

INDIAN CLAIMS COMMISSION

**Report on the Inquiry
into the Claim of the**

MICMACS OF GESGAPEGIAG FIRST NATION

To Horse Island

DECEMBER 1994

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THE COMMISSION MANDATE

THE MANDATE OF THE INDIAN CLAIMS COMMISSION

The Indian Claims Commission (ICC) was created as a joint initiative after years of discussion between First Nations and the Government of Canada about how the widely criticized process for dealing with Indian land claims in Canada might be improved. It was established by an Order in Council dated July 15, 1991, appointing Harry S. LaForme, former commissioner of the Indian Commission of Ontario, as Chief Commissioner, and became fully operative with the appointment of six Commissioners in July 1992.

Its mandate to conduct inquiries under the *Inquiries Act* is set out in a commission issued under the Great Seal of Canada, which states:

... that our Commissioners on the basis of Canada's Specific Claims Policy ... by considering only those matters at issue when the dispute was initially submitted to the Commission, inquire into and report upon:

- (a) whether a claimant has a valid claim for negotiation under the Policy where that claim has already been rejected by the Minister; and
- (b) which compensation criteria apply in negotiation of a settlement, where a claimant disagrees with the Minister's determination of the applicable criteria.

Thus, at the request of a First Nation, the ICC can conduct an inquiry into a rejected specific claim. (The government differentiates between "comprehensive" and "specific" claims. The former are claims where no treaty exists between Indians and the federal government. The latter are claims for breach of treaty obligations, or where a lawful obligation of Canada's has been otherwise unfulfilled, such as breach of an agreement or the *Indian Act*, and includes claims of fraud. This artificial distinction, which was apparently created for institutional convenience, has led to difficulties and has been modified to some extent.)

Although the Commission has no power to accept or force acceptance of a claim rejected by the government, it has the power to review the claim and the reasons for its rejection thoroughly with the claimant and the government. The *Inquiries Act* gives the Commission wide powers to conduct such an inquiry,

to gather information, and even to subpoena evidence if necessary. If, at the end of an inquiry, the Commission sees fit to do so, it may recommend to the Minister of Indian Affairs and Northern Development that a claim be accepted.

The Commission's mandate is actually threefold. In addition to conducting inquiries into rejected claims and into disputes over the application of compensation criteria, the Commission is authorized to provide mediation services at the request of the parties to a specific claim to assist them in reaching an agreement. The proceeding reported on here began as an inquiry, but it was the Commission's mediation function that led to its disposition.

PLANNING CONFERENCES

The Commissioners' terms of reference give them broad authority to choose how they proceed. They may "adopt such methods ... as they may consider expedient for the conduct of the inquiry." In choosing procedures, they have adopted a policy of flexibility and informality, and have sought to have the parties involved as much as is practicable in planning the inquiries.

To this end, the planning conference was devised. It is a meeting convened by Commission staff as soon as possible after an inquiry begins. Representatives of the parties, who usually include legal counsel, meet informally with representatives of the Commission to review and discuss the claim, identify the issues it raises, and plan the Inquiry on a cooperative basis.

This procedure is typical of mediation, and planning conferences are thus a form of mediation. They have been welcomed by both claimants and the government. The Commission's experience to date is that they can be very fruitful. Misunderstandings can be cleared up. Failures of communication - frequently the cause of misunderstandings - can be rectified. The parties are given an opportunity, frequently for the first time, to discuss the claim face to face. The parties themselves are able to review their position in the light of new or previously unrevealed facts and the constantly developing law.

The planning conference is sometimes an ongoing process. In some Inquiries there have been as many as four or five meetings. Even if they do not lead to a resolution of the claim and a further, sometimes lengthy, inquiry process is necessary, the conferences clarify issues to make that process more convenient, expeditious, and effective. Planning conferences have led to the

acceptance of a previously rejected claim ; to the revelation that a claim thought to have been rejected had, in fact, been accepted; to the reopening of negotiations on a claim on which the government had closed its file; and to the reconsideration of a previously rejected claim .

THE CLAIM

A BRIEF HISTORY OF THE CLAIM

The Micmacs of Gesgapegiag* have claimed Horse Island, located close by their reserve, since non-Indians began settling the area. The modern history of the claim begins in 1986, and the Indian Claims Commission first became involved early in 1993. Because the government agreed to consider the claim on its merits as a result of the first planning conference, the Commission made no findings in this Inquiry. This summary is based on the statement of historical research filed by the claimant in the specific claims process (see Appendix A).

Horse Island lies at the mouth of the Cascapedia River, which flows south through Quebec's Gaspé Peninsula into the Baie des Chaleurs. For over two centuries, the Micmacs of Gesgapegiag have claimed it, without success, as their own. The 500-acre island is about three miles long and one-and-a-half miles wide and is located approximately one mile from the mouth of the river. Now covered with scrub, it was once heavily forested. Poplar, cedar, pine, and particularly maple, described as late as 1896 as a "magnificent maple sugar bush," grew there in apparent abundance.

The Band's claim to ownership is based on traditional usage: in the words of one of its many petitions to governmental officials and others, it is "our ancestral heritage." Ancestors of the present claimants lived around the Baie des Chaleurs before the arrival of Europeans. In the late 18th century, Indian claims were asserted to hunting and fishing rights on the Cascapedia River and to exclusive occupation of its banks. By at least 1784, Micmac families had begun to establish permanent settlements on the Cascapedia River. Over the years their numbers increased. (A census taken in 1825 showed that 112 Micmacs were living in Gesgapegiag Indian Reserve.)

From an early date, these people began producing maple sugar on Horse Island, ultimately establishing as many as 14 camps for this purpose. The "juice of the maple" became an important source of income. In a petition sent on behalf of the Micmacs residing in Restigouche and Cascapedia to Governor General Lord Aylmer in 1834 to protest the cutting of "acres of maple trees"

* Formerly known as the Maria Indian Band

by whites on Horse and other islands, this industry and its importance were vividly described:

The annual harvest of the sugar maple on the said islands produces thousands of pounds of sugar which enables the said tribe to procure, each spring, articles essential for its plantations and other necessities; with the sale of this sugar to the whites who, in Restigouche, do not exploit this industry.

The petition went on to say that if the sugar industry was wiped out it "would force most of the families of the tribe to live [a] miserable existence a good part of the year."

This petition reflected an earlier letter, sent in 1833 by the missionary working at Maria and Gesgapegiag Mission, to the Archbishop of Quebec concerning the depredations to the industry caused by "strangers" cutting down trees. The island was also ideally situated for intercepting salmon and sea trout going up the river to spawn.

Apparently attracted by these resources, by the turn of the century an ever-increasing number of non-Indian settlers began to request title to land along the shores of the Baie des Chaleurs. Land title in the Gaspé was haphazard and confused, and in 1819 the government of Lower Canada created the Gaspé Land Commission with a mandate to regularize the system of land tenure and to ensure that settlers received clear title to the land. Claims in the Baie des Chaleurs area began to be filed in 1820. In that year, one Azariah Pritchard requested title to some 300 acres of the northern part of Horse Island, about half the island. Five years later, the Land Commission granted him title. Whether the Micmacs settled along the Cascapedia were aware of the Land Commission's activities is unknown. Given their numerous petitions and entreaties for confirmation of their entitlement by way of letters patent or a title deed, it is unlikely that they would have sat idly by and watched the loss of the lands they claimed. It is clear, however, that they gave no consent to grants to white settlers.

In 1830 the Micmacs of Gesgapegiag submitted the first of many petitions and entreaties to the Governor of Lower Canada and others asserting their right to ownership of Horse Island and requesting confirmation of it. Lord Aylmer's secretary responded to the first of these petitions on the Governor's behalf:

... I am desired to request that you will assure them that he would be sorry to deprive them of any advantage they have hitherto derived from the fisheries and juice of the maple on the islands alluded to in their Petition.

You will also please inform them that his Lordship is not aware of the existence of any ground for their apprehension of their being deprived of these advantages, and that he will always be disposed to receive favourably any representation connected with their welfare ...

In 1833 a second petition was submitted requesting a title deed to the islands in the Restigouche and Cascapedia Rivers. In the same year, Father Louis-Stanislas Malo, the missionary at the Maria mission, wrote a letter (to which we have already referred) to the Archbishop of Quebec requesting his intervention on the Micmacs' behalf:

If the limits of this letter permit, I again seek your solicitude to call upon his Excellency concerning certain islands on the Restigouche and Cascapedia rivers the exclusive use of which the present governor has granted to the savages in a letter which I have in hand; and which certain strangers have deteriorated by establishing themselves there and cutting maple trees; the sugar which the savages tap is the principal, and I dare say, the only resource they have each spring on which to survive and that can be used to procure something to plant ...

In August 1834, a third petition was sent to Lord Aylmer on behalf of the Micmacs residing in Restigouche and Cascapedia. It requests a title deed in order to prevent any further destruction of the sugar maple on the island. It refers to the letter from Lord Aylmer's secretary, and again stresses the importance of the maple sugar industry for the Micmacs:

In the final analysis, the tribe does not wish to inconvenience your Excellency by requesting new privileges or favors, but request only a title deed which would put into effect Your wishes and orders expressed in the above mentioned letter ...

In spite of these requests, affirmations, and protests, William McDonald, a crown lands agent, received orders in 1837 to sell the southern part of Horse Island at public auction. Father Malo, apparently unaware that the northern half had been sold, wrote another letter on behalf of the Micmacs, this time to the

Commissioner of Crown Lands, John Davidson, urgently requesting him to intervene in the sale of the island. The call went unheeded and the land (comprising the southern half) was sold.

Again the Micmacs of Gesgapegiag petitioned. In 1846 they sent a vehement grievance over the sale of their ancestral lands to strangers to the Commissioner of Crown Lands, Denis-Benjamin Papineau, claiming they had never consented to the sale of the island. It affirms:

That we consider our rights and privileges to the said Island as derived from our forefathers, in time immemorial, should be preferable to those who have come in latterly, intruding upon our ancient inheritance; destroying our sugaries; and depriving us of maple juice which bounteous nature had bestowed upon us for our maintenance.

That your Petitioners who have been brought up in the Wilderness and cherished in the bosom of innocence, knew not how to take any precaution against those intruders at the time of the distributing of those lands, but depended principally upon our faithful guardian the Government, to defend our sacred rights, and protect us as British subjects, in the enjoyment of those privileges which nature had bestowed on us.

Papineau met with the Micmacs and reportedly expressed his anger that the island had been sold, but said that he could do nothing about it. The petition was, however, forwarded to the Governor General, whose response was as follows:

[he] regrets that the island in question should have been sold, but he has not the power to cause a restitution, as it appears, upon enquiry that the sale has been regular and legal.

In the 50 years following this dismissal, non-Indian settlers continued to acquire grants for lots on Horse Island. Throughout that time, the Micmacs of Gesgapegiag maintained that they had been in possession and occupancy of Horse Island since time immemorial, and by virtue of the *Royal Proclamation of 1763*.

In 1896 the Reverend J. Gagné, missionary and agent working in Maria, sent a letter to Indian Affairs. It told the story of a settler who had been cutting down timber on Horse Island 40 years before and had been ordered to stop by the Chief at that time. According to the letter, a tattered patent was produced as proof of Micmac ownership of the land, and the man ceased his lumbering.

This patent had been given to the constituency's Member of Parliament to be replaced. However, the new patent was never received and the old patent never returned.

No meaningful response was ever made to the Micmacs repeated claims to exclusive use and occupation of Horse Island. The intrusion of settlers continued unabated, and the sugar industry was completely destroyed.

THE CLAIM IN THE SPECIFIC CLAIMS PROCESS

Although the claim was not actively pursued after the Governor's expression of regret, it was never abandoned. In April 1986 the Micmacs of Gesgapegiag submitted a claim to Specific Claims East/Central Branch of the Office of Native Claims, Department of Indian Affairs and Northern Development (DIAND), regarding Horse Island. The claim again asserted that the claimant First Nation continued to hold a legal interest in the island based on occupation and use of the land since time immemorial. Breach of the Crown's fiduciary obligation to the First Nation was alleged on the grounds of the land grants and the eventual alienation of the entire island.

The Micmacs of Gasgapegiag therefore claimed for damages incurred as a result of the breach, for the loss of use and enjoyment of the island, and the loss of the substantial economic benefits derived from the maple sugar and fishing industries.

A year and a half after the claim was submitted, it was rejected as not falling within the specific claims policy which barred pre-Confederation claims. *Outstanding Business, A Native Claims Policy*, the pamphlet issued by DIAND in 1982 as Canada's official guide to specific claims policy, specified:

No claim shall be entertained based on events prior to 1867 unless the federal government specifically assumed responsibility therefor.

On its face, the claim arose before Confederation in 1867. In a letter dated October 7, 1988, to the then Chief of the Micmacs of Gesgapegiag, Douglas Martin, a representative of Specific Claims East/Central referred to the pre-Confederation bar and placed on the Band the onus of demonstrating that the federal government had assumed responsibility. The letter went on to say:

In our view, this responsibility has not been clearly established. Given the basic weakness of the claim I would suggest that your band council carefully review the report and documentation with your advisors, and decide whether you agree with me that the claim does not fit within the limits of the specific claims policy if you agree that the claim is not one which can be dealt with under our policy, I recommend that we suspend the claim from any further consideration.

No explanation was given as to why the onus fell on the Band. Given that the government was probably in a better position than the Band to establish whether there had been an assumption of responsibility for the claim, laying it on the Band seems questionable. The result was, however, that the Micmacs of Gesgapegiag had reached a dead end. No further attempt to pursue the claim through the Specific Claims Process is recorded.

However, in April 1991, five years after the claim was originally submitted, Canada changed its specific claims policy by removing the pre-Confederation exclusion. In its pamphlet *Federal Policy for the Settlement of Native Claims* (published by DIAND in 1993), the government referred to the change, stating:

The 1982 guideline restricting acceptance for negotiation of pre-Confederation claims was revoked ... as with all other specific claims pre-Confederation claims must still demonstrate a lawful obligation of the government.

This change in policy led to some confusion. It appears that on January 13, 1993, Specific Claims East/Central advised Chief Martin that the federal government would be willing to consider the Horse Island claim once again. However, this was understood to be confined to the so-called fast-track procedure for claims having a value of less than \$500,000. On January 19, 1993, the Band turned to the Indian Claims Commission to request a review of the rejection of its claim.

On June 30, 1993, Harry S. LaForme, then Chief Commissioner of the Indian Claims Commission, informed the Gesgapegiag First Nation Chief and council that the ICC had agreed to conduct an Inquiry into the Horse Island claim. However, because of impending elections at Gesgapegiag, official

agreement for the ICC to proceed was put on hold until a new Chief was elected.

The public announcement of the Commission's involvement apparently led to further discussions between Specific Claims East/Central's representatives and the Band. In July the former informed the Band that, if it wished the ICC to proceed with an Inquiry, the claim could not proceed in the Specific Claims Process. The letter informing them of this read: "When a claim is under review by the ICC, the Specific Claims East/Central Directorate will not pursue any aspect of the claim".

Faced with these alternatives, the Chief and council informed the Commission in early August that they wished the Inquiry to proceed. With the ICC's formal involvement in the claim reconfirmed, the next step was for the Commission to set up a planning conference.

THE COMMISSION'S INQUIRY INTO THE CLAIM

THE PLANNING CONFERENCE OF 23 SEPTEMBER 1993

A planning conference was held on September 23, 1993, at the Commission's Toronto office. Chief Bernard Jerome, Band administrator Clement Bernard, and the Band's legal adviser met with legal counsel representing Canada; Commission representatives conducted the meeting.

The major items for discussion were the basis for rejection of the claim and significance of the removal of the pre-Confederation bar. If the bar was the basis for the claim's rejection, did not the removal of the bar remove the government's objection? Was there still some impediment to the claims being considered on its merits? If there was none, the claim could no longer be treated as a rejected claim and the Commission would have no mandate to proceed with it.

The discussion led to agreement that the claim could no longer be regarded as rejected and could now be considered on its merits. In a letter sent shortly thereafter to the Chief, the Specific Claims Directorate confirmed that it would "resume our review of the Horse Island claim through the specific claims process". The claim would not, however, go to the back of the line. Counsel for the Department of Justice had indicated at the planning conference that his review of the merit's of the claim should take no more than four to six weeks after he had received all the relevant material.

THE RESULT

We observed earlier that the planning conference process provides an opportunity for clearing up misunderstandings and rectifying failures of communication between a claimant band and the government in the Specific Claims Process. This case is an example. One hundred and sixty-three years after the first petition to the Governor, and after eight fruitless petitions and entreaties between 1830 and 1896 and an apparently failed attempt by way of the Specific Claims Process, the claim of the Micmacs of Gesgapegiag was finally going to be considered on its merits.

RECOMMENDATION

The confusion over the lifting of the pre-Confederation bar might have been avoided had communications between the First Nation and DIAND been better. We understand that, after the bar was lifted, DIAND referred claims that had been rejected because of the bar back to the Department of Justice for reconsideration. Yet, rejected claimants were not notified of this change.

In order to avoid the confusion which occurred here, we recommend that the Department of Indian Affairs and Northern Development write to all those whose claims were rejected because of the pre-Confederation bar informing them that, if they wish their claim reconsidered, they should notify the department.

FOR THE INDIAN CLAIMS COMMISSION

Dan Bellegard James Prentice, QC
Commissioner Commissioner

December 1994

APPENDIX A

HORSE ISLAND CLAIM

HISTORICAL AND LEGAL ANALYSIS

Presented to the Maria Band Council by
Fred Isaac and Rita Dagenais
March 1986

INTRODUCTION*

The Horse Island claim relates to an island situated approximately a mile and a half from the mouth of the Grand Caspédia River in the county of Bonaventure. Its official name today is Horse Island, although the Micmacs of the region have historically referred to it as Long Island or Dale Island. The Island's acreage is approximately 500 acres.

Historical literature reveals that the Micmac Indians on the North Shore of the Baie des Chaleurs occupied and used the Island for maple sugar production. They had constructed fourteen sugar camps on the island; the annual harvest produced thousands of pounds of maple sugar that was sold commercially. This industry enabled the Indians to procure agricultural supplies and other necessities of life.

The dispute over the ownership of Horse Island began with its settlement by non-Indians in the late eighteenth century. In 1825, approximately 300 acres on the north portion of the Island was adjudicated to Azariah Pritchard by the Gaspé Land Commission. The southern portion remained Crown lands until 1837 when it was sold to non-Indians by the Commissioner of Crown Lands. For a period of over one hundred years, the Micmacs claimed exclusive use and enjoyment of Horse Island. They systematically petitioned various Crown representatives, protesting against the encroachment by the whites. Despite the assurances from the Governor General that the Indians would not be deprived

* This research paper was prepared for the Micmacs of Gesgapegiag, Maria Indian Reserve, by Fred Isaac and Rita Dagenais in March 1986. The historical section of the paper is reproduced here by permission of the Band; the legal analysis is not included.

of their rights on the island, the intrusion by local settlers continued unabated and eventually, the sugar industry was completely destroyed.

It is abundantly clear from the archival documentation that the Micmacs never consented to the granting of land on the Island nor to its eventual sale. On the contrary, they vehemently protested these transactions over a very long period of time. Although the Micmacs were able to generate some sympathy from government officials, no meaningful action was ever taken. Instead, the convergence of interest between the government and the prominent local settlers conspired to entrench a status quo which, still today, cries out for redress.

HISTORICAL ANALYSIS

Following the British conquest of New France in 1760, the British established a clear policy of recognizing and affirming the traditional land rights of the Indian people. The first document implementing this policy is the Articles of Capitulation which were drawn up in 1760 by Governor Vaudreuil at Montreal and, for the most part, acceded to by the British commander in North America, General Jeffrey Amherst. Article XL reads, in part:

The savages or Indian allies of his most Christian Majesty, shall be maintained in the Lands they inhabit; if they chose to remain there, they shall not be molested on any pretense whatsoever, for having carried arms, and served his most Christian Majesty they shall have, as well as the French, liberty of religion, and shall keep their missionaries.

This document clearly applied to the then-existing colony of Quebec and confirmed the Indians's right to possess their lands. There is some controversy, among historians and legal experts as to whether this article actually determined "territorial rights" of the Indians or simply assured them the right to remain unmolested upon their lands. It is clear, however, that this document assured the Indians they would not be disturbed in the occupation and use of their lands.

The second and most important document is the Royal Proclamation of 1763. This constitutional document established the government for the territories acquired from France following the Treaty of Paris. It also defined

the new British policy in respect to Indians and their lands. The Indian policy was new in the sense that it dealt with newly acquired territories and in that it contained more definite provisions than had previously characterized British policy on Indian affairs. Otherwise, the provisions of the Royal Proclamation relative to Indians are essentially a mere continuation of the policies which the British had established in the 1750s in the New England colonies.

The Royal Proclamation recognized the rights to Indians throughout British North America to unceded lands in their possession. The basic design of the Proclamation, was to create a large area of land "reserved" to the Indians as their hunting grounds and to prohibit all private purchases of Indian lands in this territory. This "Indian Territory" was established outside the borders of the colonies of Quebec, East and West Florida, and the territory of the Hudson's Bay Company.

Within the colonies, the basic causes of friction with the Indians were the frequent instances of fraudulent purchases of Indian lands by whites. In response to this, the Proclamation established a detailed procedure for the purchase of Indian lands lying within the colonies. The Royal Proclamation allowed for the purchase of Indian lands within the limits of a colonial government, but the sale could only be initiated by the governor, acting for the purchaser, and at a public meeting of the Indians called for that purpose. Paragraph 4(a) of Part IV states:

And, whereas great Frauds and Abuses have been committed in the purchasing Lands of the Indians to the great Prejudice of Our Interests, and to the great Dissatisfaction of the said Indians; in order therefore to prevent such Irregularities in the future, and to the End that the Indians may be convinced of Our Justice, and determined resolution to remove all reasonable Cause of Discontent,

We do ... strictly enjoin and require, that *no private Person do presume to take any Purchase from the said Indians of any Lands reserved to the said Indians*, within those Parts of Our Colonies where We have thought proper to allow Settlement; but that if, at any Time, *any of the said Indians should be inclined to dispose of the said Lands, the same shall be purchased only for Us, in Our Name, at some public Meeting or Assembly of the said Indians to be held for that Purpose by the Governor or Commander in Chief of Our Colonies respectively*, within which they shall lie... [Our emphasis]

This clause prohibited the direct purchase of Indian lands by private interests; the land had to be first ceded by the Indians to the Crown for the

purpose of sale. The informed consent of the Indian tribe had to be obtained before any lands were sold. Horse Island, lying within the boundaries of the colony of Quebec, was undoubtedly subject to the protection of this provision.

This policy of protecting Indian lands within the colony of Quebec is further reflected in the instructions sent to the governors of Quebec by the Lords of Trade (Executive Council of the British Parliament). The first set of Instructions sent to Governor Murray in 1763 specified:

61. And you are to inform yourself with the greatest Exactness of the Number, Nature and Disposition of the several Bodies or Tribes of Indians, of the manner of their lives, and the Rules and Constitutions, by which they are governed or regulated. *And You are upon no Account to molest or disturb them in the Possession of such Party of the said Province, as the at present occupy or possess;* but to use the best means You can for conciliating their Affections, and uniting them to Our Government, reporting to Us, by Our Commissioners for Trade and Plantations, whatever Information you can collect with respect to these People, and the whole of your Proceedings with them.

Whereas We have, by Our Proclamation dated the seventh day of October in the Third Year of Our Reign, *strictly forbid*, on the pain of Our Displeasure, *all Our Subject from making any Purchases or Settlements whatever, or taking Possession of any of the Lands reserved to the several Nations of Indians, with whom We are connected, and who live under our Protection, without Our especial Leave for that Purpose first obtained;* It is Our express Will and Pleasure, that you take the most effectual Care that Our Royal Directions herein be punctually complied with, and that the Trade with such of the Indians as depend upon your Government be carried on in the Manner and under the Regulations prescribed in Our said Proclamation. [Our emphasis]

The Instructions sent to Governor Carleton in 1775 reiterated the importance of following the procedures set out in the *Royal Proclamation* relating to the alienation of Indian lands:

41. That no private person, Society, Corporation or Colony be capable of acquiring any Property in Lands belonging to the Indians, either by purchase of or Grant, or Conveyance from the said Indians, excepting only where the lands lye within the limits of any Colony, the soil of which has been vested in proprietors, or Corporations by Grants from the Crown, in which Cases such Proprietaries or Corporations only shall be capable of acquiring such property by purchase or Grant from the Indians.

43. *That no purchases of Lands belonging to the Indians, whether in the Name and for the Use of the Crown, or in the Name and for the*

Use of the proprietaries of Colonies *be made but at some general Meeting, at which the principal Chiefs of each Tribe, claiming a property, in such Lands, are present ...*

The 1760 Articles of Capitulation, the Royal Proclamation of 1763, and the instructions to the Quebec governors in 1763 and 1775 clearly reaffirm the inherent land rights of the Indian people in Quebec. We will examine how these land rights apply to the particular case of Horse Island.

In pre-contact times, the Micmacs of Restigouche occupied a large territory on the south and north shores of Baie des Chaleurs in the provinces of Quebec and New Brunswick, from Gaspé Bay to River Miramichi. The principal summer encampments of the Restigouche band were on the south shore of the Restigouche River, in New Brunswick, and it remained so until the mid-eighteenth century. The Gaspé Peninsula was used by the band as hunting and fishing grounds.

In 1765, the extent of the territory claimed by the Restigouche Indians was described as follows by Chief Joseph Claude: "all the rivers which are on the north shore of this river belong to the said savages of Ristigouche as well as those on the south shore in Miramichy and on the north shore of Baie des Chaleurs from the Ristigouche to Cascapediaque which they have customarily inhabited."¹

By 1784, 4 or 5 Indian families were settled on the Cascapedia River, one family claiming the sole right of fishing in that river.² In 1811, more families left the Ristigouche area to establish themselves at Cascapedia.³ According to an 1825 census, 112 Micmacs were residing on the Cascapedia River at that time.⁴

In a petition dated June 27, 1780, three Micmac Chiefs from Restigouche (Ganon, Ainagnich and Condo) claimed exclusive hunting and fishing rights on the Restigouche and Cascapedia Rivers as well as exclusive enjoyment of

¹ Census of the Government of Montreal and Three Rivers, in *Report of the Archivist of the Province of Quebec, 1936-1937*, 116. Our translation.

² Lieut. Gov. Nicholas Cox to Gov. Haldimand, August 16, 1784, National Archives of Canada [hereinafter NA], MG 21, Add. Mss. 21,862, A 773, B 202.

³ Mgr J.-O. Plessis, Journal of the apostolic voyages ... in 1811 and 1812. *Revue d'histoire de la Gaspésie* VI, no. 1, 41.

⁴ Census Return, September 30, 1825, NA, Census C-718, pp. 2254-55.

the lands situated along these rivers. This petition, addressed to Lieutenant Governor Cox, states:

Whereas it was His Excellency pleasure the Governor in Quebec to grant us the lands and River of Restigouche as our property for us and our children forever ... Therefore we desire your Excellency would debar these inhabitant from hunting or fishing in the River Restigouche, Novele, Caskepeja and Pagemkihe. Not to build houses on either of these rivers without liberty granted by us...⁵

In May of 1786, Lt. Governor Hope instructed Deputy Surveyor General John Collins to proceed with the survey of the Baie des Chaleurs area. The survey of the great Cascapedia River was ordered in response to a request for 1000 acres of land on the river by Robin, Pipen, and Co. Hope's instructions clearly stipulate that granting of this quantity of land should not in any way interfere with the prior rights of the Acadians or Indians.⁶

In order to regularize land tenure in the Gaspé District, the government of Lower Canada instituted the Gaspé Land Commission in 1819. This board, comprised of local citizens appointed as commissioners, was mandated to receive and adjudicate all land claims in the area. The legislation authorizing the Commission was adopted in 1819 and the claims in the Baie des Chaleurs area were filed beginning in 1820. In the preamble of the statute it is stated that the law is passed "... with a view to secure the Inhabitants of the said District, in the possession and enjoyment of their lands which in the most instance have, from a wilderness been cleared and improved to an advanced state of Agriculture, and whereas it is expedient to secure such persons in the possession and enjoyment of their lands in the said Inferior District of Gaspé as have in good faith cleared and improved the same."

The purpose of the Commission was to regularize the haphazard system of land tenure in the Gaspé Peninsula and to ensure that the settlers received clear title to the land. Up until this time, land was acquired in a number of ways: location tickets and grants, lots accorded to participants in government-sponsored settlement efforts and, most contentiously, by simple squatting.

⁵ Petition from three Chiefs of Restigouche to Lieut. Governor Cox, June 27, 1780, NA, MG 21, Add. Mss. 21,877, A777, B217.

⁶ Instructions from Lt. Governor Hope to John Collins, Deputy Surveyor General, May 31, 1786, NA, RG 10, vol. 329, pp. 636-40. *Third Report of the Bureau of Archives for the Province of Ontario*, 1905, 373-74.

This latter process was a very common means of establishing claims to land during this period. All categories of land claimants were obliged to present their claims to the Gaspé Land Commission: the Micmacs were therefore forced to claim lands on their traditional territory alongside all the other settlers in the area.

On July 29, 1820, a retired military officer residing in New Richmond, Azariah Pritchard, formally laid claim to certain lands on Horse Island:

Claim by Azarish Pritchard senior and Azarish Pritchard junior of New Richmond, for the following lots of land that is to say ... also an Island commonly called Horse Island in the Great River Cascapedia at about half League front the mouth of the said river claimed by the Said Azariah Pritchard Senior. Opposition by Denis Kafurgy of the Township of Hamilton for five lots of land on Horse Island above mentioned consisting of fifty acres each lots commencing at the south extremity and running from thence Northward, the opposant having as he alleges cleared and made great improvement thereupon.⁷

There is no documented evidence to indicate that the Micmacs residing at Cascapedia filed a claim for Horse Island before the Commission, nor that they opposed the claim submitted by Pritchard. Only one opposition was presented to the commissioners by a Dennis Kafurgy who claimed five lots on the southern part of the Island. This claim was not retained by the Commission.⁸

The decision of the Gaspé Land Commission was rendered on March 21, 1825. Pritchard was granted approximately 300 acres on the northern part of Horse Island, comprising lots A to E. This land grant comprised more than half the total territory of the Island. The southern part of Horse Island remained Crown lands.

The Minutes of the adjudication hearing read as follows:

The several lots of land above mentioned and described are claimed by the said Azarish Pritchard, Esquire, and Azariah Pritchard junior, having been duly published in the Canada Gazette ... the Commissioners ... having received satisfactory proof of the

⁷ Gaspé Land Commission - Claim by Azariah Pritchard, Sr, July 29, 1820, NA, RG 1, L7, p.26.

⁸ Gaspé Land Commission adjudication to Azariah Pritchard Sr, March 21, 1825, NA, RG 1, L7.

possession, occupation, and right of the said Azariah Pritchard, to the said several lots so by him claimed (those for which opposition have been ruled always excepted) Do accordingly adjudge and declare the claim ... to be good and valid ... And with respect to the said lots for which opposition have been filed none of the parties having used due diligence to bring the same to a hearing, the Commissioners are unable to determine to whom the said lots should by right and in justice so pertain.⁹

The statute establishing the Gaspé Land Commission enabled persons aggrieved by the decisions of the Commission to file an appeal. According to Section X, such persons must give notice of appeal within 12 calendar months following the decision and must produce a sum of money not exceeding thirty pounds.

It is uncertain whether the Micmacs settled on the Cascapedia were aware of the adjudication process or of the appeal mechanism. Official public announcement of the claims filed before the Commission was given by way of 3 published notices in the *Quebec Gazette*. Obviously, such information was not readily accessible to the Indians.

It is clear, however, that the Micmacs had not consented to the granting of parcels of Horse Island to white settlers. During the years following the adjudication by the Gaspé Land Commission, the Indians systematically petitioned the government for exclusive possession of the Islands on the Cascapedia.

One such petition for possession of the islands on the Restigouche and Cascapedia Rivers was sent to Lord Aylmer in 1830. The exact date of the petition is not known as the petition itself has not been located. It is referred to, however, in a letter from Lord Aylmer to the Micmacs dated November 20, 1830. This letter was drafted by J.B. Glegg, Secretary to Lord Aylmer, and addressed to M. Thibaudeau, Member of Parliament for Bonaventure county. The important extract of this letter is reproduced below :

1830 Nov. 20 Response from Lord Alymer to Micmacs petition re.
possession of Islands on the Restigouche and Cascapedia Rivers.

Castle St. Louis, Quebec.
20 November 1830

⁹ Ibid.

Sir:

I am commanded by his Excellency lord Alymer to acknowledge the Receipt of the memorial delivered by you into my hands from the Micmacks Indians inhabiting lands in this neighbourhood of Restigouche and New Richmond, and I am desired to request *you will assure them that he would be sorry to deprive them of any advantage they have hitherto derived from the fisheries and juice of the maple on the Islands alluded to in their Petition.*

You will also please to inform them that his lordship is not aware of the existence of any ground for their apprehension of their being deprived of these advantages, and that he will be always disposed to receive any representation connected with their welfare which they may conceive it necessary to address to him.¹⁰ [Our emphasis]

One year later, on November 24, 1831, the Secretary to Lord Aylmer wrote to John Davidson, the Deputy Surveyor General for the Province of Quebec. This letter was in reference to "an enclosed petition of some Micmac Indians, praying for Letters Patent for certain Lands in their possession." The particular tribe is not named, nor are the lands in question specified. The Governor inquires as to the cause of the delay in forwarding this patent and wishes to be informed of any reason why the Indians should *not* be granted the patent. (Our emphasis.)¹¹

It is reasonable to assume that Lord Aylmer was referring to the petition sent to him in 1830 by the Micmacs regarding the Islands on the Restigouche and the Cascapedia Rivers. The tone of this letter certainly suggests that the Governor was in favour of granting the letters patent to the Micmacs in question.

There appears to be some confusion as to if and when this patent was ever granted to the Micmacs. Three years later, the Micmacs sent another petition to Lord Aylmer, requesting a title deed to the islands situated in the Restigouche and Cascapedia Rivers.¹² Some sixty years later, archival

¹⁰ Response from Lord Aylmer to Micmacs' petition, November 20, 1830, Archives de l'évêché de Gaspé, Tiroir no. 65, Restigouche. A copy of this document was sent with a letter of Louis-Stanislas Malo, February 9, 1837, Québec, Ministère de l'Énergie et des Ressources, dossier 24866/16.

¹¹ Craig to Deputy Surveyor General, November 24, 1831, Archives nationales du Québec (hereinafter ANQ), John Davidson papers, E21, 359, IBI2-4303B.

¹² Petition to Lord Aylmer from the Micmac tribe established at Restigouche and Cascapedia, August 3, 1834, NA, RG 10, vol. 88, pp. 35433-35.

documents indicate that the Micmacs were, indeed, in possession of a patent to Horse Island.¹³

On December 2, 1833, the missionary working at the Maria mission, Father Malo, wrote to the Archbishop of Quebec, Bishop Signay, requesting his intervention in regards to the Micmac claims to the islands on the Restigouche and Cascapedia rivers. Referring to a letter in his possession, Malo states that the governor had granted exclusive use of these islands to the Indians. In all probability, he is referring to the letter written by Lord Aylmer on November 20, 1830. Malo's letter is particularly informative as it refers to the importance of the maple sugar industry to the Micmac Indians. This letter states in part:

If the limits of this letter permits, I again seek your solicitude to call upon his Excellency concerning certain islands on the Ristigouche and Cascapedia rivers to which the present governor has granted exclusive use to the savages in a letter which I have in hand; and which certain strangers have deteriorated by establishing themselves there and cutting maple trees; the sugar which the savages tap is the principal, and I dare say, the only resource they have each spring on which to survive and procure something to plant ...¹⁴

On August 3, 1834, a joint petition was sent to Lord Aylmer from the Micmacs residing in Restigouche and Cascapedia. This petition goes into further detail about the economic benefits derived from the maple sugar industry and once again makes reference to the fact that Lord Aylmer had granted them exclusive possession of the islands on the two rivers. In this petition, Horse Island is referred to as Dale Island. In order to prevent further destruction of the sugar maple on the Island, the Indians request a title deed be granted to them. The petition is reproduced below :

That from time immemorial the said tribe possessed in the Restigouche River, certain islands whose plans are presently in the possession of Joseph Hamel, surveyor, who prepared the survey last November, and in the Cascapedia, *an island commonly known as Dale*

¹³ Rev. J. Gagné, priest and agent at Maria, to Reed, Deputy Supt. General of Indian Affairs, April 16, 1896, NA, RG 10, vol. 2844, file 173,288, part O, C-11285.

¹⁴ Louis-Stanislas Malo to Bishop Signay, December 2, 1833, Archives de l'archidiocèse de Gaspé, Tiroir n. 65, Ristigouche. Our translation.

Island to which Your Excellency has confirmed exclusive enjoyment to the said tribe, in a letter a copy of which is enclosed here-in. [Our emphasis]

The annual harvest of the sugar maple on the said islands produces thousands of pounds of sugar, which enables the said tribe to procure, each spring, articles essential for its plantations and other necessities; with the sale of this sugar to the whites who, in Restigouche, do not exploit this industry. That the said islands, because of the spring waters which partially submerge them - at times totally - are of little value to the whites, apart from pastures which are plentiful on the shores of the Restigouche River.

That in contravention of the wishes and orders of Your Excellency, who does not wish to see the Indians of the said tribe disturbed in the enjoyment of the sugar maple, have dared to cut acres of maple trees and have refused to stop their enterprise, thereby threatening to destroy the sugar industry whose loss ... would force most of the families of the tribe to live miserable existence a good part of the year, which would certainly be contrary of the good intentions always shown by Your Excellency to the said tribe.

In the final analysis, the tribe does not wish to inconvenience Your Excellency by requesting new privileges or favors, but request only a title deed which would put into effect Your wishes and orders expressed in the above-mentioned letter.

Therefore, Your petitioners humbly request that Excellency grants to the tribe a lease or any other title judged appropriate to the said islands ...

Signed
Francois Condo
Louis Stanislas Malo Missionary
(?) Jacquelin
Joseph Labeauve
Antoine Evebun
Mathieu Caplan
Etienne Dedum¹⁵

In 1837, an agent of Crown lands, William McDonald, received orders to sell Horse Island at a public auction. This information is provided in a letter dated February 9, 1837, and signed Father Malo. The letter was addressed to John Davidson, who, by this time, had been appointed Commissioner of Crown Lands. Father Malo urgently requested the Commissioner of Crown Lands to intervene before the island was sold. Malo was apparently unaware that only the southern part of the island, which had remained Crown land, was up for sale.

¹⁵ Petition to Lord Aylmer from the Micmac tribe established at Restigouche and Cascapaedia, August 3, 1834, NA, RG 10, vol. 88, pp. 35433-35.

Obviously, this urgent call went unheeded, as the island was indeed sold and John Davidson, was in all likelihood the person to have ordered the sale in the first place. Father Malo's letter refers to a letter from Lord Aylmer to the Micmacs, assuring them that the government had no intention of selling or granting any island in the province. This letter in its entirety is reproduced below:

This part of the micmac tribe established in Cascapedia, New Richmond, having learnt that William McDonald, your agent of Crown lands in the district of Gaspé intends to proceed immediately after his return from Quebec to the sale of an island known as Horse shoe Island or Dale Island situated in the Grand Cascapedia river, has requested and authorised me as their missionary to represent their interests by writing you on his subject. Accordingly, I take the liberty to respond to this petition concerning this island as well as two other islands on the Restigouche River presented by the deceased Dolard Thibaudeau in November 1830 to Lord Aylmer which I have the honor of including the reference herein. I regret that I am not in possession of this petition and cannot send you a copy, thereby saving you the trouble of searching for it at the Castle.

... Based on the best information that I have been able to obtain, the said islands could only be used to the said savages for use of their sugar maples (apart from the small amount of hay which we could produce): the overflow from the spring waters which submerges them each year, renders them uninhabitable. Furthermore, the surrounding lands which are soon to be sold, the said savages would not be able to obtain sugar maples elsewhere and will thereby be deprived of their principle resource which the government of her Majesty certainly does not have the intention of taking away from them. In response to a petition posterior to the one already referred to and requesting the granting of the said islands, his Excellency has stated to the said savages that the government of her Majesty wasn't in the least disposed to alienate, by fragmenting or granting any island in this province and will reserve for itself exclusive ownership; a fact which Mr. McDonald, your agent, is obviously not aware of Sir, in the event that you judge appropriate to honor me with a response, please forgive me for requesting that you must send it to me as soon as possible; seeing that Mr. McDonald intends to sell the said island at the public auction as soon as he returns from Quebec.

(signed) Louis Stanislas Malo, priest¹⁶

¹⁶

Louis-Stanislas Malo, priest of Carleton, to John Davidson, Commissioner of Crown Lands, February 9, 1837, Québec, Ministère de l'Énergie et des Ressources, dossier 24866/16. Our translation.

In August of 1846, the Micmacs vehemently protested the sale of Horse Island in a petition addressed to the then Commissioner of Crown Lands, D.B. Papineau. This petition clearly indicates that the Indians had never consented to the sale of the Island; they were simply ignorant of the procedures to take to prevent the distribution of their lands to white settlers. The petition reads:

To the Honorable D.B. Papineau,
Commissioner of Crown Lands for Canada East:

The Humble petition of the undersigned Indians of New Richmond and Maria. Most respectfully therewith: That your petitioners consider themselves aggrieved by reasons of Long Island in the river Grand Cascapedia being taken from us partly and now parcelled out to persons whose principles are to traffic, on lands, to monopolize, if possible, the whole country into their own hands.

That we consider our rights and privileges to the said Island, as derived from our forefathers in time memorial, should be preferable to those who have come in latterly, intruding upon our ancient inheritance; destroying our sugaries; and depriving us of the maple juice which bounteous nature had bestowed upon for our maintenance.

That your Petitioners who have been brought up in the wilderness, and cherished in the bosom of innocence, knew not how to take any precaution against those intruders at the time of the distributing of those lands; but depended principally upon our faithful guardian the Government, to defend our sacred rights, and protect us as British subjects, in the enjoyment of those privileges which nature had bestowed

That our petitioners earnestly beg their case to be taken into your serious consideration; and to restore us the said Island, now erroneously called Horse Island which we and our ancestors always held up fourteen sugar camps...¹⁷

On September 21, 1846, the Micmac chiefs of Restigouche met with Commissioner Papineau to discuss the sale of Long Island. At that meeting, Papineau stated that he was angry that the Island had been sold, but was unable to remedy the situation as the sale took place prior to his being named Commissioner of Crown Lands.¹⁸

Acting on the request of the Indians, Colonel D.C. Napier, Department of Indian Affairs, forwarded a copy of their August 1846 petition to the Office of the Governor General. The Governor General responded that he "regrets that

¹⁷ Petition no. 173, August 4, 1846, NA, RG 10, vol. 2844, file 173,2881 C-11285.

¹⁸ E.N. de Lorimier to Colonel D.C. Napier, Indian Affairs, Montreal, September 21, 1846, NA, RG 10, vol. 2844, file 173,288, part O, C-11285.

the Island in question should have been sold, but he has not the power to cause a restitution, as it appears, upon enquiry that the sale has been regular and legal.¹⁹

This official response from the government did not appease the Micmac Indians, who continued to strongly protest the sale of Horse Island. Fifty years after the Governor General's statement, Father Gagne, a missionary and agent working in Maria, wrote to the Deputy Superintendent General of Indian Affairs on behalf of the Micmacs. This letter, dated April 16, 1896, indicates that the Micmacs were in possession of a "patent" to Long Island some 40 years previous. The exact nature of this instrument is not clear. It may have been, indeed, a letters patent, or perhaps a location ticket. We have been unsuccessful to date in locating this document. In any event, it appears that this "patent" was handed over to a Member of Parliament who promised to have it replaced by a new one, Father Gagne writes:

I have the honour to inform you of a matter of great importance to the Micmacs of my agency. The Chief, Louis Jerome, who is 57 years of age, tells me that formerly the Indians owned an Island in the Great Cascapedia called "Long Island." Then one day about 40 years ago a man named David Tozer set to work to cut down the timber on this island. He had already cut two acres when then chief Jean Baptiste Martin, accompanied by the present chief, at that time 17 years of age, went to find Tozer, who was still cutting, and they ordered him to cease working on the island, which was the property of the Indians. *Jean Baptiste Martin, in order to prove to Tozer that the Indians owned this island, showed the patent, and the latter abandoned his work.* [Our emphasis.]

At this patent was somewhat mutilated, it was shown one day to Mr. John Hamilton, of New Carlisle, then Member of Parliament. Mr. Hamilton, on seeing this old paper all torn, said to the chief Jean Baptiste Martin, "give me this old patent; I will send it to the Government so that a new patent may come back to you"; but this new patent was never received.

About seven years after he had been made to stop cutting and leave the island, Tozer came back to it, burned the timber and began to sow. The Indians, always timid and careless, did protest more. Then when it was seen that Tozer was not molested, other white men, attracted by the richness of the soil, came and made clearings there. This island is about 3 1/2 miles long and measures a mile and a half at its greatest width. There are elm, poplar, cedar, pine, and maple trees growing on it. I am informed that there is

¹⁹ Civil Secretary's Office to Lt. Colonel Napier, October 12, 1846, NA, RG 10, vol. 2844, file 173,288.

some magnificent maple sugar bush there. This island, which is on three miles of the Reserve, is today of very great value on account of its prodigious fertility in hay and as it is crossed by the Baie des Chaleurs Railway, near a station and the factory of John Nadeau. If I had this island, it is very certain that I should not be willing to sell it for \$25,000.

As I believe that my chief Louis Jerome, has given me a true account of the facts (he says that he can swear to it) I pray that you will take this matter into your serious consideration and have enquiries made into the smallest detail in order to find out when and by whom this island was granted to the Micmacs of Maria; and if it should be discovered that my Indians are truly the owners of this island, that you will take all necessary means to put them again in possession of the rich domain that has been snatched from them.²⁰

The Deputy Superintendent simply replied that the Island had been sold by the Department of Crown Lands many years ago and referred to the Governor General's response of October 12, 1846. He also indicated that the government was not disposed to listening to their claims, since the present reserve of Maria constituted sufficient compensation for all their land claims:

I may add that the Micmac Indians of Restigouche have received their present Reserve in the Township of Mann and Maria in satisfaction of their claims to other lands and the Department regrets that it can at this late date, reopen the question as to their claims to further land.²¹

The government position that whatever impropriety had been involved in the sale of Horse Island had been fully compensated by the establishment of the Restigouche and Maria reserves is highly questionable. It must be remembered that, long before the sale of Horse Island, the Micmacs had claimed 530 acres of land at Indian Point on the Cascapedia River.²² This area was later to be designated as reserve land. It is obvious that this land was not granted in order to compensate the Indians for the loss of the Island.

The Restigouche Micmacs were granted 9,600 acres of reserve land pursuant to a statute passed in 1851 (14-15 Vict., c. 106). This law reflected a

²⁰ Rev. J. Gagne to H. Reed, Deputy Superintendent of Indian Affairs, Ottawa, April 16, 1896, NA, RG 10, vol. 2844, file 173,288, part O, C-11285.

²¹ Deputy Superintendent General of Indian Affairs, to Rev. J. Gagne, Maria, May 18, 1896, NA, RG 10, vol. 2844, file 173,288, part O, C-11285.

²² Notes of Alex McNeil, surveyor, September 1, 1820, Archives de l'évêché de Gaspé, Tiroir no. 65, Ristigouche.

new general policy establishing Indian reserves throughout Lower Canada. It was, therefore, legislation of general application. The illegal sale of Horse Island cannot be "compensated" for by a simple addition of land under unrelated legislation of general application. In any event, the Micmacs would certainly have had to give their explicit consent to such an arrangement. As shall be discussed in Chapter II, the sale of the island constituted an illegal act which must be rectified on its own merits.²³

CONCLUSION

There are a number of important archival documents, which have not as yet been located. These include the Micmac petition sent to Lord Aylmer in 1830, relating to the Islands on the Restigouche and Cascapedia Rivers. The land patent referred to by Father Gagne in 1896 would also be very useful. We have attempted to trace John Hamilton's correspondence in this matter, but were informed by the Quebec National Archives that most of the correspondence by Members of Parliament has been lost.

Based on the archival documentation available to us, several key conclusions can be rendered in regards to the Horse Island claim. First of all, there is no evidence whatsoever that the Micmacs, at any point in time, ever ceded their rights to the Island. This cession would have had to be made to the Crown at a special meeting of the Indians assembled for that purpose. This strict procedure was obligatory under the *Royal Proclamation* and the Royal Instructions given to the Governor of Quebec.

It is also abundantly clear that the Micmacs had never consented to the land grants accorded by the Gaspé Land Commission and to the eventual sale of the rest of the Island in 1837. All archival documents clearly indicate that the Indians were vehemently opposed to these transactions. For over a period of one hundred years, the Micmacs systematically petitioned officials of the Crown for the exclusive use and enjoyment of Horse Island. The persistence of the Micmac protests must be strongly emphasized.

²³ Chapter II of this document included legal analysis, which is not reproduced in this appendix.

Another key element is Lord Aylmer's letter dated November 20, 1830, in which he assures the Indians they would not be deprived of their use of the maple trees on the island. This letter is often referred to in later petitions and correspondence as granting exclusive use of the island to the Micmacs.

It is also clear that a number of government officials questioned the validity of the sale of Horse Island. When the Micmacs met with the Commissioner of Crown Lands, D.B. Papineau, in 1846 to discuss the matter, he stated that he was angry about the sale but could do nothing to remedy the situation. Lord Aylmer responded that he also regretted the sale of the Island but added that the sale had been "regular and legal." It is certainly possible that all standard procedures had been respected in regards to the actual sale, but this does not remedy the legal defect caused by the fact that the Indians had not consented to the sale.

It appears that the sale of the southern portion of Horse Island had been ordered by the Commissioner of Crown Lands, John Davidson. However, it is clear that he did not have the legal authority to do so, as the Micmacs had not ceded their rights to the Island. The transaction was therefore null and void, as was the granting of the lands to Azariah Pritchard by the Gaspé Land Commission in 1825.

