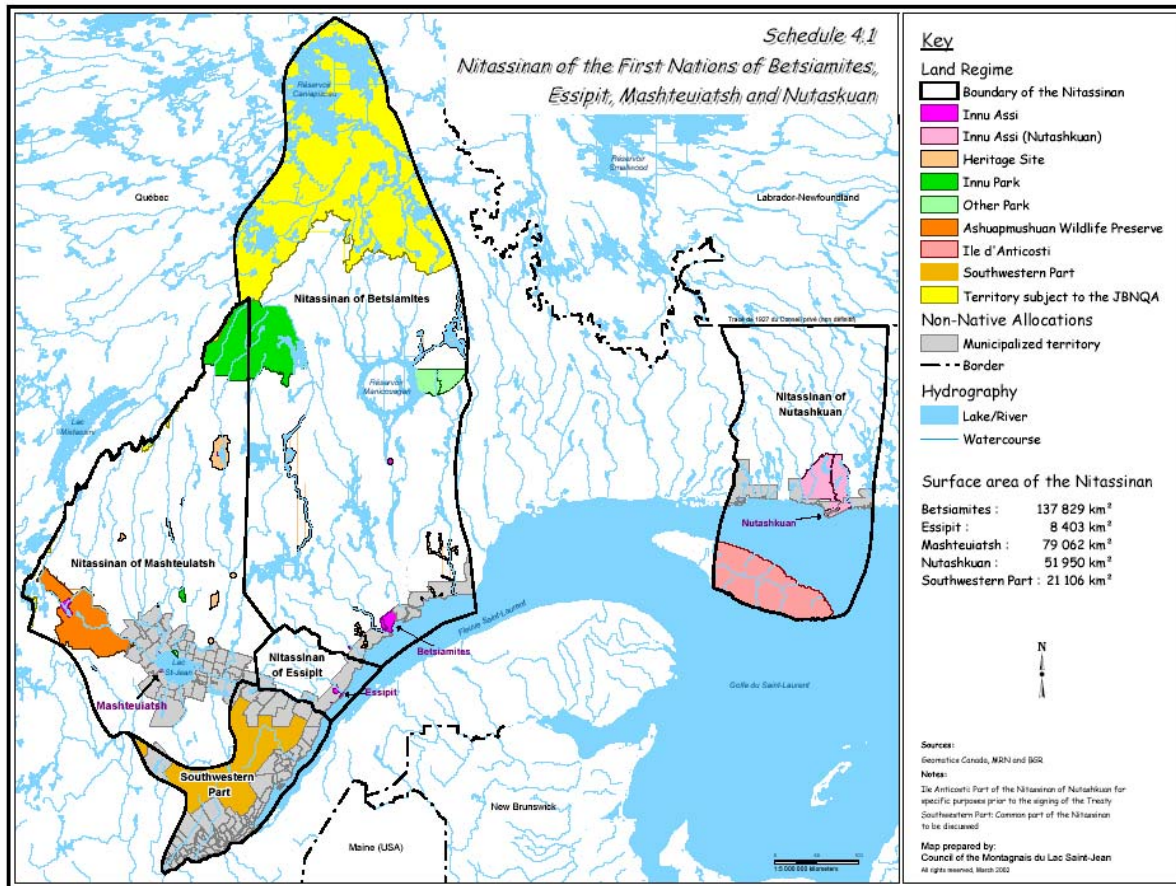
A. Aboriginal Rights and Title

The Proposal for an Agreement-in-principle states that the purpose of the negotiations between Quebec, Canada and the four Innu communities is to conclude a treaty that will reconcile the prior presence of the Mamuitun First Nations and the Nutashkuan First Nation with an affirmation of the sovereignty of the Crown (s. 2.1), while recognizing, confirming and continuing the Aboriginal rights of the Mamuitun First Nations and the Nutashkuan First Nation, including Aboriginal title, and not extinguishing such rights and title (s. 2.1). The terms and conditions on which those Aboriginal rights may be exercised will be defined in the future Treaty and protected by section 35 of the *Constitution Act, 1982*. It must be noted that the Treaty is not intended to exhaustively list the Aboriginal rights, including the Aboriginal title, of each of the First Nations, or to replace such rights and title with treaty rights (s. 3.3.2). The effect of the coming into force of the Treaty will be to suspend that class of rights (art. 3.3.4), and not to extinguish them (s. 3.3.4.1). In other words, certainty will come from suspending, as opposed to extinguishing, any Aboriginal rights not referred to in the Treaty. That approach is unique to the Proposal for an Agreement-in-principle, and is an exception to the usual formula, which provides for the exchange of undefined Aboriginal rights for defined treaty rights, using the terms “cede, release and surrender.”⁽⁶⁾

B. The Question of Territory

The question of territory is addressed primarily in chapter 4. Two categories of lands are covered by the Proposal for an Agreement-in-principle: Innu Assi lands and Nitassinan lands. The following map shows the tentative boundaries of those lands.

(6) Department of Indian Affairs, *The Nisga'a Treaty*, Backgrounder No. 7, 2001, p. 7.1.



Source: Secrétariat aux affaires autochtones of Quebec.

The territories declared to be Innu Assi are the lands of which the Innu will have full ownership. The area of those lands, for the communities of Betsiamites, Essipit and Mashteuiatsh, would be 522 km² (269 km² of which would be the former reserve lands).⁽⁷⁾ Because of the different situation of the Nutashkuan community, which is located in a less urbanized area, the Innu Assi territory of the Nutashkuan First Nation will be greater (about 2500 km²), but the Nutashkuan First Nation will have fewer property rights in the natural resources in its Innu Assi. The Innu Assi lands will be under Innu jurisdiction, and not federal jurisdiction. The soil, subsoil, and resources in them (wildlife, aquatic life, water, water power, forest, floristic and mineral) will belong to the Innu, who may dispose of them as they wish (s. 4.2.3). However, with respect to the Innu Assi of the Nutashkuan First Nation, the province

(7) Secrétariat aux affaires autochtones of Quebec, "Context and Summary of the Agreement-in-principle of General Nature Proposed by the Negotiators for Québec, Canada and the Innus of Betsiamites, Essipit, Mashteuiatsh and Nutashkuan," 12 June 2002 (<http://www.mce.gouv.qc.ca/innus/anglais/documents/Summary.pdf>).

retains ownership of water power and underground resources, and minerals (with the exception of surface minerals) (s. 4.2.5), although the Nutashkuan First Nation will retain an undivided 25% share of the ownership of mineral and underground resources (s. 4.2.5). Any exploitation, extraction or exploration will nonetheless require the consent of the Nutashkuan First Nation. “‘Good neighbour’ agreements will be negotiated to guarantee on Innu territories: free movement on highways and waterways; access for public utility purposes; protection of wildlife habitats; maintenance of water quality; management of environmental impacts.”⁽⁸⁾ Privative third-party rights of ownership and use in existence on the date when the Treaty comes into force will be respected or equitably compensated for (s. 4.5.1). As well, the term of any rights granted to third parties in Innu Assi (whether by Quebec or by Canada) will be respected. Heritage sites under Innu ownership will also be part of the Innu Assi lands (s. 4.2.2).

Nitassinan refers to the portion of the territory traditionally used by the Innu. In the Proposal for an Agreement-in-principle, that territory covers an area of approximately 300,000 km². Nitassinan will enable the Innu to practise their traditional activities (those activities are covered by the expression “Innu Aitun” in the Proposal for an Agreement-in-principle). However, the territory will not be under Innu ownership, and will retain its present status: it will still be under Quebec’s jurisdiction. As well, the laws of Quebec and Canada will continue to apply in that territory. However, certain specific arrangements, designed to preserve the Innu’s traditional ties with the territory, will be made. First, the traditional Innu hunting, fishing, trapping and harvesting rights will be recognized in this territory. The practice of those activities (and of Innu Aitun in general) in Nitassinan will be regulated by the First Nations that sign the future Treaty (s. 5.3.1). Those First Nations will also participate in management of the land, environment and natural resources in Nitassinan, under a formula that is yet to be determined; however, the final decision regarding planning rests with the government or the ministers responsible (s. 6.5.7). At least 3% of the royalties collected by Quebec on natural resources will be paid to the First Nations that sign the Treaty. Under the Proposal for an Agreement-in-principle, the federal government will recommend to Parliament that the Act implementing the future Treaty provide that Nitassinan lands not be lands reserved for the Innu within the meaning of section 91(24) of the *Constitution Act, 1867* and that no Nitassinan land comprise a reserve as defined by the *Indian Act* (s. 4.4.3). The Proposal for an Agreement-in-principle provides that the effects and exercise of Aboriginal rights, including Aboriginal title to

(8) *Ibid.*

the territory of Nitassinan and Innu Assi which are provided for under the Treaty, will be protected by section 35 of the *Constitution Act, 1982* (s. 4.4.1).

Lastly, heritage sites (not specifically Innu), Innu parks (administered by the Innu tshishe utshimaut),⁽⁹⁾ wildlife reserves, national park reserves, and Innu management and development areas are covered by the Proposal for an Agreement-in-principle (ss. 4.6, 4.7, 4.7, 4.8, 4.9).

C. Self-government

The Proposal for an Agreement-in-principle provides for recognition of the inherent right of self-government as an Aboriginal right (s. 3.3.3). Self-government by the Mamuitun and Nitassinan First Nations will include legislative, executive and judicial powers (s. 8.1.5). The governments of those First Nations will have the rights, powers and privileges of a natural person, as well as the rights, privileges and immunities of a legal person established in the public interest (s. 8.2.1). All of the First Nations that are parties to the future Treaty will have to adopt a Constitution which must deal with the following matters (s. 8.1.2):

- the status and rules governing membership and Innu citizenship;
- the selection of leaders;
- the exercise of legislative power and the composition of the legislative body;
- publication of statutes and regulations;
- accountability and accounting;
- appeals and remedies; and
- mechanisms for ratification and constitutional amendment.

The Innu legislative powers in the Proposal for an Agreement-in-principle are described in novel form. For the first time in a modern treaty, those powers will be defined as a general power to make laws, and not in terms of specific legislative powers. For instance, the Innu tshishe utshimaut will have the general power make laws in respect of any matter relating to the organization, the general welfare, the development and the good government of their societies, their members and their institutions (s. 8.3.1.1). Those laws will apply to the Innu Assi lands and to individuals in the territory (s. 8.3.3.1), but also outside the territory if so specified in

(9) The expression “Innu tshishe utshimau” means, in the Innu language, the body that has authority to govern each Innu First Nation.

the Treaty. The laws must be compatible with the provisions of the Treaty and the Innu Constitutions (s. 8.3.1.1). Sections 8.3.1.2 and 8.4.4.2 provide that the following areas will be outside the general Innu areas of jurisdiction:

- matters within the legislative jurisdiction of the Parliament of Canada under section 91 of the *Constitution Act, 1867*, except for matters in respect of which the Treaty specifies that Innu laws will prevail;
- immigration;
- the incorporation of legal persons;
- vehicle registration;
- transportation and driving licences;
- compensation for damages covered by a public no-fault compensation scheme;
- the manufacture of alcoholic beverages, drugs or medications;
- laws in relation to criminal law and procedure;
- protection of intellectual property;
- radio and telecommunications; and
- prospecting for and production, refining and handling of uranium or other atomic energy products.

The Constitution of Canada, and the *Canadian Charter of Rights and Freedoms*, will continue to apply to the Innu, to Innu territories and to the Innu authorities empowered to lead the First Nation (s. 8.4.1.1).

Rules for the priority of laws will apply to Innu laws. Those rules may be divided into three categories: priority given to Innu laws in the case of inconsistency with federal or provincial laws; priority given to federal laws in the case of inconsistency with Innu laws; and compliance by Innu laws with certain minimum standards established by Quebec or federal laws.

Innu laws will take priority in the following areas (s. 8.4.4.1):

- the organization, administration and internal functioning of the Innu tshishe utshimaut and their institutions;
- the management of Treaty rights and benefits;
- hunting, fishing, trapping and harvesting by the Innu;⁽¹⁰⁾

(10) Subject to certain restrictions relating to salt water fishing and the regulation of trade and commerce, and subject to measures to conserve the resource, protect habitats and their environment and preserve public health and safety, as determined by the relevant provisions of the Treaty.

- control and management of Innu Assi, its resources and the land titles system;
- pre-school education and primary and secondary education, including adult education, vocational training, mandatory school attendance and student financial aid;
- family law;
- peace, security and public order;⁽¹¹⁾
- traditional medicine;⁽¹²⁾
- income security and last-resort aid;
- quality and authenticity standards for Innu arts and crafts, and protection of authenticity and Innu heritage, subject to intellectual property laws;
- the environment, in respect of any matter or project whose actual and potential effects are limited to Innu Assi;
- protection and promotion of language, heritage, culture and identity, and, within the general framework of Innu Aitun, the traditional way of life of the Innu, with the exception of the right to be registered as an Indian under the *Indian Act*;
- any other matter that has a significant connection to First Nations identity or to a dominant characteristic of First Nations society;
- any matter that arises from the exercise of the powers set out in that section or ancillary to such a power;
- any other specific matter or areas as agreed between the parties between the time when the Agreement was made and the time when the Treaty is entered into.

Federal laws will have priority in the event of inconsistency or conflict with Innu laws in the following areas (s. 8.4.4.2):

- the environment;
- workforce training and development;
- criminal law and procedure;
- protection of intellectual property;
- radio and telecommunications;
- prospecting for and production, refining and handling of uranium or other atomic energy products.

(11) Subject to laws relating to national security and the national interest, and police, fire and territorial police services.

(12) Subject to public health laws.

Innu laws in the following areas will have to comply with the minimum standards established by Quebec and federal laws (s. 8.4.5.2):

- protection and restoration of mining sites;
- the quality of food products;
- protection of agricultural plants and products (insects, diseases, weeds);
- animal health protection;
- combat sports;
- workplace safety and safety in public buildings;
- building construction standards;
- any other matter that may be agreed between the Innu tshishe utshimaut and the Government of Canada or the Government of Quebec.

Lastly, it should be noted that the future Treaty will contain provisions expressing the parties' intention to implement, in an orderly and gradual manner, a variety of measures in relation to the administration of justice (s. 9.1.1). Those measures will provide for, *inter alia*, the establishment of an Innu justice system, adaptation of the Canadian and Quebec justice systems to Innu reality and cultural practices, and the possibility of establishing an Innu police force and Innu correctional services, an Innu probation service and Innu territorial police.

D. Financial and Socio-economic Arrangements

The Mamuitun and Nutashkuan First Nations will receive capital grants from the Canadian government in the amounts of \$236 million and \$23.5 million, respectively (s. 10.1.1). At the same time, the Government of Quebec will make compensatory payments for past development (including hydroelectric developments), in the form of a capital transfer totalling \$102.5 million. Canada will also contribute \$16 million, divided between the Mamuitun and Nutashkuan First Nations, which will be allocated to purposes specified in the future Treaty. The Mamuitun and Nutashkuan First Nations agree to repay the loans granted by Canada for negotiating. As well, the Innu authorities (Innu tshishe utshimaut) will enter into funding agreements with Ottawa and Quebec for the delivery of programs and services for Innu citizens. Those agreements will be renegotiated every five years, and will contain provisions for accounting mechanisms. At the same time, an agreement will be concluded on the self-financing capacity of the various Innu tshishe utshimaut. The Agreement-in-principle also provides that the Innu tshishe utshimaut will be able to legislate in relation to direct taxation (s. 12.1).

With respect to socio-economic development, the Treaty provides for specific measures to enable the First Nations that sign it to catch up in socio-economic terms. Accordingly, Quebec and Canada will undertake, based on their respective jurisdictions, to take measures to facilitate participation by the First Nations and their members in commercial fishing activities, the development of outfitting operations, forest management and logging, and the development of hydroelectric resources (s. 13.1.2). As well, training and employment development policies will be established (s. 13.9).

DEBATE

The unveiling of the Proposal for an Agreement-in-principle in June 2002 prompted a stormy public debate in Quebec, reminiscent of the debate caused by the Nisga'a Final Agreement in British Columbia and Canada. That debate also had an effect at the political levels, both in Quebec and federally. The resignation of Bloc Québécois MP Ghislain Lebel, and public statements made by former Quebec premier Jacques Parizeau, fuelled the discussion and spotlighted the many concerns that people have about the Proposal for an Agreement-in-principle.

The main criticisms of the document relate to its provisions regarding self-government and territorial regulation. First, a number of people have expressed concerns regarding the extent of the powers to be granted to the Innu authorities. In the opinion of historian Russel Bouchard, those expanded powers would create a third, race-based level of government in the province of Quebec: “In addition to being subject to two levels of government, one in Ottawa and the other in Quebec, Whites living in Nitassinan territory will be subject to a third level of government, that one being Innu” [translation].⁽¹³⁾ Those concerns are exacerbated by fears that the Treaty, which is meant solely for four communities and not for the entire Innu nation, will become a model for the future in Quebec and Canada, and will lead to “a political and legal jigsaw puzzle” [translation]:⁽¹⁴⁾ “When we are talking about the executive,

(13) Russel Bouchard, in Monique Giguère, “Nouvelle charge contre l’entente des Innus,” *Le Soleil*, 19 September 2002.

(14) Jacques Parizeau, “‘De la dynamique potentielle’ – L’ancien premier ministre du Québec manifeste son désaccord avec l’entente conclue le printemps dernier entre le gouvernement du Québec et les Innus,” *La Presse*, 28 August 2002.

legislative and judicial powers of a country being given to four separate communities, we are going to find ourselves with a veritable Tower of Babel within our territory.”⁽¹⁵⁾

The question of the territory at issue is even more delicate, given the historic claims of the sovereigntist movement in Quebec. The most controversial provision in this respect is the constitution of Nitassinan. The Proposal for an Agreement-in-principle has been criticized for the size of the Nitassinan territory (amounting to roughly one-sixth of the territory of Quebec), which is seen as excessive and unacceptable. The territorial integrity of Quebec is certainly the most problematic issue for sovereigntist critics of the Proposed Agreement-in-principle: “Were we asserting independence in territories that do not belong to us? Will we be asserting it in a territory that has been reduced to the size of a postage stamp?” [translation].⁽¹⁶⁾

In addition, Jacques Parizeau and Ghislain Lebel have criticized Quebec for the tripartite nature of the Proposed Agreement-in-principle. The allusions made to recognition of the 1982 Constitution (which Quebec has never ratified) present a problem. All of these concerns regarding the Proposal for an Agreement-in-principle are buttressed by the novel procedure for suspending rights used by the parties to obtain certainty in the future Treaty.

RECENT DEVELOPMENTS

The lack of transparency for which the governments were criticized by the non-Aboriginal populations of the territories affected has also fuelled the debate. To date, the federal and provincial governments have still not ratified the Proposal for an Agreement-in-principle. As well, at the provincial level, given the avalanche of criticism expressed and the demands by non-Aboriginal communities for a referendum on the question, Premier Bernard Landry announced the creation of a parliamentary committee in early 2003 to examine the Proposal for an Agreement-in-principle. He also appointed Guy Chevrette in early October 2002 as “special envoy” to ensure that the populations affected by the Proposal for an Agreement-in-principle are kept fully informed. Mr. Chevrette tabled his report, *Pour la négociation d'un traité juste et équitable*, with the parliamentary committee on 21 January 2003. Before discussions on a final agreement can continue, the Proposal for an Agreement-in-principle will have to be ratified by all the parties concerned.

(15) Ghislain Lebel, in Raymond Giroux, “Nomination d’un ‘émissaire’ dans le dossier autochtone : L’ex-bloquiste Lebel invite Chevrette à débattre en public,” *Le Soleil*, 3 October 2002.

(16) Ghislain Lebel, “De l’insouciance à l’état pur; La Paix des Braves signée par le gouvernement est une ‘paix déshonorante,’” *Le Soleil*, 10 August 2002.

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