



Madawaska Maliseet First Nation
Land Claim Report
2018

Wolastoqiyik

People of the Beautiful River

"Maliseets have lived on,
utilized, and managed this land
since time immemorial."



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Land Claim Report

How It Started

by *Patricia Bernard*

When I was a student at the University of New Brunswick doing my undergraduate degree in Education, I always tried to focus my studies on Aboriginal history, Maliseet history and local history. The courses focusing on these issues were few and far between. At the time, in 1996, in my final year of my education degree, Andrea Bear Nicholas was the chair of Native Studies at St. Thomas University (UNB's sister university, sharing the same campus). I asked her if I could do an independent study to examine the history of my community at Madawaska. This is where it all started.

I spent countless hours at the provincial archives viewing microfilms, collecting any and all documents that referenced, St. Basile, Madawaska, Little Falls, etc. Often times I would get nauseous from the microfilms movements. Once I collected all these documents I had to put them together and come up with a paper topic (thesis). Basically, my paper discusses how the New Brunswick government favoured Indians that abandoned their traditional lifestyle and became farmers.

But, the main surprise was with the several maps depicting the reserve size that I uncovered. The maps showed several different sized boundaries at different times in history. In 1787, it showed the boundaries at approximately 4000 acres, in an 1845 map it shows the boundaries at approximately 1600, and then an 1860 map shows the boundaries at approximately 700 or 800 acres. My question was, when and how did these changes occur? I also came across an amazing speech by Louis Bernard, my great, great, great grandfather. This speech moved me and it is reproduced at the back of this newsletter. If not for this plea to the New Brunswick Government in 1860, there would be no reserve at Madawaska right now.

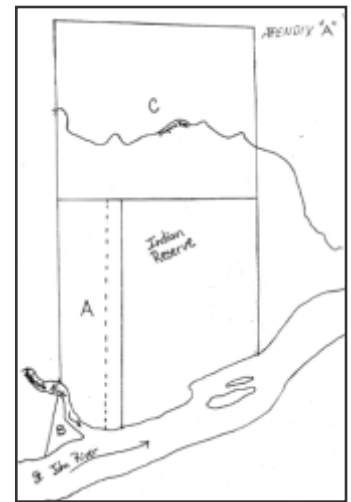
This is the basis for the claim. I found no documents that showed that the reserve was legally reduced in size from 1787, nor was any compensation paid to the reserve inhabitants. In 1997 I entered law school and, with the help of a dear friend and co-law-student, we drafted a claim with

the relevant facts and law to claim an alienation or illegal dispossession of reserve land. This was submitted to the Specific Claims Branch at the Department of Indian and Northern Affairs Canada in April 1998.

The original claim outlined three parcels of land, A, B and C. Parcel C was later dropped at the Tribunal phase as it was a secondary argument.

(See map "Appendix A")

After submitting the claim, much more research was conducted over the years, adding to the proof that the reserve was much larger than it currently is today.



A Decade of Silence

After the claim was submitted in 1998, the Madawaska Maliseet First Nation did not hear anything from the Specific Claims Branch for almost a decade! In 2008, the Government passed the Specific Claims Tribunal Act. This was as a result of hundreds of claims that were backlogged at the Specific Claims Branch. Madawaska's claim was one of them. The Act mandated the Specific Claims Branch to answer a claim within three years, and if they didn't then the claim could be brought to the tribunal. A claim could also be brought to the tribunal if it was rejected by Canada.

Where was I? Well, I finished law school in 1999 and was called to the New Brunswick Bar in 2000. After being called to the bar, I applied to work at the Specific Claims Branch in Ottawa. I got the job and became a research claims analyst for the Atlantic Provinces. But I had to stay clear of the claim



that I submitted on behalf of Madawaska. But that was ok, it was assigned to another analyst. During my time at the Specific Claims Branch I became a Senior Advisor to Claims in Ontario and learned much about the history of Aboriginal people across the country. It was an amazing learning journey.

I left the Specific Claims Branch in Ottawa to work at INAC in Amherst, Nova Scotia as a Manager of

Registration, Estates and Governance. I only worked there one year, and returned home to Madawaska to become the Band's Legal and Governance Advisor in 2007.

In 2009, we received a letter from the Specific Claims Branch stating that there was no breach of a lawful obligation because there was no reserve created. This was the formal rejection of the claim by Canada.



Formal Rejection of the Claim

In 2009, Canada sent a formal rejection of the claim stating that no reserve land was illegally taken because it was never officially a reserve. This was the only reasoning that was given, and they didn't even state when the reserve was officially created. At the time, the only recourse we had was to bring our claim to the Indian Specific Claims Commission (ISCC). This body did not have binding authority but they could investigate a claim and recommend that Canada reconsider their decision. So that is what we did. We sent it to the ISCC and they agreed to do an investigation. However, shortly after agreeing to investigate they sent the claim back to us and advised that the Commission was being dismantled. They suggested that we send the claim to the Specific Claims Tribunal. However, even though the SCT Act was passed in 2008, no judges were appointed.

Judges for the SCT were appointed in 2011, and we submitted our claim in August 2012.

Five Years in the Specific Claims Tribunal

The last five years in the Tribunal Process have been the busiest and most productive towards the resolution of our claim. From drafting pleadings, applications, responses to hiring experts, doing additional research and uncovering

new supporting documentation. During this time, we had to overcome several hurdles.

Hurdle # 1 – Remove the Lead Counsel

Initially, when the claim was submitted, the first hurdle was when Canada asked me to recuse myself from being the lead litigator on the file. Basically, Canada was saying that because I worked for the Specific Claims Branch 10 years ago, that I would have inside knowledge of their confidential legal briefs. If you recall, when I worked for SCB I made sure to keep my distance from this file. There was no way anyone was going to convince me that I should back away from this claim. Three lawyers told me that I should, and that the chances were slim that any judge would allow me to remain as lead lawyer. But I refused.

Canada made an application to remove me from the file. We researched and we submitted legal briefs, and even set a date for a hearing to argue my continued presence with this claim. However, one week before the hearing, after a tell tale Case Management Conference, Canada withdrew the application. They gave no reasoning. However, my guess is that they realized that the same legal arguments that they claimed that I would have viewed I would have still viewed them at any validity hearing.

Hurdle #2

Deny the First Nation Up-To-Date Legal Arguments

The original claim was submitted in 1998. Fourteen years



later our claim was brought to the Tribunal. In 2014, which was 16 years later, we needed to review our legal arguments. The Canadian Courts had much to say concerning Aboriginal law within the past decade and a half. We wanted to amend our legal arguments to reflect the current law, so we made an application to do so. However, Canada didn't feel we should be allowed because when the claim was rejected it was rejected based on the original legal arguments. This just wasn't fair. Why should we be penalized and not allowed to use current law in making our arguments today?

So again we researched, and drafted brief once again setting a date for a hearing. And once again, Canada withdrew their objections and allowed us to amend our legal argument.

Hurdle # 3 – Deny the First Nation the Opportunity to Expand the Scope of the Claim

During the additional research, many new documents were uncovered, the story of our reserve creation was becoming much more clear. When we submitted the claim we originally submitted for 3 parcels of land (see map). This was based on early research, and based on the point in time when the reserve was being diminished. However, it soon became evident that we needed to pinpoint a time when the reserve was created, and that lead to the much larger boundaries from 1787. At first we figured we would just submit another claim for the remaining lands at another time and just continue to focus on the three parcels. However, after I carefully reread the Specific Claims Tribunal Act, I realized that we could possibly be prevented from submitting another claim because of a certain section of the Act, prohibiting similar claims with similar facts from being argued before the Tribunal. I realized that we needed to put the whole of the reserve lands into one claim. We were successful in negotiating with Canada that this would mean that one parcel (parcel C) would likely be dropped in lieu of

adding the remaining lands outlined in red on the Sproule Survey.

Expert Reports

There are several reports that we relied upon during this process. Finding an expert was not always an easy task. In total, we have over 10 reports on this claim, some of which were internal and some which were presented to the Tribunal and Canada. None of this victory would be possible if it were not for the hard work of our experts and researchers.

2017 - The Hearings

Three hearing sessions in front of the Judge were held in May, June and July. As we prepared for our meetings, Mario and I held three community sessions to go over the history from 1725 up until 1860. We had about 30 people come to the info sessions. This helped us get our thoughts straight as we prepared to tell our story to the Judge.

From May 15 to May 18 in Edmundston, our Experts testified as to the events surrounding the creation of the reserve. Many members attended the hearings and were treated to the expert opinions of Elizabeth Mancke and Brian Cuthbertson. It was an interesting story to say the least, surrounding all the historical events that lead up to the creation of our reserve.

From June 19 to the 22 in Halifax, Canada's Experts testified as to their version of events surrounding the same time period. However, just before Canada's expert testified, our very own Maliseet Expert Andrea Bear Nicholas testified, particularly with respect to our treaties and how they defined our relationship with the government.

Then finally on July 25 to the 27, both parties made their legal arguments to the Judge. I believe these hearings were well presented and we certainly made an impact on the Judge since he did decide in our favour.





Next Steps

The tribunal decision was released on November 29, 2017. Canada had 30 days to review the decision and determine if they would seek judicial review. Although a judicial review is not exactly an appeal, it is a process that allows courts to supervise tribunals to ensure that they follow the law. In any event, the limitation period has expired and we are now in the next stages of determining compensation.

on track. It will take some convincing for us to abandon the assistance of the Tribunal, given the longevity of this claim, and no willingness on Canada to settle this issue at any time in the past.

On February 14, 2018, I met, by teleconference call, with representatives of Canada to discuss the next steps of entering into the negotiation process of the land claim. Basically, there are several steps to move from the Tribunal process into the Specific Claims Branch Negotiation process.



1815 map by Joseph Bouchette

Basically, we will need to do an historical appraisal of the land from the date that it was taken from the community. We need to determine the value of the land at the time it was taken and bring that amount forward with an agreed upon interest formula.

My guess is that Canada will attempt to negotiate this amount outside the tribunal, which will be fine with me if we can manage to maintain a good reasonable time-line and work plan so that things do not get stalled. We can always continue to argue the compensation through the tribunal if we meet any kind of stalemate.

I cannot say with certainty the amount of time this process takes, but I can only assume it will be between one and two years. I do know that when an amount is determined, Canada is not obligated to pay it all in one lump sum. According to the Specific Claims Tribunal Act, they can pay over a period of 5 years.

Currently, I am awaiting a response from Canada on when we will next meet. I advised them that basically, they have three options:

1. Go right back to the Tribunal for the compensation argument.
 2. Have a direct conversation between the parties about compensation, possibly negotiations.
 3. Agree to mediation by the Tribunal about compensation.
- My experience tells me that Tribunal guidance keeps us

1. A **letter** needs to be drafted to the Department of Justice (DOJ) requesting that the claim in the Tribunal be put in abeyance (put on hold) so that we can negotiate settlement with Canada. (I did this on Thursday, February 15, 2018)

2. DOJ will respond to the request agreeing to put claim on hold to negotiate.

3. We will then jointly **apply to the tribunal** to put our claim on hold for one year. Should the negotiations take more than a year, which is likely to happen, then we must ask the Tribunal for another extension. I believe we can negotiate this within one year to one and half years.

4. The Deputy Minister of INAC (now CIRNA - Crown-Indigenous Relations and Northern Affairs) must approve the claim for negotiation. Because the Tribunal found in our favour, this process should only take about 3 months.

5. Once approved, we will receive a **letter of offer** to negotiate, which we will **reply acceptance** by Band Council Resolution.

6. Once approved for Negotiation, the First Nation and Canada will sign a **Negotiation Protocol**. The protocol sets out the process and "ground rules" for negotiations. It



includes studies, timetables, frequency of meetings; confidentiality; without prejudice discussions; good faith negotiations; and hopefully it will bound the honour of the crown.

7. Once the Negotiation Protocol is signed, we will work together towards a **Joint Workplan**. This will include what questions need to be answered, such as additional studies to review, meetings, and other issues.

8. **Joint Terms of Reference** will also be drafted to determine head of damages; survey size; date of alienation; anthropological studies; historical land appraisals; forestry appraisals; loss of use and any other issues raised towards value.

By entering the negotiation process with the Specific Claims Branch, we will have more control and we will not be bound by the \$150 million cap of the tribunal.

The Canada website may also assist in understanding the negotiation process.

<https://www.aadnc-aandc.gc.ca/eng/1100100030336/1100100030340>

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1842 painting of the Saint John River and Little Falls Blockhouse by John Philip Bainbrigge.



Introduction

Opening statements by Patricia Bernard reproduced from the first hearing on May 15, 2017



Good Morning, I am the legal counsel for this claim before the Tribunal, representing the Claimant, the Madawaska Maliseet First Nation.

My name is Patricia Bernard, a Wolastoq woman, a mother, a grandmother, a wife, a

chief and the great, great, great granddaughter of Louis Bernard, a Wolastoq man who lived for over 100 years in the territory on which we stand right now, and who lived through the years that are vital to the history of this claim.

Being the Chief in my community is not only an honour and a burden of responsibility, it is much, much more. In Maliseet law, being the Chief invests me with authority to speak.

As a lawyer representing my community in this process, not only does it make consulting with my client much easier, it adds a layer of ability to my authority as the community's advocate. In Canadian law, it invests me with the authority to speak.

I once worked for the Specific Claims Branch, many years ago. This experience gave me an understanding that most claimants never have a chance to have. Although it did provide me with empathy at times, it also provided me with much frustration and anger.

Surprisingly, these three aspects of myself are not in conflict. I am not conflicted by them. This is because, in this matter, they converge and support each other.

The Chief hears, feels and speaks the people's knowledge that a wrong has been done.

The lawyer is able to refine and express it in terms Canadian courts will understand.

The reformed bureaucrat is able to measure it against Canada's internal standards.

If the people's sense of wrong were inconsistent with Canadian law or federal policy, perhaps I would struggle to resolve that conflict.

But I have never had that problem: morally, legally, and politically, this is all one matter.

Every matter, in every court in the world, is really a story. And when we get down to the reason of why we are here, it is a story about land. In every matter, it is always, always, only ever about land.

We had the land. It was taken away. At the time, we had no remedies.

Have the times changed? Here we are in a tribunal that is uniquely designed and built to hear our story.

We knew, coming in, that our adversary created the tribunal, chose the judges, made the rules.

We know, coming in, that we are implicitly agreeing that our lost land can be replaced by monetary compensation: that injustice can be remedied by money.

The tribunal has no authority to restore land, no matter how unjustly it was taken. This tribunal carries reconciliation as part of its mandate, part of its soul.

We hope that the better angels of all our natures will guide you in the hearing of the story, and us in the telling.

The Theme:

This claim dates back over 250 years, and we assert that the reserve for the Maliseet at Madawaska was created 230 years ago when the first New Brunswick Surveyor General, George Sproule surveyed the boundaries in 1787.

We will demonstrate that the Treaties between the British and the Maliseet from 1725 to 1760, along with three Proclamations in 1761, 1762 and 1763, created a unique relationship and understanding between the two nations.





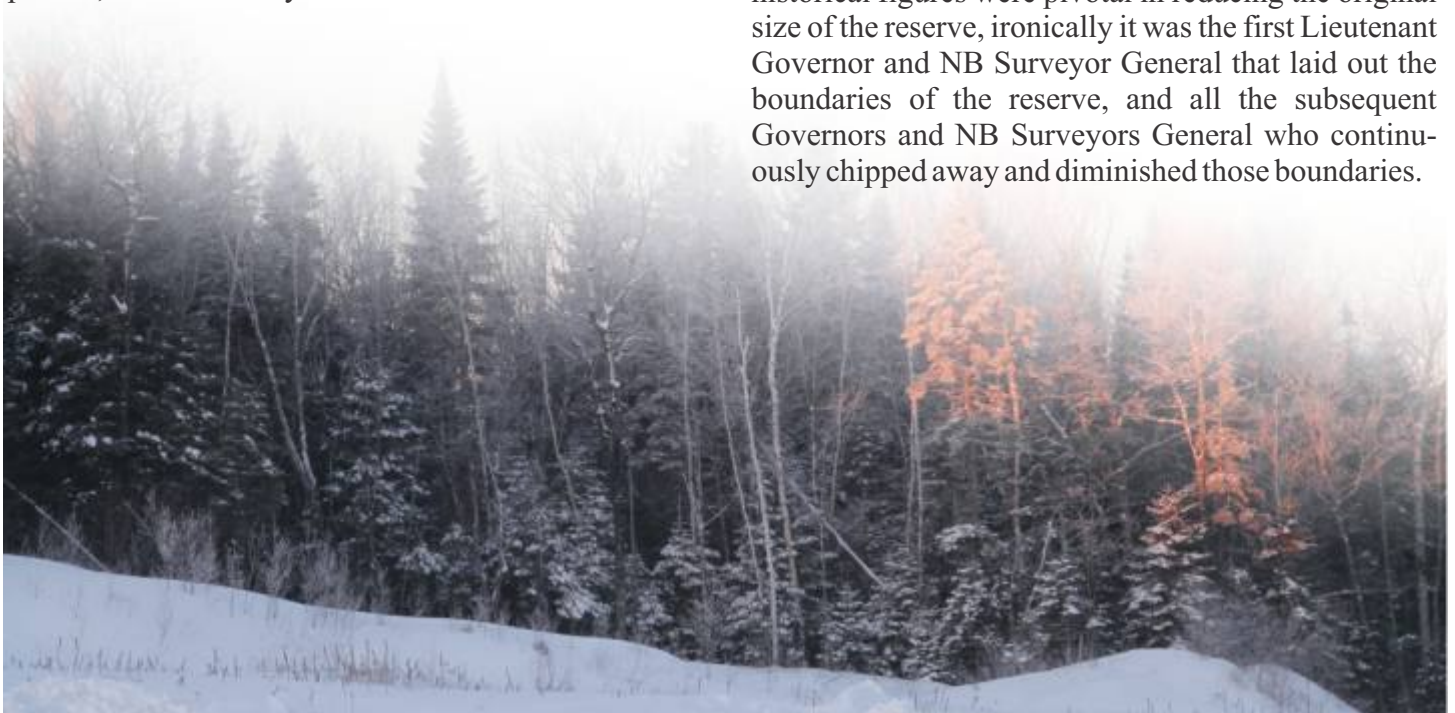
As a result of this relationship, the newly formed Province of New Brunswick sent their Surveyor General to an area occupied by the Madawaska Maliseet to set aside land for their use and occupation, creating a reserve, at best, or a cognizable interest, at least, to the Madawaska Maliseet.

Many events occurred over the next 80 years that will demonstrate that the Maliseet always considered the Sproule Survey to be the originating document creating their reserve. At no time did they ever surrender this area, nor did they receive any compensation for the loss of reserve lands. We will demonstrate that the Maliseet continuously claimed the area as theirs, prior to and after the reserve was created. The Maliseet not only complained when land was taken, but also petitioned continuously for legal documents and recognition of the promises that were made, even requesting that the government carry out their intentions of creating reserves.

Many surveys, maps, sketches and reports support the continued assumption by the Maliseet and the British that there indeed existed a reserve or cognizable interest in the land for the Maliseet.

Even the local settlers recognized the interest that the Maliseet held and often referred to their lands as “Indian reserve.”

The lack of, mismanagement of, and missing documentation has created an issue of understanding the complete story. However, like a puzzle with a few pieces missing, one can still make out the whole picture, the whole story.



Witnesses to be Examined:

- ◆ Elizabeth Mancke
- ◆ Brian Cuthbertson
- ◆ Andrea Bear Nicholas

Through them and the many documents contained within the Common Book of Documents, you will hear the story, the story of alienation and dispossession of the Madawaska Maliseet reserve.

What will the Crown argue?

- ◆ The Government never intended to create a reserve at Madawaska.
- ◆ Maliseet traditional migratory lifestyle prejudiced them from receiving lands, their concepts of population and permanent residency demonstrate a completely different cultural perspective.
- ◆ Maliseet favoured the Americans, and British Government didn't trust them and therefore would never have reserved land for them, despite having reserved land elsewhere in New Brunswick for the Maliseet, let alone give grants to French Acadian settlers.

Conclusion:

At the end of this process we will have successfully demonstrated that a reserve or cognizable interest in the land was created for the Maliseet in 1787 and that at no point in time did the Maliseet surrender or give up their right to the land. We will demonstrate how certain historical figures were pivotal in reducing the original size of the reserve, ironically it was the first Lieutenant Governor and NB Surveyor General that laid out the boundaries of the reserve, and all the subsequent Governors and NB Surveyors General who continuously chipped away and diminished those boundaries.



Historical Time Line of the Madawaska Maliseet First Nations Land Claim

Maliseet-British Treaties

These treaties are often referred to as the “Peace and Friendship Treaties” and are nation-to-nation agreements between Wabanaki Nations and the British Crown. According to Maliseet historian Andrea Bear Nicholas, the word for treaty in Maliseet is *lakotowakən*, literally meaning “a tool for making a relationship”.

Treaties were signed in 1725, 1749, and in 1760. These treaties established peace as well as “mutual respect for two very different modes of life and land use”. The Maliseet Nation did not cede any land in these treaties.

1761 Map by Peach

In 1761, Captain Joseph Peach creates a map of the St. John River showing a large “Indian Village” located at the confluence of the Madawaska and St. John Rivers. During this period, Madawaska, Meductic, and Ekwpahak (near present-day Fredericton) were the largest and most important Maliseet villages. Large concessions of land were made to wealthy settlers in the early 1760s. After a long period of colonial warfare and British campaigns on the St. John River, Maliseet people were forced to seek refuge further north in places like Madawaska.

Royal Proclamation of 1763

King George of Great Britain issues a Royal Proclamation on October 7, 1763 recognizing British claims to lands formerly claimed by France following the Seven Years’ War. The Proclamation also recognized Native rights to land, and stated that settlers could not purchase land directly from Native peoples, but that the land had to be ceded to the British Crown first before any settler could obtain it. The 1763 Proclamation applies to the Madawaska area.

1765 Maliseet Petition

The Maliseet Nation petitions the Quebec government to restrict settlers from hunting beaver in the area between Riviere-du-Loup and Grand Falls, and stated that the area (including the Madawaska River) is “Lands belonging to the [Maliseet] Nation”. The petition is published in the Quebec Gazette on January 24, 1765.

1779 Ekwpahak Grant

On August 2, 1779, The Nova Scotia government issues a grant to the Maliseet Nation for land at Ekwpahak (near present-day Fredericton).

1783

Thousands of Loyalists from the American Colonies settle on the lower St. John River and along the Bay of Fundy. This has a major impact on Maliseet people, sending refugees north to Madawaska and affecting the security of Acadian families on the lower St. John River. New Brunswick is created as a new province in 1784, with a government formed among the Loyalist population.

1785

Acadian families lose access to land they are farming on the lower St. John River and petition the New Brunswick government to re-settle in the Madawaska area. They are promised an official grant for lands at Madawaska at a later date. The influx of Acadian settlers in the area has an impact on the large Maliseet population at Madawaska who have already experienced a drastic loss of their lands on the lower St. John River.

1787 Dorchester Letter

On January 3, 1787, Lord Dorchester (Governor General in Quebec) writes his brother, Thomas Carleton (Lieutenant Governor of New Brunswick) about tensions between settlers and Maliseets on the upper St. John River, and demands that:

surveyor John Frederick Holland and Hugh Finlay (Deputy Post-Master General) at Madawaska on July 16th, 1787.

Sproule believes that the boundary should be established above Lake Temiscouata based on the Quebec Act and the 1783 Treaty of Paris, while Holland argued that he had been



1787 survey by George Sproule showing the original red boundaries of the reserve

“...the Indians be treated with civility and kindness... common justice requires some attention and some compensation to these people whose lands we come and occupy... I would recommend that on every opportunity these Indians be benevolently treated.”

1787 Sproule Boundaries Survey

In 1787, Surveyor General George Sproule, is instructed by Lieutenant Governor Thomas Carleton to travel up the St. John River to survey the area in order to settle the boundary between Quebec and New Brunswick. Sproule met Quebec

instructed to draw the boundary at Grand Falls. Although, the parties could not agree and the provincial boundary is not established at that time, Sproule does complete a number of other tasks. Along with mapping out the St. John River and portage route between the St. Lawrence River and Lake Temiscouata that is being used as a post route. He also surveys an area for the Acadian settlers (outlined in black), and reserves land for the use of the Maliseet Nation (outlined in red). A notation on the map states:

“The Indians require the tract of Land included within the red Lines to be reserved for their use. Except Kelly's Lot.”



The total area within the black lines that was to be granted to the Acadian families comprises of roughly 16,000 acres; while the reserved area within the red lines for the Maliseet Nation comprises of roughly 3,700 acres.

1787 Sproule Communication Plan

George Sproule completes a second survey in 1787, which maps out the communication route from Fredericton to the St. Lawrence River. A notation on the map at the confluence of the Madawaska and St. John Rivers states that the Maliseet Nation holds an annual Grand Council at Madawaska.

1788 Laurent Doucet Petition

On January 25, 1788, Laurent Doucet, a settler in the province of Quebec, petitions the Quebec government for land at Madawaska (the boundary between Quebec and New Brunswick had not been settled and colonial jurisdiction in the area was uncertain at this time). On February 25, 1788, the Quebec Council of Crown Lands debates Laurent Doucet's petition. Post Master General, Hugh Finlay, who was present during the committee meeting, stated:

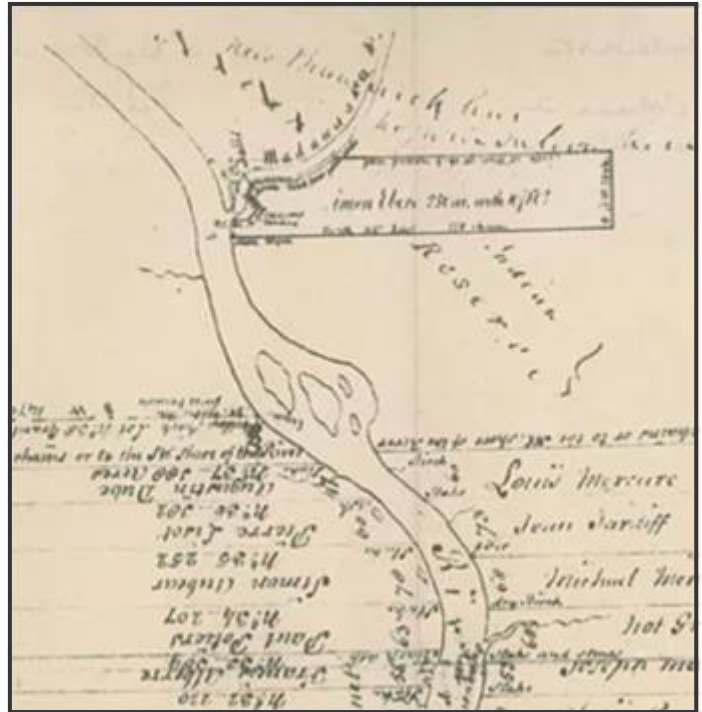
“Mr. Finlay informed the Committee that he thinks the place mentioned in Doucet's petition is included in a tract of land laid out by order of the Government of New Brunswick for the use of the Saint John Indians, who are in actual possession of it.”

Hugh Finlay was also present at Madawaska in July 1787 with surveyor John Frederick Holland and Surveyor General George Sproule.

1790 Grant to Joseph Mazerolle and 48 Others

In 1790, George Sproule issues a grant to Acadian settlers at Madawaska between the Indian Reserve and the Green River. Other signatures on the grant plan by Surveyor General Thomas Baillie (serving three terms between 1824-1825, 1829-1840 & 1842-1851) and deputy J.W. Beckwith (1820s) show that the grant plan was added to over time.

It is evident that the plan has been tampered with since the word “Indian” on the west side of the Madawaska River is crossed out and re-written on the east side of the river below the lot to Simon Hebert (this lot was only granted to Hebert in 1825). A licence of occupation, which was granted to Simon Hebert in 1829 for a small lot on the west side of the



1790 grant plan to Joseph Mazerolle and 48 others

Madawaska River, is also marked on the plan.

The 1790 grant plan was later traced, although, it is difficult to determine the date of the tracing. It was most likely done after Simon Hebert was granted his licence of occupation in 1829.

1792 Petition for a Grant

On October 3, 1792, the Maliseet Nation petition the New Brunswick government requesting a grant for the land at Madawaska, which they described using specific landmarks. In an accompanying letter from local magistrate Thomas Costin about the land, he states, *“I imagin[e] that Captn. Sproule hath surveyed.”*

1792

On October 19, 1792, the New Brunswick government issues a grant to the Maliseet Nation for land at Kingsclear. This grant is a reaffirmation of the grant issued by the Nova Scotia government in 1779.

Surveyor General Anthony Lockwood (1819-1823)

Between 1819-1823, Surveyor General Anthony Lockwood went mad, was arrested, and taken out of office.



His replacement, George Shore, found the Surveyor General's office in disarray with many documents destroyed. It took several years before the office was put back in order.

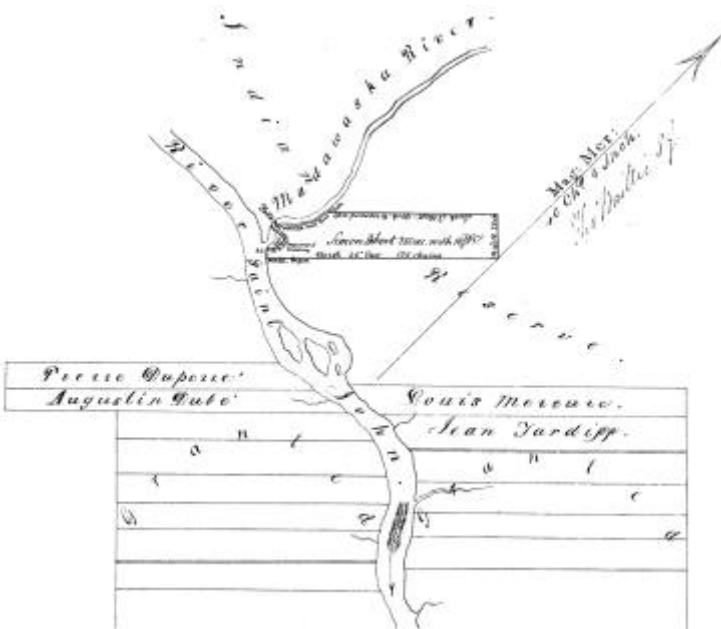
1820 Joseph Treat

In September 1820, surveyor Joseph Treat was instructed by the Governor of Maine, William King, to travel through northern Maine to survey the Penobscot and St. John Rivers and examine the quality of the soil. Treat is guided through the country by Penobscot Governor John Neptune and relies entirely on Governor Neptune's knowledge of the land. While at Madawaska, Treat records in his journal:

Note: The St. John Indians hold under a grant from the King of England a tract of land beginning 1 mile below Madawaska River running 4 miles up St. John, making 6 miles on that River; thence northerly up the Madawaska about 2 miles making about 1/2 township. Their town and head quarters for hunting is at and a little below Madawaska – This tribe consists of about one thousand to 1500 souls – and perhaps 300 fighting men.

1824 Joseph Martin Petition

Settler Joseph Martin petitions for a grant of 400 acres on the Madawaska River above Simon Hebert's lot. A notation on the petition by Surveyor General Thomas Baillie states, "The Situation herein described is within the bounds of a Tract reserved for the Madawaska Indians, and is ungranted Land".



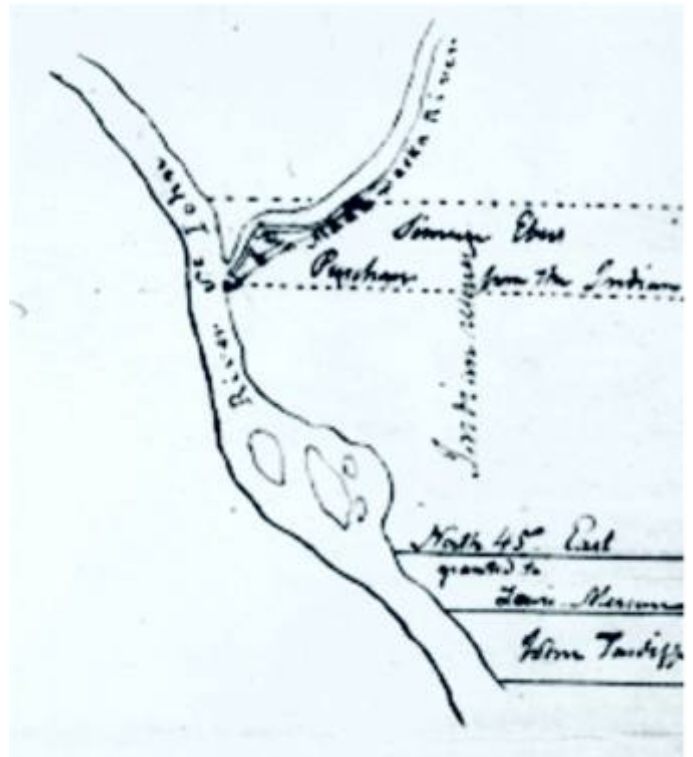
1825 Grant to Simon Hebert

1825 Francis Rice Petition

Settler Francis Rice petitions for a grant of 200 acres on the west side the Madawaska River and states that the lot is "joining the Indian Reserve".

1825 Grant to Simon Hebert

Settler Simon Hebert had squatted on the Madawaska reserve for some time before he petitioned in 1824 for 300 acres at the mouth of the Madawaska River. The sketch on the petition shows that the lot is located on the Madawaska reserve. The notation on the sketch stating that the lot was "purchased from the Indians" is illegal, according to the Royal Proclamation of 1763.



Sketch from Simon Hebert's 1824 petition

On May 16, 1825, Simon Hebert is granted 250 acres on the Madawaska reserve. The accompanying grant plan is signed by Surveyor General Thomas Baillie.

1829 Licence of Occupation

In 1829, Simon Hebert receives a licence of occupation to use a small tract of land on the west side of the Madawaska River for 21 years. The land is given to Hebert under the condition that he would give up part of his lot to the government to build a blockhouse for a possible war against the Americans over the location of the international boundary.

1831 Deane & Kavanagh Report

In 1831, American agents John Deane and Edward Kavanagh, are instructed by the Governor of Maine, Samuel Smith, to travel and report on the Madawaska Settlement. In their report they state, “...before any adjustment is made of Simon Hebert's claims or of the claims of his Sons, Simonet and Joseph, all of whom declined giving us any account of their possessions, that they should be thoroughly investigated, and wrongs, if any, righted.”

1838 Schedule of Indian Reserves

In 1837, New Brunswick gained control over Crown Lands in the province. Thomas Baillie, Surveyor General and Commissioner of Crown Lands, tallies the total acreage of Indian Reserves in the province. In 1838, Baillie publishes a “Schedule of Indian Reserves in New Brunswick”. This is a first attempt by the government to account for the reserve several years after many had been created. The Madawaska reserve is not listed on the schedule however it is clear that the Surveyor General is not certain as to whether the list is complete and indicates for other reserves that “no record appears”. This is not surprising considering the destruction of land documents caused by Anthony Lockwood years earlier.

1841 Moses Perley

In 1841, Moses Perley is appointed Commissioner of Indian Affairs, being the first to hold this position. Perley travels throughout the province in June of 1841 to report on the “Indian Settlements” in New Brunswick. He visits Madawaska and meets with Captain (or Chief) Louis Bernard, who was 70 years old at the time. Perley refers to an “Indian Reserve” on both sides of the Madawaska River and that Hebert had been granted land within the boundaries of the reserve.

Perley writes:

He [Louis Bernard] told me... that he was born on the land, and that his father and grandfather were also born, lived, died, and were buried on this spot. That when he was a boy, the Indians had a very considerable Village here, the wigwams standing in regular streets near the water side; he pointed out to me the former site of their Village, and also the boundaries that were assigned to the Tribe when he was a youth.

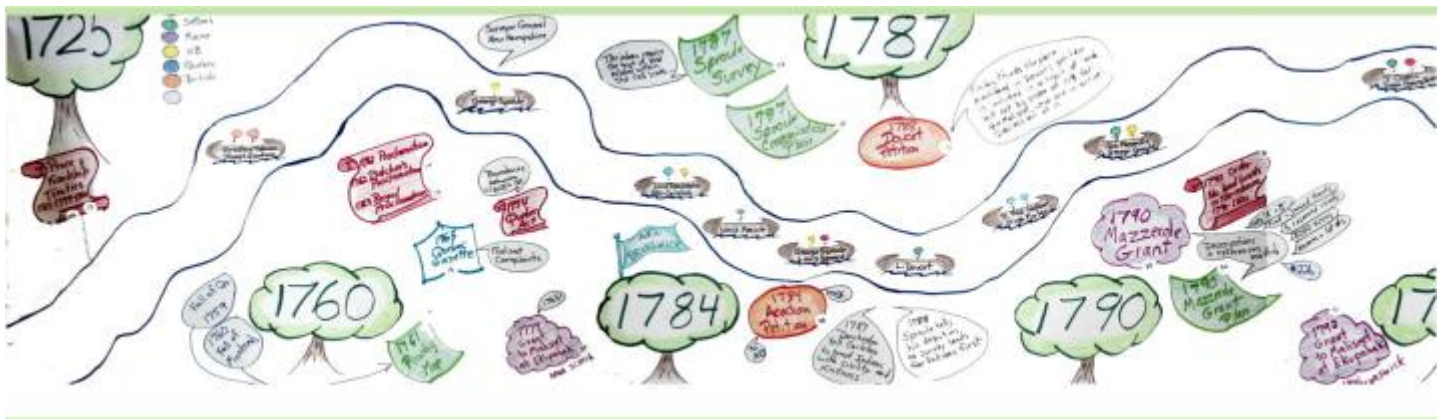
Perley also discussed the problem with rampant squatting on the reserves by settlers. Indian Reserves are held and protected by the Crown for the use and benefit of the Indians. On August 4, 1841, a proclamation is issued in the Royal Gazette requiring trespassers to remove themselves from reserve lands or face prosecution. This was never enforced on the Madawaska reserve.

1842 Schedule of Reserves

Following Perley's report, a revised schedule of Indian Reserves was published which lists the reserve at Madawaska as containing 700 acres. The description states, “East side River St. John below the Grant to S. Hebert, near the mouth of the Madawaska River.”

1844 Act

On April 13, 1844, New Brunswick passes an act entitled “An Act to regulate the management and disposal of the Indian Reserves in the Province of New Brunswick.” This act stipulated that a small portion of existing Indian Reserves would remain for the use of native people while the remainder would be auctioned off to settlers.





1845 Garden Survey

In 1845, New Brunswick Surveyor, H.M. Garden, completes a survey of the Madawaska reserve dividing it into eight lots. Lots number three and four were to be for the Madawaska Maliseet. Under the 1844 Act, the additional lots were to be auctioned off and although preparations were made, the act was never fully implemented. On his survey, Garden draws a new back boundary that is added to the reserve which extends about twice the length of Simon Hebert's lot.

John Hartt Petition

On February 12, 1853, settler John Hartt petitions the New Brunswick government for a grant on the Madawaska reserve. Hartt had squatted on the Madawaska reserve since at least 1842.

1853 Emmerson Letter

Indian Agent, John Emmerson, writes a letter to R.D. Wilmot, Surveyor General, on April 23, 1853, about John Hartt stating:

That Mr. Hartt applied to him Bernard repeatedly to dispose of a part of the reserve and to deed it to him. That he constantly refused Mr. Hartt telling him that the ground was reserved for the use of the Indians and could not be sold.

Lewis Bernard and the other Indians on the reserve declare that they do not wish the government to dispose of any part of the reserve.

1860 Hartt Grant

On April 11, 1860, John Hartt receives a grant for lot No. 1 of the Madawaska reserve, comprising 100 acres.

1860 Beckwith Survey

In November 1860, deputy surveyor, Charles Beckwith completes a survey of the Madawaska reserve which closely resembles the reserve's current boundaries. Lot No. 1 is marked-off as belonging to John Hartt and the reserve begins with lot No. 2.

1861 Louis Bernard Petition

In July 1861, at the age of 90, Louis Bernard travels to Fredericton to petition the Lieutenant Governor about the injustices he has experienced and the reserve land that had been granted away at Madawaska throughout his lifetime. It was a plea to halt further granting of land on the Madawaska reserve.

Born in 1771, Louis died at the age of 101, and had experienced many of the events that had taken place at Madawaska since Sproule's visit in 1787.



Louis Bernard Petition

July 1, 1861

To His Excellency The Honourable J. H. T. Manners Sutton Lieutenant Governor of the
Province of
New Brunswick
The Petition of Lewis Bernard an aged Indian of the St. John Milicete Tribe

Humbly Sheweth

That your petitioner the said Lewy Bernard lives upon the Indian Reserve immediately below the mouth of the Madawaska River on the right ascending Side of the River Saint John in the now County of Victoria with his children and grandchildren who are living with him and some other Indians of the same Tribe also who are living, with him upon said Indian Lands as neighbours and since he was a young man his Father living there also before him and he was himself born there and when he became a man he settled on the land and helped to cut down the trees and clean up the land and has always had a home there to return to when he came home from hunting in the Forest and your Petitioners would also state that a portion of the land so cleared was what is called interval land and has produced hay which he has cut from year to year to feed his horse and other stock and that he himself, has also cultivated some of the higher lands through all these past years, and has raised, upon them from year to year potatoes & c to assist him in supporting himself and his family that he has always had residing there even if he was absent at times himself and now when he has become old and not so well able to work as when he was a young man/ he for many years (this land being easy and good land to plough) has had the privilege of getting some of his neighbours to come with his team and plough his land and put his crops in for a share as agreed between him and his neighbours and thus he has still be receiving a yearly benefit from the land to assist him to live and he has also practiced getting his hay cut upon shares also latterly thus also securing a portion of the produce of the land for his living and he has become old and infirm he has no mind to see for another home and wishes to live and die on the land he has helped to clear and cultivate from his youth up and on the lands that his King and Country always reserved for him and the Milicete St. John Tribe of Indians to which he belongs. He cannot bear the sorrowful thought of having to remove from the lands where he

has buried his wives and children and grandchildren and his Father and Mother and his Brothers and Sisters and all he holds dear to him but hopes to be allowed to spend the remainder of his life upon this land. That has become so sacred to him on account of all the above stated endearing associations and which the thought of being obliged to lose and remove from would be like a premature Death to him. And Your Petitioner would humbly beg leave to state the reason why your Petitioners has been obliged to trouble your Excellency upon this occasion which he regrets having been obliged to [*illegible*] in lawful authority over him on any occasion as follows: The last year he was prevented from having the hay cut upon his land by Mr. Rice the Indian Agent at Madawaska who sold the hay upon his land as he was informed ? for L8.00 & upwards and the parties cut the hay and took it away from him and converted [*illegible*] to their own use and Mr. Rice or no other person has ever given him one cent on account of said hay and he would further beg leave to state what has further discouraged him that in this present year of 1861. And your Petitioner not believing it was passible for him to be so ill treated by his Governor and his Country as his lands to be sold from under his family and he and his family driven away from his only home has traveled this long journey from Little Madawaska to Fredericton where his Governor did Fathers resides to talk with them about these lands as set forth in this petition and Your petitioner begs to state that nothing could have induced him now in his old age to come so far but hoping that by showing his case to Your Excellency and his Council in person and submitting himself as he has always done as a peaceful subject of the Crown and government under while he has always lived and expects to die [*illegible*] the same. They would not allow any Agent or any other person or suffer his lands to be sold to dispossessing him and his family or that they should be driven from their homes which has become so sacred and dear to them.

Madawaska

And Your Petitioner
As In Duty Bound Will Ever Pray
his
Lewy 'X' Bernard and
mark
other Indians of the St. John Milicete Tribe

Experts' Profiles



Andrea Bear Nicholas

Andrea Bear Nicholas is Professor Emeritus at St. Thomas University. Prof. Bear Nicholas held the position of Chair in Native Studies at St. Thomas University from 1993-2013. As an Expert Witness for the Madawaska Maliseet First Nation, Prof. Bear Nicholas focussed on the history of Maliseet Treaties and the relationship with the Crown.

Dr. Brian Cuthbertson

Dr. Cuthbertson has worked on a number of specific claims for the Metepenagiag (Red Bank), Esgenoopetitj (Burnt Church), Bouctouche, and Nekotkok (Tobique) First Nations. Dr. Cuthbertson was an expert witness for the Madawaska Maliseet First Nation where he focussed on the 1844 Act and the government's administration of Indian Reserves in New Brunswick during the early nineteenth century.



Dr. Elizabeth Mancke

Dr. Elizabeth Mancke is a Professor of History at the University of New Brunswick in Fredericton. Dr. Mancke was an expert witness for the Madawaska Maliseet First Nation where she provided an analysis of 18th century land grants and Crown-Indigenous relations in British North America during the 18th and 19th centuries.

Dr. William Parenteau

Dr. Parenteau is a Professor of History at the University of New Brunswick in Fredericton. Dr. Parenteau was an expert witness for the Madawaska Maliseet First Nation where he assisted Dr. Mancke in providing an analysis of the events at Madawaska within the social and political context of British North America in the 18th and 19th centuries.



Clifford Lawrence

Clifford Lawrence is a real estate appraiser for de Stecher Appraisals Ltd. in Saint John, NB. Mr. Lawrence was hired as a consultant for the Madawaska Maliseet First Nation where he provided an analysis of the 1787 Sproule survey and early surveying practices.

Dr. Robert Adlam

Dr. Adlam is a Professor of Anthropology at Mount Allison University. Dr. Adlam drafted a historical report for Canada when the claim was at the Specific Claims Branch. He later became an expert witness for Madawaska, but unfortunately resigned shortly thereafter.



"As a people, we can't forget our heritage and traditions..."

Public History

In 2014, Madawaska Maliseet First Nation hired Public History, an independent research firm, to search for the missing fieldnotes of George Sproule, as well as locate a missing speech by the Maliseet. After a thorough search of various archives and document collections the notes and the speech were not found. Sproule's fieldnotes would have provided insight into his 1787 expedition.



Legal and Research Team



Patricia Bernard

Patricia Bernard is the lead legal council on the Madawaska Maliseet Specific Claim. She was instrumental in the claims history from the original submission up to and including negotiating the final compensation.

Paul Williams

Paul Williams is a Haudenosaunee-Six Nations Confederacy lawyer. Paul has been involved in the claim at the tribunal since 2014. His extensive expertise in Aboriginal law was instrumental in drafting legal arguments before the Judge.



Rick Hatchette

The late Rick Hatchette, who was the legal and governance advisor to the St. John Valley Tribal Council for over 25 years, was second chair to the land claim when it was submitted to the Tribunal in 2012. Unfortunately, Rick retired in 2014 and Paul Williams was hired to replace Rick.

Robert Hamilton

In the summer of 2013 Robert Hamilton, a second year law student, worked on the Madawaska Maliseet First Nation Specific Claim. Robert has since moved on to pursue his PhD in law at the University of Victoria in British Columbia, focussing on Aboriginal Title in the Maritimes.



Mario Pelletier

Mario Pelletier has a Bachelor of Arts from St. Thomas University. In 2012, he completed an independent study under Prof. Andrea Bear Nicholas where he focussed on the use of maps as a colonial tool for the alienation of Maliseet lands at Madawaska. Mario was hired as a research assistant on the Madawaska Maliseet First Nation Specific Claim in 2013.



...For if we forget where we came from, we can lose sight of who we are."

~ Canuuk of the Maliseet



Reflections On The Decision

by Paul Williams

Read Justice MacDougall's decision. If you're a Madawaska Maliseet, every paragraph brings sweet confirmation. Confirmation of the things your grandmother told you. Confirmation that the things you were taught in school, the ones that made you uneasy, were only a part of a much darker and more complicated story. Confirmation that the twenty years Chief Trish Bernard put into this effort were worth it.

To a lawyer, the decision breaks new ground. It affirms Wabanaki understandings of treaties. Justice Barry MacDougall took the time to examine the available evidence - and to think about

what it meant that so much was missing - and to explain what it meant, in history and law. The decision confirms that, in the 1780s, the government of New Brunswick was small and new and dealing with a refugee crisis, and the Surveyor General, George Sproule, had the authority, as a senior Crown official, to reserve land for various purposes in the course of his surveys. Creating Indian reserves in

Canada was never done in only one way. Once land was clearly on the path to being reserved, the Crown's trust-like, fiduciary obligations kicked in to require it to complete the process, and to keep its promises. The Royal Proclamation of 1763 did apply to the Maritimes, to protect Indian lands as they were identified. At Madawaska, the process of "reserve creation" and that of "reserve reduction" came almost hand in hand. But then, that was true all over the continent. The challenge is always to show that this was not only wrong, but also unlawful.

There was courage involved: the Government of Canada tried hard to remove Chief Bernard from the file; to block Madawaska's right to use changes in the law to its advantage; to put forward distracting, sometimes intimidating arguments. Madawaska's team was a remarkable mix of the

best experts possible, people who already knew their fields deeply and those who scrambled to fill gaps in documentation and knowledge. There was incredibly hard work involved, often deep into the night, to meet deadlines and to respond to challenges with imagination and agility, and to distill legal and historical complexity into clear, principled explanations.

And there were the usual strange twists. When Justice MacDougall took over the claim, he wanted to accelerate the process. When I explained that I would not be allowed to travel for six weeks after my hip operation at the end of

March, he set a May 15 date for the beginning of the hearings. I felt he was being cruel: it turned out he would be retiring at the end of August, and he wanted to hold all the hearings before then so he could write the decision.

Only because the Government of Canada took extreme positions were we able to identify aspects of history and law that made all the difference - for example, that the Surveyor General

was not engaged in creating "Indian reserves" so much as reserving several different kinds of land as he did his work. Or that his work, in the 1780s, was conducted under the authority of the Royal prerogative, a relatively obscure area of law to most Canadians, and most Canadian lawyers.

It is not unusual, in claims over two hundred years old, to find that key documents are missing. In this case, we also found that key documents had been modified. And in the end, the most important document of all was one remarkable map, detailed and colourful, showing the land "the Indians require be reserved for their use." Not "requested," as Canada's expert historian argued, but "required." The Maliseet chiefs of the late 1700s, and the honest, effective Crown officials of that time, left us the tools we needed to move beyond land loss and toward recovery.





The 1787 Sproule Survey Map and The Surveyor's Task

by *Clifford Lawrence*

It is indeed an honour to be counted as part of a team of experts proving the creation of a Reserve for the Maliseet at Madawaska in the year 1787. I regret that I lack the gifts to adequately explain the range of emotions felt on reading the decision of the Honourable Barry MacDougall on behalf of the Specific Claims Tribunal.

Involvement with de Stecher Appraisals Ltd. began with David Babineau in 2004; in connection with the Canadian Pacific Right of Way Specific Claim that was settled in early 2008. My own relationship with the Madawaska Maliseet began in 2006 though work on the current claim began in December 2012. David and I then attended a meeting with the experts on February 7, 2013. Among the documents at that meeting was a black and white copy of the 1787 Sproule survey. Patricia recognized that survey as a key piece to the puzzle and she tasked me with procuring a coloured copy of the original.

Though a real estate appraiser by training, my principal involvement with the claim thus far relates to peripheral

knowledge acquired through education, work experience and personal interest and research in the fields of surveying and cartography. Maps and plans add much to the historical record and I hope that I have helped the team to shine light on their secrets. In 1966, in the preface to Volume I of *Men and Meridians: The History of Surveying and Mapping in Canada*, author Don W. Thomson wrote:

“What is the surveyor's task?

It is to measure the natural features of the earth and its waters, to scan the heavens, to locate and fix the boundaries of areas into which man has decided to divide this planet and to determine precise dimensions, directions and relative positions. The mapper, for his part, meets the urgent need of man to

see his locality, his nation and his world as

a whole and in relation the one to the other; to orient himself within his earthly and heavenly environment. But when a surveyor has completed his measuring and the mapper his accumulation of facts, there remains the task of putting results in a form readily understood by others.”

Core Values at the Heart of Land Claim Effort

by *Bill Parenteau*

The successful defence of the Madawaska Malicite land rights, in my experience, marked the culmination of more than two decades of examination of aboriginal land and resource rights in northeast North America. I began working on specific claims shortly after the completion of my PhD studies in the mid-1990s. I moved on from there to government reports and formal academic publications on Native resource issues. In recent years I have served as an expert witness for First Nations.

I would like to share just one important observation I have taken from the experience. A focus on specific issues over the centuries of aboriginal-colonizer interaction creates the false impression of the 'native rights' movement being occasional and fragmented. It is only through more detailed study that a fuller picture

emerges. In fact, administration of Native land and resources that has changed fundamentally over time, while the Native position has been characterized by a core set of beliefs and principles. Those core values have been sustained by unflappable leaders like Chief Patricia Bernard who fought for the Madawaska claim for 20 years despite enduring repeated setbacks along the way.

It has been a highlight of my career to participate in the Madwaska land claim and to feel the warm embrace of the community. On this issue, I am proud to be a part of the UNB History department and to know that my colleagues share a commitment to meaningful acts of reconciliation such as the land claim in which myself and Elizabeth Mancke were privileged to participate.



When History Becomes Visceral

by *Elizabeth Mancke*

As a professional historian, I know that history can become visceral, can move us to tears, make us angry, drive us to make resolutions to see justice done. I felt many of those emotions as I worked on this case over three years. And many of you heard it in my voice over four and a half days as I gave testimony and answered questions in cross examination.

But nothing in my professional experience prepared me for the deepening and now powerfully visceral admiration and respect I felt for the Maliseet women and men – and indeed all Indigenous peoples – who have protected their land and their culture for hundreds of years: the Maliseet who walked the survey lines with George Sproule in 1787; the chiefs who petitioned for a grant; the residents at Tobique who told Moses Perley that there was another reserve up the river at Madawaska; Louis Bernard who travelled to

Fredericton as an elderly man to plead for the government to desist from taking his people's land; the Maliseet scholar, Andrea Bear Nicholas, who found the documentary evidence to prove the existence of the Peace and Friendship treaty that her people's oral history told her existed; the young law student, Patricia Bernard, who started collecting the documentary record to prove that the reserve lands at Madawaska had formerly been more extensive and then as chief put together a team to make the case in a land claim tribunal.

I am in awe at the commitment of thousands of Indigenous women and men who, with steadiness and resolve, have protected their lands and cultures. And I am grateful for the experience that allowed me to understand the magnitude and gift of their dedication in a more visceral way.





The Impact of the Land Claim Agreement

by *Cyrille Simard, Mayor of Edmundston*



The decision of a special federal tribunal recognizing the merits of a claim for compensation of the Madawaska Maliseet First Nation (MMFN) on a portion of territory that would have normally been integrated to the reserve has raised exchanges from all

directions within our community.

It's a bit normal. Few people are informed of Aboriginal issues. I'm not accusing anyone directly. The responsibility in great part for this unfortunate phenomenon lies with our education system. It has never truly granted a real importance to the Aboriginal issue in our teaching.

We could discuss at length the negative consequences of this lack of knowledge on our historical and current relations with the MMFN. But, this would take a lot more space than this simple article.

The question which is often put to me today is simple. What does this decision represent for Edmundston?

On this point, I will simply say three things:

The first, is that this decision has no negative impact on our community. This is not a claim for these lands to be

returned to the MMFN. No one will have to move and dispose of their property because suddenly they happen to live on a territory that, 230 years ago, was designated to be part of an aboriginal reserve.

The second, is that this decision rather has a positive impact for our community. This is a claim for financial compensation for up to \$150 million. It will be paid by the federal government and not by the city of Edmundston. We cannot assume how the members of the MMFN will want this compensation. However, we know one thing, this money will obviously be invested largely in our local economy. Such a sum injected in our economy will necessarily have a positive impact for everyone.

The third, is that this decision brings us, once more, to stop considering ourselves as two divided communities but instead to recognize that our histories have been intertwined forever. That it is abnormal and unhealthy that we have lived together for two centuries without really knowing each other mutually. That it is primordial to continue building bridges between us based on an open, respectful and constructive dialogue, to ensure a prosperous future for all.

We owe it less to the memory of those who preceded us but especially to those who will follow us.



For our future generations