

Background Information – Part B

Wiikwemkoong Islands Specific Claim – October 2015

Introduction

The following information has been gathered to aid Council in their discussions of the Wiikwemkoong Islands Specific Claim. This report will focus on: i) summarizing the public's concerns, points of view, and suggestions, and on ii) providing further information about related legal and research issues that have been raised by members of the public.

Concerns, points of view, and suggestions

The summary below relates to comments that members of the public conveyed to Council about the land claim, through correspondence and/or through the Public Meeting held by the Municipality on September 16th, 2015.

Access to private property

The Municipality has received letters from some ratepayers who are concerned about maintaining access to their properties, which currently are reached by roads which lie on land that may become part of the final land claim agreement. At the end of one of these roads is also the only boat launching area on the lake. The details of these situations will be provided to Council separately. The Municipality may wish to include these matters in its official response to the proposed land claim settlement, to ensure that access issues are not overlooked by the Ontario Ministry of Aboriginal Affairs (OMAA).

Environmental concerns

The public is expressing concern that Provincial building codes and environmental regulations for septic systems are not enforceable on Native lands. Some are asking the OMAA to make compliance with such regulations a condition of any transfers of Crown land to Wiikwemkoong, particularly in relation to Philip Edward Island. Wiikwemkoong has an annual water quality testing program and a Cottage Lot Policy, both of which relate to some of the environmental concerns being raised by the public. Although there is much talk that transferring the Island to Wiikwemkoong will damage its pristine condition, it should also be noted that the general public's use of Philip Edward Island has already resulted in significant amounts of garbage being left on its shores every summer, to the extent that a local non-profit association has often organized groups of people to travel there and clean it up.

The attachment of environmental regulations to a transfer of Crown lands is an issue that can only be addressed at the Provincial level. However, the Municipality may wish to express to OMAA its belief that the natural beauty of the entire area deserves to be maintained for those

who call it home during the summer or year-round, for future generations who have yet to appreciate it, and for the economic well-being of the Municipality.

Loss of recreational use of Crown lands

This topic is the most frequently mentioned concern in the correspondence that the Municipality has received. Some people have written very moving descriptions of their sentimental attachment to lands where they have spent so many happy times with family and friends. In many cases, their relationship to the islands has been built over several generations, but even those who are new to the area, or have limited experience with traveling through it, have expressed their disappointment over the potential loss of public access to them, in particular Philip Edward Island. Some people have written very angry letters, and there appears to be a feeling amongst them of being betrayed by the Province.

In a recent informal meeting with Wiikwemkoong, the Municipality was assured that the Band Council will be open to discussions and proposals for use agreements of Philip Edward Island once the Land Claim is resolved. Even if Philip Edward Island is ultimately left out of a final land claim agreement, the Province will move forward with its plans for Killarney Coast and Islands Park, which the Province's Land Use Policy states will allow for "commercial tourism". It seems inevitable that free use of Philip Edward Island will end.

Potential loss of economic revenues

Some cottagers fear negative effects on the local economy if the public is no longer able to moor a vessel or camp on Crown land for free, yet very little correspondence on the topic has been received from local tourist operators. Those who have contacted the Municipality refer to specific effects, such as the inability to continue bringing guests to Philip Edward Island for shore lunches. The Municipality may wish to encourage affected business owners to approach Wiikwemkoong to discuss the possibility of a use agreement.

Research and legal issues

This section relates to particular issues that have been raised by some members of the public, who maintain that they warrant a significant extension of both the public consultation period and the negotiation phase of the land claim process, so that they can be properly resolved before a final agreement is reached. The issues are presented below, along with information that may aid Council's understanding of them.

The settlement of Shebahonaning/Killarney village

Some people are asking the Province to re-examine historical research about the village, because they maintain that Shebahonaning, now known as Killarney, was first settled in 1820 by "European people".

Complaints often resulted if Killarney Natives received any benefit or authority viewed as rightfully belonging to non-Natives. In December 1880, the *Manitoulin Expositor* newspaper published a letter protesting that *“some changes have been made here in the light house employees, the lights having been taken from Mr. Proulx and given to one Lamorandiere, an Indian...We cannot see how any Government could...give the situation to an Indian who receives Indian pay from year to year and therefore must be a minor under the very Government which appoints him to the position”*.

Later that month, the newspaper published a response from Pierre Regis de Lamorandiere, a grandson of Etienne: *“Your correspondent makes a great mistake in giving the name of the appointee. His name is not ‘Lamorandiere, an Indian’, but Pierre Regis de Lamorandiere...I have a perfect right to receive any money that belongs to me by inheritance from the Indian funds in payment for the purchase of our lands and do not consider it any disgrace to receive what is justly due me from my patrimony nor do I consider it disqualifies me from holding any position with which I may be entrusted...”*

As stated in the previous background report provided to Council (dated September 15th), in 1820, a Northwest Fur Trade Company post was established at Shebahonaning by Etienne Roberet de la Morandiere. His wife was Josephthe Saisaigonokwe (“woman of the falling snow”). Etienne is considered Métis by various researchers. Genealogy published by Pierre-Georges Roy in 1905 states that Josephthe was a close relative of Tecumseh and a member of the Odawa Nation.

A small permanent village of Native people grew around the trading post. The several Native/white intermarriages that took place later did not transform the community from a Native one to a European one. Genealogic data shows that each generation descending from the first families of Shebahonaning intermarried almost exclusively with other Natives. The people of Shebahonaning self-identified as Indians (see example at left) and were included in the paylists being administered by the Department of Indian Affairs, for the Robinson Huron Treaty of 1850. The majority remained on the paylists until a large number were enfranchised by Indian Affairs, beginning in the 1930s (they lost their legal status as Indians).

In the late 1980s, people began applying to Indian Affairs to have their legal rights as Indians officially recognized and restored. Well over 400 descendants of Killarney’s first Native families now have legal status as Indians. Research on those descendants who were living in Killarney village in 2007 shows that 112 out of 130 male and female

heads of households (their children were not included in the data) are direct descendants of Natives who were settled in Shebahonaning prior to the signing of the Robinson Huron Treaty of 1850. Of the same 130 heads of households, 77 are direct descendants of Natives who were settled in Shebahonaning prior to the Bond Head Treaties of 1836. The following page is an overview, by family name, of the ancestral connections of Killarney’s Native families, and their present-day First Nation affiliations.

Given all of the data that is available about the Native history and genealogy of Killarney during the almost two centuries of its existence, it is very unlikely that the village’s first, intermediate, or later inhabitants would be viewed as “Europeans” if the Province re-examined its history.

SHEBAHONANING/KILLARNEY FIRST NATION AFFILIATIONS, BY FAMILY NAME

ANCESTRAL AFFILIATIONS	PRESENT DAY AFFILIATIONS
<p>Waikemahcai's Band (<i>Now known as Henvey Inlet FN</i>) Peshikence (Beauvais, Solomon, Tyson) Kebutoquai (de Lamorandiere) Tetepadkwe (de Lamorandiere)</p>	<p>Henvey Inlet First Nation Burke, Hebert/Herbert, Noble, Pitfield, Proulx, Solomon, Tyson</p>
<p>Shaimahgah's Band (<i>Spanish River Division 3 - Sagamok</i>) Saisaigonokwe (de Lamorandiere, Burke, Loosemore, Solomon) Meawwezhanche (de Lamorandiere, Burke, Loosemore, Solomon) Recollet (Roque, Loosemore) Akwewok (Roque, Bernard, Loosemore, Pilon) Beaucage</p>	<p>Sagamok Anishnawbek Beaucage, Burke, Duchesne, Loosemore, Proulx</p>
<p>Tahgaiwenene's Band (<i>Now known as Wahnapiatae FN</i>) Akwewok (Roque, Loosemore) Metwikemekenang (Tranche, Tranchemontagne)</p>	<p>Wahnapiatae First Nation Bateman, Roque, Tyson</p>
<p>Manitoulin Unceded (<i>Now known as Wiikwemkoong Unceded</i>) Bemanakinang (Bernard, Beaucage) Jacko (Green) Kijikopinensi (Bernard, Proulx) Kijiasoige (Green) Manidoshkay/Mendoshkin (de Lamorandiere) Pangowish (de Lamorandiere) Recollet (Bernard, Roque, Loosemore) Sagima Wawanons/Ningwawanons (Proulx) Wakegijig Wendebence</p>	<p>Wiikwemkoong Unceded Beauvais, Burke, de Lamorandiere, Loosemore, Low, Proulx, Roque, Sagima, Wakegijig, Wendebence</p>
<p>Painoquonaishkung Band (<i>Now known as Magnetawan FN</i>) Nowkwegahbow (Cooper, Hebert/Herbert)</p>	<p>Magnetawan First Nation None</p>
<p>Kewaiconce's Band (<i>Now known as Thessalon River FN</i>) Peladeau (Bateman, Roque, Tyson) Negonahbonaquai (Bateman, Roque, Tyson)</p>	<p>Thessalon River First Nation None</p>
<p>Chippewas of Nawash de Lamorandiere Proulx</p>	<p>Chippewas of Nawash None</p>
<p>Chippewas of Sarnia Wapoose (Prue, Proulx, Bateman, Pitfield, Roque, Tilson, Tyson) Recollet (Pitfield, Tilson) Peladeau (Bateman, Roque, Tyson)</p>	<p>Chippewas of Sarnia Pitfield</p>
<p>Canadian Branch of the Pottawatomis of Wisconsin Ningwawanons (Proulx)</p>	<p>Not organized as a separate First Nation today None</p>

Use of George Island by Native and non-Native people

George Island, shaped like a large triangle, is located directly across the Channel from Killarney village, and has many waterfront properties, almost all of which are situated along the side that faces the village. The remainder of the Island is Crown land that is included in the proposed land claim settlement.

The Province is being asked by some members of the public to consider three historical events which support their view that there is a long history of European use of George Island, and that it is therefore unlikely that after 1820, Natives would have regarded it as solely their land. The historical events being referred to are discussed below.

- i) *documentation exists showing that part or all of George Island was sold in 1882 to a non-Native fisherman*

The story of the selling of part or all of George Island is familiar to many Killarney people. This

<p><i>John Henry Lowe Bachelor and Mary Ann McCuan Spinster both of Killarney Lake Huron Married on Tuesday October 20th. 1868 At Sheguiandah Age of Bridegroom 19 Age of Bride 18 Names of Parents of Bridegroom John and Mary Lowe. Names of Parents of Bride James and Mary Ann McCuan Place of birth of Bridegroom Bedfordshire England Place of birth of bride Wlkwemikong, Manitoulin Island Witnesses: J. W. Adams Philomene Pelon</i></p>
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Island, so the story says, was originally the territory of Mary Ann McCuan's father, who was one of the Wiikwemkoong Chiefs. Mary Ann McCuan married John Henry Lowe in 1868 and they eventually settled on George Island. After her husband's death in 1879, she sold the Island to commercial fisherman Charles Noble. The story that is being presented to the Province further explains that, according to family lore, the Wiikwemkoong Chiefs of that time also made John Henry Lowe a Chief because he was marrying one of their daughters. A suggestion is then made that perhaps the Wiikwemkoong Chiefs also gave George Island to Lowe as a wedding present. In support of the story, two documents are provided to the Province: one referred to as "*Marriage Certificate of John Henry Low and Mary Ann McCuan, October 11 (sic), 1868*" (copy shown at left) and the other referred to as "*Bill of Sale, George Island, June 6, 1882*" (copy shown on the next page).

When viewed in context, the above story does not have "the ring of truth", and the available facts do not support the conclusions being offered to the Province. The two documents, for instance, are also in the historical collections of several Killarney people as well as in the family

history records of many of the Lowe descendants, because they are not originals. They are

photocopies of typewritten transcripts of originals, which opens up the possibility that errors were made in transferring information from the originals to a typewritten version. The source of the original documents is not shown. Even if one assumes that the transcripts are completely accurate, there are other significant problems with the story.

In 1862-63, the Wiikwemkoong Band expelled from their community two “white” fishermen and banned them from continuing to use one of their fishing islands. This well-documented story is more complex than the above statement suggests, but is included here to demonstrate that the expulsion occurred despite the fact that one of the fishermen was part Native, and that the other had a Native wife from Wiikwemkoong and had lived with her and their children in the Wiikwemkoong community for almost thirty years. At the time, the local political situation was explosive, and hostile to whites and their systems of government. It is not likely that five years later, in 1868, the Band would decide to give to John Henry Lowe, a stranger and a white immigrant who was also a fisherman, one of their largest fishing islands simply because he married a Wiikwemkoong girl, even if she was a daughter of one of their Chiefs.

Know all men by these presents that I
 Charles G. Hammond of the village of Sheguiandah
 district of Algoma, Province of Ontario and I Mary Ann
 Lowe of the aforesaid Village; District and Province
 have this sixth day of June in the year of
 our Lord One thousand eight hundred and
 Eighty two sold to Charles Noble of the Village of
 Killarney, District of Algoma, all our improvements
 M.L.M. and claim and right to Georges Island in the
 said District of Algoma for the sum of One Hundred
 and thirty five dollars of lawful money of Canada
 M.L.M. Dated at Sheguiandah this sixth day of June
 A.D. 1882

Witnesses:

William Forrest	C. G. Hammond
M. L. McGrath	Susan Hammond her
	Mary Ann x Lowe mark

The 1882 “Bill of Sale” for George Island names two sellers: Charles Hammond and Mary Ann Lowe. They signed the document, along with Susan Hammond. Who was Charles Hammond and how did he come to “own” part or all of George Island if it was given to John Henry Lowe as a wedding present? Why did Susan Hammond, not named in the document as one of the sellers, also sign the Bill of Sale?

The 1882 Bill of Sale states that Charles Hammond and Mary Ann Lowe are selling “all our improvements and claim and right to Georges Island”. The language in this phrase is intriguing. The word “improvements” likely

refers to fences, dwellings, barns, areas cleared for pastures...anything that has improved the property. But if one has title to a property, why refer only to selling one’s “claim and right” to it? What claim or right could Charles and Mary Ann have shared to this unpatented land?

1861 Census: Mary Ann McCuan is living with the Hammond family, and her age is recorded as 9 years old. Charles Hammond is 51 years of age, a fisherman, born in the United States. Susan Hammond, his 41-year-old wife, was also born in the United States. The Hammonds are shown as Protestants, while Mary Ann is shown as Roman Catholic. Place of residence is not specified, but it was a Census for the Algoma District, and the members of Hammond's household are listed amongst those of known Killarney village residents of the same time period.

1868 "Marriage Certificate": John Henry Lowe, age 19, birthplace Bedfordshire England, is married in Sheguiandah to Mary Ann McCuan, age 18, birthplace Wikwemikong, Manitoulin Island. They are both described as Killarney residents.

1871 Census: Mary Ann Lowe is living with her husband John Henry Lowe and their son Albert, in Killarney. Also in Killarney are Charles Hammond and his wife Susan, with 4-year-old Florence Hammond. The occupations of Lowe and Hammond are each recorded as "fisherman".

1881 Census: 30-year-old Mary Ann Lowe is listed as a widow. She and her five children are recorded as living with Charles Hammond, age 70, Susan Hammond, age 60, Florence Hammond, age 14, and several others, in Killarney.

1882 "Bill of Sale" for George Island: lists the sellers as Charles Hammond and Mary Anne Lowe, and states that they live in Sheguiandah.

1887 Headstone: a man named Charles Hammond died and is buried in the Sheguiandah cemetery. The headstone records his age as 77.

1891 Census: Susan Hammond, a 71-year-old widow, and Florence Hammond, her 23-year-old daughter, are living in Sheguiandah. Listed in the same household are Albert, Charles, Hannah, and William Lowe. The occupation of both Albert and Charles is shown as "fisherman". The name of their mother, Mary Ann Lowe, is not included.

Information about the Hammonds and the Lowes is shown at left, and is based on the Census of Canada records of 1861 to 1891; on a cemetery headstone in Sheguiandah, Manitoulin Island; and on the two transcripts that were submitted as evidence of the sale of George Island.

The "Marriage Certificate" for Mary Ann states she was born in Wiikwemkoong, to James and Mary Ann McCuan. But she lived with Charles and Susan Hammond from at least 9 years of age until she married John Henry Lowe in 1868, and again after his death. It appears that Mary Ann McCuan and the Hammonds had a family relationship, even if Mary Ann was not related to them by blood. Some people in Killarney believe that Hammond and Lowe were also partners in the commercial fishing industry. If they were not, they must at least have had a strong friendship, because one of John Henry Lowe's sons was named after Charles Hammond – Charles Hammond Lowe, who later dropped the "e" from his surname and became a well-known and very successful Killarney commercial fisherman.

Given all of the above information about the ongoing relationship between the Hammonds and the Lowes, is it possible that Charles Hammond and John Henry Lowe settled their families on the same piece of land on George Island? By 1882, John Henry Lowe had died. Perhaps that is why Charles Hammond and John Henry Lowe's widow (Mary Ann Lowe) were the ones selling their "improvements" as well as their "claim and right" to the land. The historical context of the Bill of Sale and the language used in it are consistent with a sale of squatters' rights, not a sale

of property. Perhaps any of the adults living at that specific location could have been perceived as having squatters' rights, and that is why Charles' wife Susan Hammond, although not named in the document as one of the sellers, also signed the Bill of Sale.

In 1882, no individual held or could have sold a legitimate title to part or all of George Island, because up until 1914, the Department of Indian Affairs and the Province of Ontario had not come to an agreement about who had the right to manage that Island (evidence to support this statement is discussed below, in parts ii) and iii) of this section). In addition, after the 1882 "sale" of George Island, people continued to settle there, in locations that are similar to those of today's private properties.

Based on all of the above information, it is difficult to view the Bill of Sale document as credible evidence of a legitimate sale of part or all of George Island.

ii) *cottage development began on George Island in 1906*

By 1906, non-Natives had begun building cottages on George Island, and several years later one of them became concerned about not having proper title to his land. He hired a lawyer, who in 1912 approached the provincial Minister of Lands to discuss obtaining a land patent. In a letter, the lawyer reported back to his client what resulted from his meeting with the Minister "and also other Ministers": that the issuing of patents "for this particular island" depended on whether or not the Province could come to some agreement with the federal Department of Indian Affairs, subject to interpretations of the Bond Head Treaty of 1836.

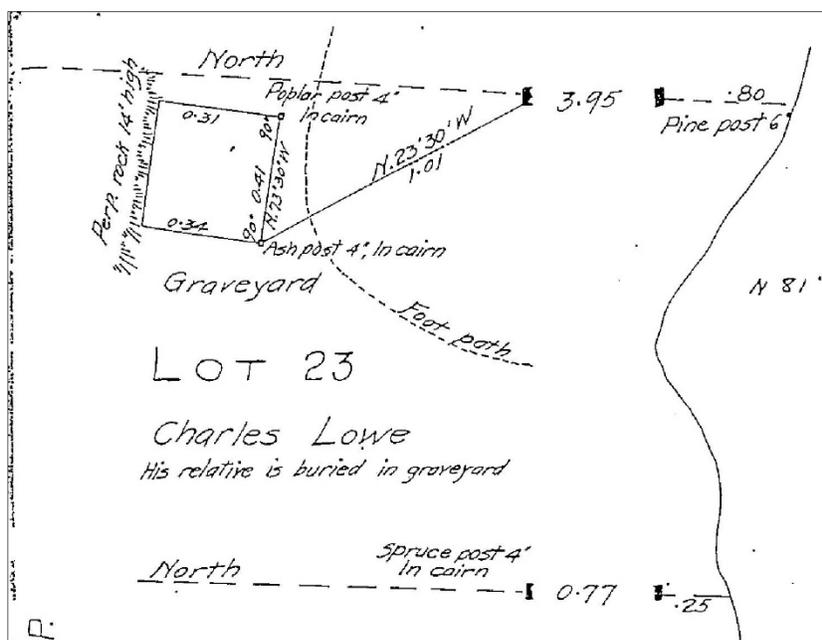
The exact circumstances under which early cottagers on George Island acquired their land is not known, but the situation described above does not align with most people's understanding of the expression "cottage development", which implies that the Province, or some other agent armed with the approval of the Province, was overseeing the sale of recreational properties that had become available. In 1912, years after the first cottage was built on George Island, at least one of those cottagers recognized the fact that he did not legitimately own the land, and the federal and provincial governments were still debating, in relation to Indian title, who had the right to manage George Island.

iii) *well before 1914, George Island was being used for farming and the grazing of cattle and horses*

It is not clear why the practice of farming and the grazing of livestock prior to 1914 would be regarded as a significant point for discussions about Native vs non-Native "ownership" of George Island. Long before 1914, farming was a common occupation of Native people in areas of Ontario that were suited for it. Throughout much of the 1800s and beyond, the Department of Indian Affairs encouraged Native people to farm, so that they would be less dependent on hunting and fishing for food in their traditional territories. Therefore, there would be no reason for Natives to regard George Island as non-Native lands or as shared Native/non-Native lands simply because farming and the grazing of animals was taking place there.

In 1914, the Department of Indian Affairs and the provincial government agreed, without the prior knowledge of Wiikwemkoong, that Ontario would administer all of the islands of the North Channel, including George Island. When the agreement became public knowledge in 1915, the Wiikwemkoong Chiefs wrote to the Superintendent of Indian Affairs, asking about the agreement and requesting that the government meet with the Indians. No meeting about the issue was ever held. [Up until 1974, when the federal government established the Office of Native Claims, the federal and provincial governments had no general policy for dealing with Native land and treaty claims.]

In the 1915 survey of George Island, the Provincial Land Surveyor recorded on his sketches the names of those who were situated on each of the "lots" that he had mapped, and in his notes



he referred to them as "squatters". Almost half of the lots were occupied by Native people of Killarney, and the notes on the sketches reveal that some of them were using George Island for farming and the grazing of cattle and horses.

The survey also shows the lot on which Mary Ann and John Henry Lowe had previously lived and on which he was buried. It is marked with the name of their son, Charles Lowe (see sketch at left). This

suggests that the plans Charles Hammond and Mary Ann Lowe made for the 1882 sale of "part or all of Georges Island" were not carried out.

There are countless cases of governments and their various ministries disregarding treaties that were made with Natives and ignoring settlement and/or resource development by non-Natives. The building of cottages on Native lands is one example of the types of non-Native activities that occurred despite the existence of treaties and the ongoing protests of the Natives with whom the treaties were made. It is, therefore, quite possible for Natives to have continued viewing George Island as solely Native land from well before 1820 up until the present day, even though non-Natives were also making use of it.

Reminder: The transfer of private properties, including those on George Island, will not be part of any final settlement agreement relating to the Wiikwemkoong Islands Specific Claim, unless the transfer is made on a willing seller/willing buyer basis. However, compensation for the loss of those private properties may be included in the final agreement.

Use of the fisheries and George Island by First Nations people of Killarney village

The following question relating to compensation for loss of use of certain resources has been raised in the correspondence received to date by the Municipality: *Killarney people today are Band members of Wiikwemkoong, and their Killarney ancestors were also part of Wiikwemkoong. If those Killarney ancestors fished and used George Island, how can the Band today say they should be compensated for not having use of those same things?*

Ontario was certainly in the habit of ignoring Indian title [to lands]...It was Ontario, after all, who had jurisdiction over the white trappers...it was Ontario who had licensed the surveyors and mining exploration properties the Indian people were complaining about to federal officials...it was Ontario which had already given out timber licenses to lands...If the incursion of whites was the gun pointed at the head of the Indian people, Ontario's finger was on the trigger.

From p. 22-23 of [Treaty Research Report, Treaty No. 9, \(1905-1906\)](#), by James Morrison, for Treaties and Historical Research Centre, Indian and Northern Affairs Canada, 1986

Without a doubt, the people of Killarney village benefited from the use of George Island, and from the fisheries. And some, but not all, Killarney people were Band members of Wiikwemkoong. Money earned through the fisheries was relied on by Killarney families for decades, to provide shelter and food, purchase equipment and supplies, school their children, and so on. However, Wiikwemkoong did not have control of the fisheries or of George Island. Neither did Killarney people, regardless of whose Band members they were. The provincial government took control of the development and management of those resources, despite the protests of Native people.

The Province, for example, issued fishing licences, hired fisheries overseers to enforce its regulations, set and collected associated fees and fines, ordered land surveys, permitted sales of land, administered land records, and settled land disputes.

If the fisheries and George Island are rightfully part of the territory of the Wiikwemkoong Unceded Indian Reserve, then these resources have been withheld from their

management for over a century, and they have not received the communal rights and benefits associated with them.

Ownership of Fitzwilliam Island

Fitzwilliam Island, off the coast of Wiikwemkoong Unceded Indian Reserve, is a very large property situated within the boundary of the Islands Specific Claim. However, because it is privately owned, the Province cannot transfer the title of that land to Wiikwemkoong, unless the landowner is willing to sell, at a price that the Province is willing to pay. The Province has reported that there will not be a purchase of Fitzwilliam Island. It appears that the owner does not wish to sell it. After Wiikwemkoong presented evidence of their historical use of Philip Edward Island, which is similar in size to Fitzwilliam Island, the Province included it in the proposed alternative land settlement.

Those who oppose the inclusion of Philip Edward Island in a final agreement are not losing their properties through this process, but some of them are maintaining that the owner of

Fitzwilliam Island should lose his. At the same time that they are trying to convey to the Province their emotional attachment to Philip Edward Island and explain the intrinsic value it has for their families, they are ignoring such sensitivities when it comes to the owner of Fitzwilliam Island. Instead, they are encouraging the Province to pursue the owner until he agrees to sell it, or strip him of his land.

It is recommended that Council avoid the appearance of supporting either suggestion. Encouraging the machinery of big government to intimidate a property owner into selling his land would not reflect well on the Municipality. With regard to expropriation, the Province has been reassuring the public for years that private property will be left undisturbed when Native land claims are settled. If the Province now decided to carry out an expropriation of Fitzwilliam Island, it could create havoc for future land claim negotiations. No-one would find the land claims process credible once the government had violated one of their own fundamental policies.

Adele Loosemore

Adele Loosemore
Project Manager
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