

The Right to the Pekuakamiulnuatsh First Nation's Territory. Interview with H  l  ne Boivin, Member of the Pekuakamiulnuatsh First Nation and involved in the comprehensive land claim negotiations since 1995

Mashteuiatsh, April 13, 2016

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The Pekuakamiulnuatsh (Pekua kami: flat lake; Innuatsh: people) are one of the nine Innu First Nations of the province of Qu  bec¹, located in Mashteuiatsh on the northwest shore of Lac Saint Jean, six kilometres from the city of Roberval (Map 1). The Mashteuiatsh "reserve"², formerly a gathering place for the nomadic Algonquin groups of the region, was created in 1856. Reserves are spaces in which Canada's Indigenous peoples were settled by force in the 19th century in order to "free up" the rest of the land for the country's industrial development and the exploitation of natural resources. The Mashteuiatsh area (15.24km²) represents but an infinitesimal portion of the vast spaces that the Innu occupied in previous times while practicing their nomadic lifestyle and subsistence activities (hunting, fishing, gathering, trapping); this was based on the seasons, the availability of natural resources, family networks, trading and relations with neighbouring nations. Today there are 6,562 members of the Pekuakamiulnuatsh community, 2,058³ of which live in Mashteuiatsh. Like the other reserves in Canada, Mashteuiatsh is under federal government jurisdiction pursuant to the Indian Act which, although it goes back to 1876, is still in effect today. The community of Mashteuiatsh is led and administered by Pekuakamiulnuatsh Takuhikan (formerly the Conseil des Montagnais du Lac Saint-Jean).

¹ The other Innu First Nations are distributed along the North Shore (Essipit, Pessamit, Uashat-Malioatenam, Ekuanitshit, Natashquan, Unamen Shipu, Pakuashipi) and in the interior of the territories (Matimekush - Lac John, near Shefferville). The Pekuakamiulnuatsh language, Nehlueun, has some particular characteristics which distinguish it from the other Innu communities – which explains the difference in the designation of the nation ("Innuatsh" rather than "Innu") as well as the use of the adjective "Innu".

² As referred to the *Indian Act*, a reserve is "a tract of land, the legal title to which is vested in Her Majesty, that has been set apart by Her Majesty for the use and benefit of a band." A band refers to a "body of Indians for whose use and benefit in common, land, (...), have been set apart". A reserve is administered by a "Band council", generally made up of an elected chief and councillors for terms of two or three years. This organizational structure, imposed by the Canadian government starting in the 19th century, generally has little in common with the customary organization systems of the indigenous peoples of Canada.

³ Source: Indigenous and Northern Affairs Canada http://www.aadnc-aandc.gc.ca/Mobile/Nations/profile_mashteuiatsh-eng.html (last accessed on June 28, 2016).

Map 1: Location of Mashteuiatsh



In Canada, negotiation mechanisms called “comprehensive claims”, as well as the necessary funding for these proceedings were put in place in 1973 with the objective of entering into so-called “modern” treaties with Inuit and First Nations in regions of the country where their land rights were not subject to so-called “historic” treaties (negotiated between 1701 and 1923). Based on the idea of establishing legal certainty on specific lands and territories, finalizing these modern treaties is perceived as a benefit for all parties concerned as their objective is to reconcile the rights and interests of Indigenous peoples with non-indigenous Canadians and thus prevent future conflicts. The more clearly the terms, conditions rights and obligations of each of the parties of a treaty are set out, the greater the certainty is deemed to be with regard to the use, economic development and administration of the lands and territories affected by the treaty. The process is optional and supposedly affords Indigenous peoples a way out of legal proceedings.

The Mashteuiatsh authorities, jointly with other Innu First Nations, have been in negotiation since 1979 with the Quebec and federal governments. They are basing their claims on research pertaining to the occupation and contemporary use of the territory, commonly called “the great research”, carried out in 1983 at the request of the Attikamek-Montagnais⁴ Council. Since 2005, the discussions have continued under the auspices of the Petapan group, bringing together the First Nations of Mashteuiatsh, Essipit and Nutashkuan⁵. The discussions were

⁴ The findings of this research fill over nine volumes, a summary report, the testimony of over 400 Innu, 17,000 descriptive files, approximately 1,000 maps and over a thousand hours of recording (<http://petapan.ca/page/nitassinan>, last accessed on June 29, 2016).

⁵ The negotiations were initially conducted under the auspices of the Conseil tribal Mamuitun (CTM) bringing together the Mashteuiatsh, Essipit and Pessamit First Nations. In January 2000, the negotiations resulted in the development of the “Approche commune” [tr.: common approach], a document defining the parameters used as a basis for future negotiations. Joined the same year by the Nutashkuan First Nation, the CTM then became the Mamuitun mak Nutashkuan Tribal Council (CTMN), which in April 2002, agreed with the negotiators for Canada

relaunched in January 2016 with a view to filing the draft treaty, negotiated on the basis of the Agreement-in-Principle of General Nature (AIPGN) signed in 2004. The territories affected by the future treaty involve three administrative regions of the province of Quebec: Saguenay-Lac-Saint-Jean, Côte Nord and the provincial capital (Québec and Mauricie). For the first time, the negotiation of a modern treaty involved a territory whose population is in majority non-indigenous (95%). That is why the AIPGN strongly recommends a partnership approach with the non-indigenous communities and the various levels of government. Moreover, what distinguishes the AIPGN is that it would go against logic – that of Québécois and Canadian society – according to which Indigenous peoples should extinguish their ancestral rights to fully enter Canada. Thus, the AIPGN intends to be the first negotiation between Indigenous peoples and the Canadian provincial and federal governments based not on extinguishment of their ancestral rights, but on their recognition, and regulation of the effects and provisions for exercising these rights. One of the current major challenges of the Petapan group is to convince the members of future signatory First Nations as a whole to support this draft, because once it has been ratified by the parties in discussion, the treaty will be presented to them for referendum.

To better understand the stakes of these negotiations and the perspective brought by Pekuakamiulnuatsh Takuhikan on the territorial rights of the Mashteuiatsh community, we met with Hélène Boivin, who has been involved in this process for the band council for over twenty years.

Justice Spatiale - Spatial Justice (JSSJ): From a long and historic perspective, how does the Pekuakamiulnuatsh Takuhikan address the question of rights to the territory, whether the Mashteuiatsh reserve lands or Nitassinan [territory traditionally occupied by the Innu in north-eastern North America prior to colonization]? And what are the roles and objectives of the land negotiations with regard to these rights?

Hélène Boivin (HB): This is how we see it: we were the first occupants of the territory. We were there before the Europeans arrived. We were there even before Samuel Champlain landed at Pointe-à-Matthieu in 1603 and then Quebec City in 1608. The history and occupation of the territory of our First Nation [that of the Pekuakamiulnuatsh], then the Montagnais and the Algonquin family if we expand, did not begin with Champlain's writings, nor with his arrival. We are basing ourselves on the fact that we have a historic presence on the land. We are approaching it this way first and foremost. Then, considering the land negotiations in progress, we are also increasingly addressing it on the basis of contemporary occupation of the territory. The purpose, in part, of the negotiations is to reconcile the rights and interests of each of the parties – the parties being us, the government of Canada, and the government of Quebec which here represent Quebeckers, and also Canadians. The objective of the negotiation is to reconcile these rights. So, we have to have a lot of information on this occupation, historic and contemporary alike, because without this occupation and this information, we cannot justify the rights we are asking for over this territory. "Ancestral rights" and "aboriginal title" are spoken of in Canada. Ancestral rights concern the weakest in the range of rights, namely, rights to hunt, fish, gather and related activities, like for example, having a camp, cutting wood, etc. In the spectrum of rights, the strongest of these is Aboriginal title⁶. This is somewhat the equivalent of a right of ownership over the territory and resources, not in the sense of the Quebec civil code, but rather in the customary sense.

and Quebec on a proposal for an Agreement-in-Principle of General Nature or AIPGN (cf. <http://www.versuntraite.com/documentation/publications/EntentePrincipelInnus.pdf>, last access Jun 28, 2016). In 2005, the Pessamit First Nation withdrew from the process, leading to a new change in the group's name, known from then on by the name Petapan.

⁶ Aboriginal title: Category of ancestral right, related to exclusive occupation of a territory, including the right to exclusively use and occupy lands. In the ruling *Delgamuukw v. British Columbia* in 1997, the Supreme Court of Canada for the first time defined the content and scope of Aboriginal title by noting that this was protected by subsection 35(1) of the *Constitution Act, 1982*.

We explain it like this: it's as if the rights of ownership in Quebec over the territory and resources were divided in three: *usus*, *fructus* and *abusus*. We, the First Nations, have *usus*. We have the right to use the territory and resources for purposes of expressing our culture and distinctive lifestyle, in other words, to hunt and trap and to perpetuate our way of living. Let's accept that if we claimed rights over a territory to build a shopping centre, that wouldn't work. And these guidelines were established by decisions of the Supreme Court. So, I will summarize our view: we were here first, we received the first Europeans. However, we are in a Canadian Constitutional setting and that is the context in which we are negotiating.

JSSJ: Ghislain Picard, the chief of the Assembly of First Nations of Quebec and Labrador, recently made reference to what is called the "indigenous resurgence" in British Columbia, a position that essentially says one cannot claim back the rights that one already has. What do you think about this point of view and how does it function in Quebec?

HB: You're right, that's why we, we're talking about "land negotiation". The negotiation is taking place in the context of a federal policy called the "comprehensive land claim policy". But we feel that we don't have to make a claim because we never gave up our land rights and our right to be sovereign. That's our view. The proof is that we have never signed a treaty in this regard, as other nations across Canada have done, like for example, the Cree in Quebec, the Naskapis or the Inuit. We have in no way ever renounced our land rights and our right to potentially form an autonomous government. That is why we speak of "negotiations" and not "claims". We do not use the word "claim" because we deem that the land belongs to us and that we have never ceded it.

JSSJ: Is that why the Council has a "cultural affirmation" policy?

HB: Yes, a cultural affirmation policy that is already ten years old⁷. And most recently, we have wanted to register a constitutional process, that is, steps for the right to internal self-determination as referred to in international law. The "Constitution" file is important because it would enable us to establish our own guidelines. When I say "establish our guidelines", it's because we increasingly realize that if we don't organize ourselves, someone else will do it for us! That's how it has to be seen. The goal of the constitutional process that we had begun to undertake was therefore to establish our own guidelines. This is what we wanted. However, at this time, we feel that in our community, considering its diversity – ideological diversity, diversity of origins, diversity of opinions – that the bar was perhaps too high. But also because, in parallel, we will soon have a treaty. How could I explain that? I would have to try to nuance my remarks. People's way of thinking is the original aboriginal way, for example: the fact that at the time, borders did not exist; the fact that at the time, there was a real sharing and strong cooperation; the fact that at the time, you didn't have to ask anyone's permission to do whatever. Consequently, you can't just tell people today that they have to comply with new guidelines and regulations, it's very difficult for them. Because the people in the community – not everyone but particularly one of the groups represented – because I was just telling you that there is diversity among us – the way they see it is: "Me, I can hunt, fish, gather fruit everywhere and anywhere I want. I don't have to ask anyone's permission and I am not subject to any rules whatsoever."

JSSJ: And that, that's really the heart of the claims: Which territorial system – or territoriality, to use a term that is frequently used in the university – do you refer to for structuring

⁷ Cf. <http://www.mashteuiatsh.ca/bureau-politique-1/politique-daffirmation-culturelle-des-pekuakamiulnuatsh.html>, last access August 23, 2016.

negotiations and clarifying rights? Many people assert that the indigenous way of occupying the territory is not represented by the mechanisms of negotiation, namely, occupation through social ties, political ties, etc. There is little room for that in the territorial claims policy. Could this be what produces this opposition in the community? Is it possible that people think it's not suited to their cultural occupation of the territory?

HB: Yes. But we are trying to get people to understand that the situation is completely different today. One or two hundred years ago – because colonization is recent – we were nearly alone on the land. There were a few people but we were nearly alone. And we would encounter other groups, like the Cree and Anishnaabe, because the territory where my First Nation is located, Lac Saint-Jean, Pekuagami, is an international crossroads. Because at the time, the “roads” were the rivers. And people encountered one another here, then starting from here, they had access to the north, the south, the east and the west. But today the situation is quite different: there is forest harvesting, hydro-electric dams are being built, there is mining exploration and operations, and vacation use (cabines). And for us, these activities are an extremely important issue. I will give you an example I often give: Quebeckers, not all Quebeckers but some of them who have little knowledge about First Nations, will say, “Ah, they’re the ones taking all the fish out of the lakes, killing the elk, taking all the beavers”. But in reality, we have 143 traplines and 200 Mashteuiatsh Innu camps on the territory. That is nothing compared to the 11,000 cottages belonging to non-indigenous individuals. We are not the ones causing stress! We are not the ones stressing wildlife and natural resources, it’s the non-indigenous.

JSSJ: Yes, many ideas and stereotypes emerge around the issue of sharing the territory between Indigenous and non-Indigenous peoples. It would also seem that in more remote regions, where there is a smaller percentage of newcomers – that is, non-Indigenous peoples – and where the question of intercultural relations with the settler society is less present, negotiations have been settled more easily. Is this your impression as well?

HB: Yes, indeed. We’ve been negotiating for 37 years. If we compare our negotiation with that of the Cree and the Naskapis in Quebec⁸ – I am less familiar with the negotiations Canada-wide – the Cree, at the time, negotiated with a gun to their heads. That’s the image we give. They won in the first instance and then on appeal but the decision was then overturned and they had one year to come to another agreement. And the Cree, as you have mentioned, occupy territory where they are relatively alone. And moreover, the entire Cree nation was involved. Currently, we are not negotiating at gunpoint because we have not chosen to go before the courts and there is no ruling. Some of our people are saying, “Don’t waste any more of your time negotiating. Go to court”. But we give them the example of the Cree: going to court is expensive. The Cree went, and they won their case but the decision was overturned and they had one year to negotiate an agreement. The bottom line is that going to court would come down to negotiations just the same. The problem is that there is

⁸ Reference is made here to the *James Bay and Northern Quebec Agreement* (JBNQA), the first modern treaty signed between Canada and Indigenous peoples. It originated in the 1971 announcement by the Quebec provincial government that hydroelectric development activities would begin in Northern Quebec. The Cree and Inuit of Quebec thus turned to the courts in 1972 to demand the immediate cessation of the construction work. These proceedings finally enabled the Cree and Inuit to begin negotiations, resulting in the signing of the JBNQA on November 11, 1975 by the Cree and Inuit, the governments of Canada and Quebec, the James Bay Development Corporation, the James Bay Energy Corporation and Hydro-Québec. In 1978, the Naskapis First Nation joined the agreement, which had been amended as part of the *Northeastern Quebec Agreement* (NEQA).

not enough political pressure to settle the negotiation. The Canadian and Quebec governments have no sense of urgency. And I think it's due to a lack of knowledge because if Canada and Quebec were better acquainted with Indigenous peoples overall, I am convinced that they would buy the idea that First Nations can move toward establishing their own government, taking charge of their own destiny, the recognition of their territorial rights, etc. I think that by establishing our own guidelines, everyone would win. The problem is that the Canadian and Quebec governments always negotiate with a certain lack of caring, lack of awareness as well as resistance, as if none of this mattered. I am going to give you an example of what I have experienced: when I came to the community, my job was to be seated at the negotiations table with the governments. I sat at the negotiations table from 1995 to 2005, until the signing of the AIPGN, the Agreement-in-Principle of General Nature. At the time, the federal government occasionally filed a proposal. A month later, it was against its own proposal. And we would say to them, "But it's your proposal!" It was that absurd.

JSSJ: There is still a great deal of bashing by the non-indigenous population. But ultimately, it's also a form of racism. The idea that Indigenous peoples were sovereign – politically, economically – as well as organized culturally on the land, that they had their own organizational systems, doesn't occur to them.

HB: Yes, everyone would win from recognizing us – a portion of the Quebec and Canadian population thinks that we, the First Nations, live off of them. And that bothers them. But if they're so bothered that we're living off them, why don't they recognize our autonomy? "Give us a chance and be open to what we can do with the experience, such as managing portions of the land, for example. At least be open enough to agree". Of course, we may not get there but at least we'll have tried. And let's try together. "Consider your needs, consider ours, and let's try to find common ground." And say, "OK, now we'll arrange it so that everyone is comfortable in this territory and any activity benefits everyone." But at times we get the impression that we should back up. One of the current issues this year, but which has existed for a long time, is sport fishing. Every spring, we keep two weeks for traditional fishing with nets. The last two years, when this activity coincided with sport fishing, we managed to negotiate an area that was exclusively for us for traditional fishing and everyone else could fish in the rest of the lake. This exclusive area didn't go far, we aren't asking for that much since you could see the nets from the shore. But this year, the government insisted again that non-indigenous fishing be opened as soon as the ice was gone. Sport fishing was moved up two weeks everywhere on the lake. With a treaty, we wouldn't have to continually renegotiate.

JSSJ: We realize that paternalism is very much still in existence: another authority decides, regardless of whether or not the Innu are consulted.

HB: Yes, but we also have a good relationship with the government. We have a meeting with the Quebec Ministry of Energy and Natural Resources next week. When we explain to them that the pressure is not coming from our side, they understand. They are sensitive to these matters. But in reality, there are also political issues. And this involves the elected officials. We Indigenous peoples are one percent of the province's population. Accordingly, if you want to be re-elected, it's not a good selling point to present yourself as being a defender of or respectful of indigenous rights. But the representatives at the ministry are very sensitive. They understand and try to help us. They try to make progress with us. Things get stuck at a different level.

JSSJ: That means that there is a lot of work to do in raising awareness to develop an intercultural vision of the territory among the youth so they'll understand that they share this territory with Indigenous peoples. Do you think that perhaps with a new generation, with a different curriculum in the schools, there may be a more understanding population, one that might conceive of its relationship with Inuit and First Nations differently?

HB: Yes, I have been in land claim negotiations for twenty years and prior to that, I worked in other communities and other sectors. I have also given many lectures in the last 25-30 years on indigenous issues and realities in Quebec. And at times I get the feeling that everything has to be started over again. I have not seen a lot of evolution. And, moreover, a lot of reasoning needs to be put forward to explain indigenous realities. I'll give you an example. In our land claim negotiations, 6km² are to be added to the community, which today covers 15.24km². At this time, this issue is stuck with the city of Roberval because the mayor is opposed to it. And when I give lectures, I'm asked, "And what do you think about that?" I reply that I don't understand. People from India or China come and buy farm land in Quebec and they're welcomed with open arms. But we, the First Nations, the first inhabitants of this country, are just asking to add 6km² to our land reserve and there are people against it.

JSSJ: Does this land belong to the city of Roberval?

HB: Yes, and they don't want to give it up. However, we're prepared to pay.

JSSJ: Once again the view is that Indigenous peoples should have disappeared, that they do not have rights over the land and that it's just a problem that has to be settled. Not equal to equal... but rather to make it go away.

HB: Yes, that's it.

JSSJ: Could it be said that there is no connection between municipal development and land planning on the one hand and indigenous communities on the other?

HB: Concerning the file on enlarging the reserve, Roberval granted rights to a company and that is why we can't have this land. However, enlargement appears in the Agreement-in-Principle of General Nature (AIPGN) signed in 2002. When there are government plans, whether micro or macro, we tell them, "Look, we have the AIPGN and a land regime. This is what is provided for in this land regime." It's true that the agreement in principle has no legal weight. But we are nonetheless basing ourselves on the principle that the governments negotiated it in good faith. And we have a chapter on transitional measures, chapter 19, which clearly states in its first paragraphs that Quebec and Canada will do everything possible not to infringe upon the contents of this agreement.

JSSJ: Could you remind us of the objective of the land regime provided for by the AIPGN?

HB: Our ancestral land covers 92,000 km². In this territory, we are supposed to obtain full ownership of roughly 200km² which includes the current reserve, the land for enlarging the reserve, Lake Ashuapmushuan, and two small portions of Lake Onistagan to the north. Only these lands would be fully owned. This is the land over which the indigenous government that would be put in place would have full authority. The principle is that we would be able to continue our traditional activities over the rest of the territory, Nitassinan, and have priority over sportsmen for wildlife harvesting. But as I was just saying, the objective in the negotiations is the reconciliation of the rights and interests of both parties. In the treaty, this translates as follows: we can practice our traditional activities and have priority for harvesting. But these activities must be reconciled with others. This means that there will be agreements establishing specifically what will happen in the outfitters' operations and what will happen in the ZECs⁹. For example, we're going to have to negotiate payment of access fees with the ZECs. Because there are outfitter operations on provincial land¹⁰, you have ZECs, you have environmental reserves, you have national parks, you have provincial parks. For each of these designations, there is an agreement establishing what goes on there. In the case of an outfitter's operation, when the outfitter is receiving his clients, we cannot go about our activities on his land. We can do them elsewhere, however. For example, on our ancestral land, we have a great deal of farmland and that is where migratory birds are hunted. Therefore, there will be agreements because this has become municipal land and in some cases, private property. So it will be a matter of getting permission from the owners. If they give us permission to hunt, we'll be able to; if they don't, no.

JSSJ: By virtue of the Indian Act, reserve land belongs to the federal government. If the treaty is implemented, what will be the status of these lands?

HB: The status will be as referred to under the Quebec Civil Code. We will be owners of the surface and the subsurface. The status will be like a collective title.

JSSJ: And what will the status be of the lands that you won't have full ownership of but that fall under the agreement? Will there be three land categories as in the case of the James Bay and Northern Quebec Agreement¹¹?

HB: This will be different for us. They will consult us in accordance with the principle of "genuine participation" in the decision-making processes related to management of the land, the environment and natural resources on Nitassinan. But what we had been hoping for was

⁹ In Quebec, the ZECs (controlled exploitation zones) are public lands for harvesting, hunting, fishing and outdoor activities administered by not-for-profit organizations and providing services related to recreational forest activities through payment of an access fee. The ZECs are responsible for development, harvesting and conservation of fauna and flora while also facilitating users' access to the lands.

¹⁰ In Canada, an outfitter is a private company – and by extension the land occupied by it – which rents out facilities and services (lodging, transportation, equipment) for sport hunting, fishing and trapping.

¹¹ The JBNQA created three land categories. Lands in category I, where indigenous villages are located, are administered exclusively by the indigenous communities that are signatories to the agreement. Category II covers lands generally located on the perimeter of the villages. They fall under provincial jurisdiction but Indigenous peoples participate in the management of hunting, fishing and trapping activities and the development of outfitters' operations. Moreover, they possess exclusive hunting, fishing and trapping rights in these areas. Category III includes Quebec public lands on which Indigenous and non-Indigenous peoples may hunt and fish with the former having the exclusive right to harvest certain furbearing animals and aquatic species, participate in the administration and development of the territory and until 2015, right of first refusal when there is an application for or transfer of an outfitter's operations (cf. <https://www.aadnc-aandc.gc.ca/fra/1100100030830/1100100030835>, last accessed June 28, 2016).

"co-management". But Quebec said, "No, there cannot be two decision-makers." Genuine participation means that over the rest of the land, the public land, meaning the lands that we will not have full ownership of, we will be entitled to practice *Innu aitun*¹². *Innu aitun* will, however, have to adjust to the other designations. We will have agreements with these other designations. And regarding the matter of knowing how ancestral and indigenous title will be expressed, the government will have to consult us on all development that takes place on this land. Consultation will be an obligation. And if the government infringes on our right and our title, it will have to "harmonize" and "accommodate". "Harmonize" means to put measures in place. For example, if a camp has to be destroyed, it can be moved. And "accommodate" means that if it is impossible to relocate the camp, there will be financial compensation. So, the government has to consult us, harmonize and accommodate.

JSSJ: How are harmonization and accommodation different from co-management?

HB: Co-management involves the right to veto. For example, in the case of a mining operation project, the project will not go ahead if you oppose it. With harmonization and accommodation, the government ultimately has the last word.

JSSJ: So, despite everything, will the power relationships remain unequal?

HB: Yes, but the treaty must be seen as a contract that the parties undertake to respect. The last case that went before the courts, the Tshilquot'in case (Tsilhqot'in Nation v. British Columbia), shows that development could also be impeded by proving Aboriginal title as stronger. But that means that you have to prove that you have occupied this land for 6,000 years, that you still occupy it, and that you have exclusive occupation, that there are no other individuals than you on this land, and that you need this land, for example, to trap beaver for food. And that if this land is destroyed, there will be no other where there are any beaver, and that that will have an impact on your food base. But even in this case, the government could infringe on our right and give us financial compensation. Moreover, I always give the following example. The government of Quebec has a caribou protection policy. And in this policy, cultural loss, which for us means a drop in the caribou populations, is not considered. This is an observation we make every time that we have to analyze government policies and submit our comments. In the case of forest harvesting, if they establish caribou protection zones, they will assess what this represents in terms of economic loss and will compensate us. But they will not compensate us for the cultural loss that this represents.

JSSJ: And what is the importance of the heritage sites compared to the rest of the land?

HB: As there are many third parties on our land, we have identified various heritage sites based on major rivers in order to protect our culture. But we won't have exclusive rights over these lands, with the exception of a few.

JSSJ: You were just saying that it is important for you to have researchers who are from the community. Can you explain that for us?

HB: We are obliged to document occupation of the land for 6,000 years up to the present. And we're going to have to continue documenting it, because each time you want to

¹² The AIPGN defines *Innu Aitun* as: "... all activities, in their traditional or modern manifestation, relating to the national culture, fundamental values and traditional lifestyle of the Innus associated with the occupation and use of Nitassinan and to the special bond they have with the land. These include in particular all practices, customs and traditions, including hunting, fishing, trapping and gathering activities for subsistence, ritual or social purposes" (Chapter 1, sec. 1.2).

implement harmonization measures, you have no choice as the government of Quebec wants to know: "Where is your camp? Where is your trap line? And what are you taking? What are you doing there? How long have you been doing it?" As a result, we have no choice. We are therefore going to have to constantly document all our practices. Prior to the Delgamuukw decision, land claim policies did not recognize historic occupation. They only recognized contemporary occupation. That's why after the Delgamuukw decision in 1997, we added the southwestern part of the territory that goes up to Quebec City [located in the Laurentian wildlife reserve] to the negotiations. At this time, this portion continues to be subject to disputes at the negotiations table. The government mandated studies, as it seriously doubted that we were there and how long we had been there. This is why we were obliged to do our own studies to document our occupation of the land. On the basis of its study, the government said, "Yes, indeed, there were Montagnais there in 1603 and 1608. But then colonies were established, disease, war with the Iroquois... And the Montagnais had to leave this land for various reasons and withdraw toward the interior." And indeed, during a period of time, from 1635 to 1701 roughly, the Montagnais populations decreased in this part of the land. That's why the governments of Quebec and Canada said, "Given that there were just a few of you in the southwestern part, you cannot claim Aboriginal title." For them, the fact that for several hundred years we did not frequent this land for those reasons means that they could not recognize the Aboriginal title of the Innu in that territory.

JSSJ: Basically, this comes down to denying the fact that colonization itself was the cause of this decrease. It wasn't the Montagnais who decided one day to the next, "Let's not go there anymore."

HB: Yes.

JSSJ: What about the *Indian Act*? Will the Mashteuiatsh and the other signatory communities still be subject to it after signature of the treaty? Will there still be Indian status¹³?

HB: It's far from obvious. A legal expert could explain it better than I. Indian status remains. The *Indian Act* will continue to apply. However, the treaty will make some sections of the law null and void. For example, under the *Indian Act*, it's the federal Minister of Indigenous and Northern Affairs who has the ultimate say in decisions. The Band Council only has delegated authority. But with the treaty, the band council will no longer have delegated authority, it will be a real government, even if it's a "municipal" type government. This is an important issue for our community because some individuals have said that if this is where the treaty ends up, it will be ridiculous. But in reality, we cannot do otherwise. We admit that if the entire Innu nation were engaged in the negotiations, we could form a national government. But we are just three First Nations. It is therefore unthinkable to form a government at the local scale that would have powers equivalent to those of a Quebec superior court in terms of justice, or again, and here I'm going to the extreme, equivalent to a supreme court. It doesn't make sense. So we're going to be a government that is part way between a municipal government

¹³ In Canada, eligibility for Indian status (registered) is defined in the *Indian Act* in accordance with specific rules. This status allows access to programs and services offered by federal organizations and provincial governments. In the context of signing a modern treaty, the *Indian Act* may be partially replaced by the provisions of the new agreement and the laws arising from it, resulting in a transfer of jurisdiction and authority of the federal government to the indigenous signatory bodies in discrete areas. For all that, this does not necessarily lead to the suppression of registered Indian status, as shown in the case of the Cree and the Naskapi in the context of the implementation of the JBNQA and the NEQA.

and a national government, in quotation marks. But what's going to change is that we're going to be able to approve our own laws with regard to elements related to our Indianness. And these laws will apply and have precedence over provincial and federal laws.

JSSJ: The treaty will be submitted to the population through a referendum. What will happen if the referendum doesn't pass, like in the case of the Inuit¹⁴?

HB: It won't be lost but it will probably be done from a perspective of the right to internal self-determination, which will translate into bilateral agreements.

JSSJ: What is the difference between internal self-determination and a treaty?

HB: With internal self-determination, it is likely that we will have more restrictive powers than those recognized under a treaty. With internal self-determination, we would not have authority concerning our Indianness except on the reserve. And if we were to decide to put our guidelines outside this land, for example with regard to practicing traditional activities, the Quebec government could prosecute us and take us to court. But if it emerges that the rules that we establish for ourselves are not harmful, or comply with some component or other of resource protection, and that we are justified in so doing, then they will say, "It's alright for the Innu." But as our legal advisors are telling us, there is the possibility of being confronted from a legal perspective at any time, unlike a treaty which is similar to a contract that you sign with someone and which establishes how things are going to go; a global contract that regulates every aspect of all the issues: land matters, autonomy, economic development, funding. With a treaty, you are not obliged to re-approve it every time.

JSSJ: Will internal self-determination be implemented in accordance with the United Nations Declaration on the Rights of Indigenous Peoples?

HB: Yes, there is also a theory in Canada in this regard. This is Brian Slattery's theory of the inherent right to self-government. This constitutional law scholar has established the following theory: given that we have not abdicated our sovereignty and that we existed prior to the creation of the Canadian constitution, our right to autonomy can be exercised outside Canada's constitution.

JSSJ: And if the referendum were unsuccessful, would the process still have the benefits in terms of land use and development? For example, will you be able to salvage elements of the AIPGN land regime for the purpose of intercultural planning, and the establishment of better relations with non-indigenous communities, notably the city of Roberval?

HB: Yes, but if we do not obtain independent sources of revenue, other than those that we already have now in order to operate, even with all the willingness in the world, we will not have the means to implement this type of plan. I don't know if you understand what that involves on a daily basis. I'll give you an example regarding harmonization. Just off the top of my head, these figures may not be exact, but there are about fifty municipalities (on the traditional lands [Nitassinan] of Mashteuiatsh). And these municipalities have urban development plans. Now, to harmonize with these plans, you have to sit down with these fifty municipalities. The problem is that there are only 2,000 of us residing in the community, and 4,000 living outside. So yes, the AIPGN could be a basis for a common plan but if we do not have additional sources of revenue, regardless of how much we would want to, it would be impossible.

¹⁴ On April 27, 2011, the Inuit of Nunavik rejected by a vote of 66% the final agreement for regional government proposed by their political representatives and the Quebec and Canadian governments.

JSSJ: And in the context of a treaty, what would be the additional resources and where would they come from?

HB: We will continue to receive government funding for programs and services, like everyone else. We will also have funding for implementation of the treaty, financial compensation for past damages that were never settled, including damage caused by forest harvesting and hydroelectric dams, at a time when we had not been consulted, when we couldn't say a thing, and this was done without ever receiving any compensation. We will also be entitled to share 3% of the royalties on resource development over the entire territory. And finally, we will be able to implement a taxation system.

JSSJ: So a taxation system will be implemented in the communities?

HB: Yes, and moreover, there will be nearly mandatory impact and benefit agreements¹⁵. So, as soon as someone plans a mining operation, there will automatically be an agreement that provides for employment measures, access to contracts, financial compensation, etc.

JSSJ: And at the same time, given that you have been negotiating for 37 years, will you also have to repay the debt accumulated during all these years of negotiation?¹⁶

HB: Yes, to date we owe \$42 million.

To conclude, it is essential to sign a treaty. Without a treaty, in the current context of development, land and resources development, the rights of the Pekuakamiulnuatsh First Nation are in danger of being reduced to next to nothing. It is therefore essential that we give ourselves the tools and means to provide a better future for our youth and future generations. We're certainly not going to get there by staying with the *Indian Act*.

To quote this paper: Hélène Boivin, Irène Hirt, Caroline Desbiens, « Les droits au territoire de la Première Nation des Pekuakamiulnuatsh. Entrevue avec Hélène Boivin », ["The Right to the Pekuakamiulnuatsh First Nation's Territory. Interview with Hélène Boivin", translation: Sharon MOREN], *justice spatiale | spatial justice*, n° 11 mars 2017 | march 2017, <http://www.jssj.org>

¹⁵ An "impacts and benefits agreement" (IBA) is a contractual agreement between a resource development company (mining, forestry, hydroelectric, etc.) and an indigenous community affected by the development projects this company carries out.

¹⁶ "Comprehensive Land Claims" are subject to government loans enabling the indigenous party to take on the expenses related to negotiations; the loan becomes a debt to be repaid once the claim has been settled (provincial and federal governments are thus both judge and party in negotiation processes).