

**ONTARIO COURT OF JUSTICE
(GENERAL DIVISION)**

B E T W E E N:

SIX NATIONS OF THE GRAND RIVER BAND OF INDIANS

Plaintiff

- and -

**THE ATTORNEY GENERAL OF CANADA
and
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**

Defendants

DEMAND FOR PARTICULARS

THE PLAINTIFF, Six Nations of the Grand River Band of Indians,
hereby requests particulars of the allegations contained in the defendant, the
Attorney General of Canada's statement of defence, as follows:

A. 1. With respect to the allegations in paragraphs 2 and 3:

- (a) specify whether the defendant, the Attorney General of Canada
("Canada's Attorney") admits or denies that Canada's Attorney

represents Her Majesty the Queen in Right of Canada (hereafter "Canada"); and

- (b) if Canada's Attorney denies that Canada's Attorney represents Canada, provide full particulars of all allegations of fact, law or mixed fact and law relied on as the basis for such denial.
- (c)
 - (i) does Canada's Attorney allege (as Ontario does in paragraph 7 of Ontario's Statement of Defence) that "if the Crown had or has any obligation or duty to the Six Nations in respect of (the Grand River) lands or proceeds of disposition of lands, it was and is a political trust, not justiciable or enforceable in the courts";
 - (ii) if so, provide full particulars of any allegation that the Crown at any time regarded its obligations to the Six Nations as a "political trust not justiciable or enforceable in the courts";

B. On the assumption that Canada's Attorney is properly named as the representative defendant for Canada pursuant to the *Crown Liability and Proceedings Act* (Canada), a reference to Canada in the remaining paragraphs of

this demand for particulars will also hereafter refer to Canada's Attorney where the context requires.

2. With respect to paragraphs 2 and 4:

- (a) specify exactly what relevant obligations, duties or liabilities of the Imperial Crown to the Six Nations, is Canada the successor to, or subject to;**
- (b) specify exactly what relevant obligations, duties or liabilities the Imperial Crown had or owed to the Six Nations which Canada does not now have or owe to the Six Nations;**
- (c) specify, with respect to those obligations, duties or liabilities of the Imperial Crown which Canada alleges Canada does not now have or owe to the Six Nations, who has or owes those obligations;**
- (d) provide full particulars of all allegations of fact, law or mixed fact and law relied on as the basis for the particulars provided in answer to paragraphs (a), (b) and (c) above;**

- (e) specify whether Canada disputes in whole or in part the jurisdiction of the Ontario Court of Justice (General Division) to grant the relief claimed in this action;
- (f) provide full particulars of all allegations of fact, law or mixed fact and law relied on as the basis for the allegations (if any) that the Ontario Court of Justice (General Division) does not have complete jurisdiction to grant the relief claimed in this action;
- (g) specify, what relevant obligations, duties or liabilities to the Six Nations, Canada has as a result of the *Constitution Act, 1867*; and
- (h) provide full particulars of all allegations of fact, law or mixed fact and law relied on as the basis for the particulars provided in answer to paragraph (g) above.

3. With respect paragraphs 4 and 6:

- (a) specify whether Canada admits or denies that the Imperial Crown had or owed fiduciary obligations to the Six Nations and, in particular, was under a fiduciary obligation to the Six Nations to hold, protect,

manage and care for the lands, personal property and other assets vested in the Crown for the benefit of the Six Nations;

- (b) if Canada denies that the Imperial Crown had or owed fiduciary obligations to the Six Nations and, in particular, was under a fiduciary obligation to the Six Nations to hold, protect, manage and care for the lands, personal property and other assets vested in the Crown for the benefit of the Six Nations, provide full particulars of all allegations of fact, law or mixed fact and law relied on as the basis for such denial;
- (c) specify whether Canada was in a fiduciary relationship with the Six Nations on and after July 1, 1867;
- (d) if Canada denies that it was in a fiduciary relationship with the Six Nations on or after July 1, 1867 provide full particulars of all allegations of fact, law or mixed fact and law relied on as the basis for such denial;
- (e) specify whether Canada held title to or possessed any assets belonging to or held for the benefit of the Six Nations on and after July 1, 1867;

- (f) if Canada held title to or possessed any assets belonging to or held for the benefit of the Six Nations on or after July 1, 1867, specify who held title to or possessed such assets immediately prior to July 1, 1867; and
- (g) provide full particulars of all allegations of fact, law or mixed fact or law relied on as the basis for the answer to paragraph (a) above;
- (h) specify whether Canada now holds title to or is in possession of any assets belonging to or held for the benefit of the Six Nations.

4. With respect to paragraphs 7 and 10:

- (a) specify whether Canada admits or denies that the Royal Proclamation of 1763 (other than the procedural requirements identified in paragraph 10) has never been repealed and was and is part of the laws in force in Canada and Ontario and binds the Crown; and
- (b) if the statement in paragraph (a) above is denied, provide full particulars of all allegations of fact, law or mixed fact and law relied on as the basis for such denial.

5. With respect to paragraphs 76 and 77 (and in the light of answer 2(b) to the questions on written examination for discovery to Canada, Set No. 1):

- (a) provide full particulars of all allegations of fact, law or mixed fact and law relied on as the basis for the allegation that the Haldimand Proclamation was not or is not a treaty within the meaning of section 35 of the *Constitution Act, 1982*;
- (b) does Canada admit or deny that the rights conferred upon the Six Nations by the Haldimand Proclamation are aboriginal rights now protected by the *Constitution Act, 1982*;
- (c) if Canada denies that the rights conferred upon the Six Nations by the Haldimand Proclamation are aboriginal rights now protected by the *Constitution Act, 1982* provide full particulars of all allegations of fact, law or mixed fact and law relied on as the basis for such denial;
- (d) does Canada admit that the plaintiff band is the successor to the beneficial interest of the lands allotted to the Six Nations under the Haldimand Proclamation and the Simcoe Patent?;

- (e) (i) provide a full and complete description of the beneficial interest which the plaintiff band is the successor to; and
- (ii) provide full particulars of all allegations of fact, law or mixed fact and law relied on as the basis for the description provided in answer to paragraph (e)(i) above.

6. With respect to paragraphs 16(b), 17(b), (c) and (d), 19, 21, 26(b) and 28(c) of Canada's Reply to the Demand for Particulars dated March 14, 1996, specify whether those for whose benefit the lands described in the Haldimand Proclamation and the Simcoe Patent were allotted, were the "plaintiff's ancestors", the "ancestors of the plaintiff" or the "ancestors of the Six Nations" as those phrases are used in the above-noted paragraphs of the Reply for the Demand for Particulars, and if not, provide a full and complete definition of "the plaintiff's ancestors", "the ancestors of the plaintiff" and the "ancestors of the Six Nations" as used in the aforesaid Reply to the Demand for Particulars together with full particulars of all allegations of fact, law or mixed fact and law relied on as the basis for such definition.

7. With respect to paragraph 79, provide a full and complete description of "the land" referred to in that paragraph.

8. With respect to paragraphs 2 and 80:

- (a) specify when the fiduciary relationship between Canada and the members of the Six Nations (who are admitted to be aboriginal people by paragraph 2 of Canada's Statement of Defence) arose;
- (b) provide full particulars of all allegations of fact, law or mixed fact and law relied on as the basis for the answer to paragraph (a) above;
- (c) specify what (if any) fiduciary obligations arose as a result of the fiduciary relationship referred to in paragraph 80;
- (d) provide full particulars of all allegations of fact, law or mixed fact and law relied on as the basis for the answer to paragraph (c) above;
- (e) specify what aspects of the fiduciary relationship referred to in paragraph 80 are alleged not to give rise to a fiduciary duty; and
- (f) provide full particulars of all allegations of fact, law or mixed fact and law relied on as the basis for the answer to paragraph (e) above.

9. With respect to paragraph 25:

- (a) specify whether legal title to the Six Nations lands referred to in paragraph 25 was vested in the Crown;
- (b) specify whether Canada alleges that Joseph Brant had the capacity necessary to effectively appoint Colonel William Claus to be a trustee of property vested in the Crown or to receive funds from the sale of Six Nations' lands the title to which was vested in the Crown; and
- (c) provide full particulars of all allegations of fact, law or mixed fact and law relied upon as the basis for the answers provided to paragraphs (a) and (b) above.

10. (a) with respect to paragraphs 2 and 105 and the allegations contained in the Statement of Claim, particularly in paragraphs 22, 23 and 56 thereof, does Canada admit or deny that the Crown had an obligation to obtain full and fair compensation for the benefit of the Six Nations in return for a conveyance of legal title to any or all of the Grand River Lands;

- (b) provide full particulars of all allegations of fact, law or mixed fact and law relied upon as the basis for the answer provided to paragraph (a) above.

11. With respect to paragraphs 29, 40, 50, 83 and 119 provide full particulars of all allegations of fact, law or mixed fact and law relied on as the basis for the proposition implicit in those paragraphs that the Six Nations had the capacity necessary to effectively appoint William Claus, John Claus, J.H. Dunn or other persons to be trustees of assets legal title to which was vested in the Crown for the benefit of the Six Nations.

12. With respect to paragraph 89 provide full particulars of all allegations of fact, law or mixed fact and law relied on as the basis for:

- (a) the proposition that the Six Nations had the responsibility for enforcing the terms of the Selkirk Mortgage; and
- (b) the proposition implicit in that paragraph that the Six Nations had the capacity necessary to effectively give responsibility for enforcing the Selkirk Mortgage to the "Claus trustees".

13. With respect to paragraph 17:

- (a) specify in detail the origin and attributes of the "particular land conveyancing system"; and
- (b) provide full particulars of all allegations of fact, law or mixed fact and law relied upon as the basis for the answer to paragraph (a) above.

14. With respect to paragraph 18:

- (a) specify whether Canada alleges that the Six Nations' council had the capacity necessary to give Joseph Brant a power of attorney authorizing him to take such security...either in his own name or in the name of others to be by him...nominated, as he or they may deem necessary for securing the payment...of money due and owing from...purchasers; and
- (b) provide full particulars of all allegations of fact, law or mixed fact and law relied upon as the basis for the answer provided to paragraph (a) above.

15. With respect to paragraph 85:

- (a) does Canada allege that there are "records extant today" which would permit the "accounting" therein mentioned to be completed;
- (b) if so, specify the records listed in the plaintiff's Affidavit of Documents or Supplementary Affidavit of Documents or otherwise specifically identify the documents to which the allegation in paragraph 85 refers; and
- (c) specify whether or not Canada alleges that there are relevant records in the possession, power or control of the plaintiff which have not been listed in the Affidavit of Documents or the Supplementary Affidavit of Documents provided by the plaintiff and provide full particulars of all allegations of fact, law or mixed fact and law relied upon as the basis for that allegation.

16. With respect to paragraph 27:

- (a) specify whether Canada alleges that the Six Nations had the capacity to effectively instruct William Claus to hold securities received from

the sale of Six Nations' lands, make loans or distribute money among the different tribes;

- (b) provide full particulars of all allegations of fact, law or mixed fact and law relied upon as the basis for the answer to paragraph (a) above.

17. With respect to paragraph 33:

- (a) specify whether Canada alleges that the Six Nations had the capacity necessary to instruct William Dickson as alleged in paragraph 33 and specify the nature of the proceedings that the Six Nations were capable of instituting and the necessary parties thereto; and
- (b) if so, provide full particulars of all allegations of fact, law or mixed fact and law relied upon as the basis for the answer to paragraph (a) above.

18. With respect to paragraph 94:

- (a) specify when an action or other proceeding to enforce "this claim" could first have been instituted and specify the nature of the proceeding and the essential parties to the proceeding; and

- (b) provide full particulars of all allegations of fact, law or mixed fact and law relied upon as the basis for the answer to paragraph (a) above.

19. With respect to paragraphs 99 and 100:

- (a) does Canada allege that "crediting the Six Nations' account for subscribed shares in the amount of £368.14 provincial currency" was full and fair compensation for the land patented to the Grand River Navigation Company; and
- (b) if so, provide full particulars of all allegations of fact, law or mixed fact and law relied upon as the basis for the answer to paragraph (a) above.

20. With respect to paragraph 103:

- (a) does Canada allege that no Six Nations' lands were sold or conveyed without the Six Nations' agreement as to the nature and amount of the consideration to be obtained in return for such sale or conveyance;
- (b) does Canada allege that no Six Nations' lands were sold or conveyed without obtaining full and fair compensation for the Six Nations;

- (c) does Canada allege that the Crown did not have a fiduciary obligation to obtain full and fair compensation in return for the sale or conveyance of any or all of the Six Nations' lands; and
- (d) provide full particulars of all allegations of fact, law or mixed fact and law relied upon as the basis for the answers to paragraphs (a), (b) and (c) above.

21. With respect to paragraph 105 specify:

- (a) what (if any) duty the Province of Canada had to obtain any or adequate compensation for the sale or conveyance of Six Nations' lands; and
- (b) provide full particulars of all allegations of fact, law or mixed fact and law relied upon as the basis for the answer to paragraph (a) above.

22. With respect to paragraph 106 specify exactly what benefits flowed to the Six Nations by reason of the "well founded and flexible" "regime" therein mentioned.

23. With respect to paragraph 107:

- (a) provide full particulars of all allegations of fact, law or mixed fact and law relied on as the basis for the denial of a fiduciary or other duty to obtain full and fair compensation for Six Nations' lands "otherwise transferred"; and
- (b) provide a full explanation of what Canada means by the statement "it was implicit that the sale price of any lands sold took into account the value of lands "otherwise transferred"".

24. With respect to paragraph 113:

- (a) provide full particulars of all allegations of fact, law or mixed fact and law relied on as the basis for the denial that the Crown took possession of Lots 25 and 26, Concession 4, of the Township of Dunn; and
- (b) provide full particulars of the compensation (if any) obtained for or paid to or for the benefit of the Six Nations with respect to Lots 25 and 26, Concession 4, Township of Dunn.

25. With respect to paragraph 115 provide full particulars of the compensation obtained or paid to or for the benefit of the Six Nations for the lands described in paragraphs 71 and 72 of the Statement of Claim.

26. With respect to paragraph 120:

- (a) does Canada allege that placing monies held for the benefit of the Six Nations in the consolidated revenue fund is consistent with the Crown's fiduciary obligations to the Six Nations;
- (b) if so, provide full particulars of all allegations of fact, law or mix fact and law relied upon as the basis for the answer to paragraph (a) above; and
- (c) if, as suggested in the answer to paragraph 15 of the Request to Admit, incorporated by reference into question 2 of Set No. 1 of the Questions to Canada on Written Examination for Discovery, "costs incurred by the Crown in the course of administering Indian Affairs may have been charged back to some or all Bands whose assets were being administered by the Crown", provide full particulars of all allegations of fact, law or mixed fact and law relied upon as the basis for the justification for such charge backs and the differential

treatment of Bands of Indians including Bands "whose assets were being administered by the Crown" and Bands without assets being administered by the Crown.

27. With respect to paragraph 121:

- (a) specify all provisions of all legislation alleged to constitute the "legislative mandate" referred to in paragraph 121;
- (b) provide full particulars of all allegations of fact, law or mixed fact and law relied upon for:
 - (i) the proposition that an accounting would be inordinately expensive; and
 - (ii) an accounting would be a practical impossibility;
- (c) if, as pleaded, the Court should not order an accounting on the basis that it would be inordinately expensive or a practical impossibility,
 - (i) does Canada allege that the Six Nations' Trust should not be made whole;

- (ii) if Canada alleges that the Six Nations Trust should not be made whole, on what basis (if any) should the Six Nations be compensated; and
- (iii) provide full particulars of all allegations of fact, law or mixed fact and law relied upon as the basis for the answer to paragraph (c) above.

28. With respect to paragraph 122:

- (a) specify when an action or other proceeding to enforce the claims said to be barred by the statutory provisions referred to could first have been instituted and specify the nature of the proceeding and the essential parties thereto; and
- (b) provide full particulars of all allegations of fact, law or mixed fact and law relied upon as the basis for the answer to paragraph (a) above.

29. With respect to paragraph 130, provide full particulars of all allegations of fact, law or mixed fact and law relied on as the basis for the denial of the obligation to account.

30. With respect to paragraph 131, provide full particulars of all allegations of fact, law or mixed fact and law relied upon as the basis for the proposition that the plaintiffs have waived their right to the relief claimed in this action.

31. With respect to paragraphs 132 and 133:

(a) does Canada admit or deny that in *Miller v. The King*, Canada argued that:

(i) the Imperial Crown retained responsibility for Indian Affairs in Canada after 1840; and

(ii) the claims put forward by the Six Nations in *Miller v. The King* could not be asserted against the Crown in Right of Canada by reason of the provisions of the *Petition of Right Act* and/or the *Exchequer Court Act*;

(b) does Canada admit or deny that neither the Six Nations nor Canada argued and neither the Exchequer Court nor the Supreme Court of Canada held that by operation of law the obligations of the Imperial Crown to the Indians of Canada in general and the Six Nations in

particular became the obligations of Canada or Ontario subsequent to 1840;

- (c) does Canada admit or deny that Canada argued in *Regina v. Secretary of State* (1982), 1 Q.B. 892, 937, that the obligations of the Imperial Crown to the Indians of Canada had at some point in time prior to 1982, become the obligations of the Crown in Right of Canada or in Right of the Provinces of Canada and were no longer the obligations of the Imperial Crown and the English Court of Appeal so held;
- (d) does Canada admit or deny that the law with respect to whether the Imperial Crown or a Crown in Canada was liable to honour the obligations of the Crown to the Indians of Canada changed in 1982 as a result of the judgment of the English Court of Appeal in *Regina v. Secretary of State*;
- (e) provide full particulars of all allegations of fact, law or mixed fact and law relied on as the basis for the answers to paragraphs (a), (b), (c) and above.

32. With respect to paragraph 135 specify all of the provisions of all of the "valid legislation" referred to therein.

33. With respect to paragraph 136:

- (a) specify all of the provisions of all legislation referred to therein;
- (b) provide full particulars of all allegations of fact, law or mixed fact and law relied on as the basis for the proposition that the Crown has acted in accordance with valid legislation and specify all provisions of such valid legislation and all acts alleged to be in accordance with such legislation.

Dated: December 1, 1998

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SIX NATIONS OF THE GRAND RIVER

- AND -

THE ATTORNEY GENERAL OF CANADA ET AL

ONTARIO COURT OF JUSTICE
(GENERAL DIVISION)

Proceeding Commenced at Brantford

DEMAND FOR PARTICULARS

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SUBMITTED THIS 18th DAY OF December, 1998
Brown Law Office (Civil Law)
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FOR ONTARIO
Per: [Signature] Time: 1:40 p.m.
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