

**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 Her Majesty The Queen In Right of Ontario's (hereafter "Ontario's") statement of defence, as follows:

A. With respect to paragraph 1, which incorporates by reference and repeats numerous paragraphs of the Statement of Defence of the Attorney General of Canada ("Canada's Defence") and with respect to the following paragraphs of Canada's Defence:

1. With respect to paragraph 77 of Canada's Defence:

- (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 Ontario 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 Ontario 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 Ontario 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.

2. With respect to paragraph 79 of Canada's Defence and paragraph 18 of Ontario's Defence, provide a full and complete description of "the land" referred to in paragraph 79 of Canada's Defence and a full and complete description of "the Simcoe lands" referred to in paragraph 18 of Ontario's Statement of Defence.

3. With respect to paragraph 80 of Canada's Defence:

- (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 Defence and by paragraph 3 of Ontario'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.

4. With respect to paragraph 25 of Canada's Defence:

- (a) specify whether legal title to the Six Nations lands referred to in paragraph 25 was vested in the Crown;
- (b) specify whether Ontario 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.

5. With respect to paragraphs 29, 40, 50, 83 and 119 of Canada's Defence 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.

6. With respect to paragraph 89 of Canada's Defence 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".

7. With respect to paragraph 17 of Canada's Defence:

- (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.

8. With respect to paragraph 18 of Canada's Defence:

- (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.

9. With respect to paragraph 85 of Canada's Defence:

- (a) does Ontario 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 Ontario 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.

10. With respect to paragraph 27 of Canada's Defence:

- (a) specify whether Ontario alleges that the Six Nations had the capacity to effectively instructed 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.

11. With respect to paragraph 33 of Canada's Defence:

- (a) specify whether Ontario 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.

12. With respect to paragraph 94 of Canada's Defence:

- (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.

13. With respect to paragraphs 99 and 100 of Canada's Defence:

- (a) does Ontario 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.

14. With respect to paragraph 103 of Canada's Defence:

- (a) does Ontario 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 Ontario allege that no Six Nations' lands were sold or conveyed without obtaining full and fair compensation for the Six Nations;

- (c) does Ontario 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.

15. With respect to paragraph 105 of Canada's Defence 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.

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

17. With respect to paragraph 107 of Canada's Defence:

- (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 is meant by the statement "it was implicit that the sale price of any lands sold took into account the value of lands "otherwise transferred"".**

18. With respect to paragraph 113 of Canada's Defence:

- (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.**

19. With respect to paragraph 115 of Canada's Defence 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.

20. With respect to paragraph 120 of Canada's Defence:

(a) does Ontario 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; and

(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.

21. With respect to paragraph 121 of Canada's Defence:

(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 Ontario allege that the Six Nations' Trust should not be made whole;
 - (ii) if Ontario 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.

22. With respect to paragraph 122 of Canada's Defence and paragraph 2 of Ontario's Statement of Defence:

- (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.

23. With respect to paragraph 130 of Canada's Defence, 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.

24. With respect to paragraph 131 of Canada's Defence, 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.

25. With respect to paragraphs 132 and 133 of Canada's Defence:

- (a) does Ontario 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 Ontario 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 Ontario 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 after 1840 and the English Court of Appeal so held;

- (d) does Ontario 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 (d) above.

26. With respect to paragraph 135 of Canada's Defence specify all of the provisions of all of the "valid legislation" referred to therein.

27. With respect to paragraph 136 of Canada's Defence:

- (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.

B. With respect to the following paragraphs of Ontario's Defence:

1. With respect to paragraphs 4 and 5:

- (a) specify whether Ontario disputes in whole or in part the jurisdiction of the Ontario Court of Justice (General Division) to grant the relief claimed in this action;
- (b) provide full particulars of all allegations of fact, law or mixed fact and law relied on as the basis for such dispute;
- (c) provide full particulars of all allegations of fact, law or mixed fact and law relied on as the basis for:
 - (i) Ontario's allegation that the obligations of the Imperial Crown to the Six Nations are not enforceable in the Courts and, in particular, in the Ontario Court of Justice (General Division); and
 - (ii) Ontario's denial that the obligations to the Imperial Crown to the Six Nations are now enforceable only against the Imperial Crown.

2. With respect to paragraph 6 provide full particulars of all allegations of fact, law or mixed fact and law relied on as the basis for:

- (a) the denial therein contained; and
- (b) the allegation that "Ontario is subject to no obligations, duties or liabilities owed to the Six Nations by the Imperial Crown or before confederation by the Province of Canada or the Province of Upper Canada.

3. With respect to paragraph 7:

- (a) specify exactly what "the interest of the Six Nations in the lands, personal property and all other assets in question in this action" is alleged to be, including the nature and attributes of such interest or interests;
- (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) provide full particulars of all allegations of fact, law or mixed fact and law relied on as the basis for:

- (i) the allegation that "the Crown was not at any time under fiduciary obligations or any obligation or duty that was justiciable or enforceable in a court of law or equity to the Six Nations to inter alia hold, protect, manage and care for the lands, personal property and all other assets of the Six Nations for the benefit of the Six Nations in a similar manner that trustees are required to hold, protect, manage and care for the assets of a trust for the benefit of the beneficiaries of the trust"; and
- (ii) the allegation that "if the Crown had or has any obligation or duty to the Six Nations in respect of those lands or proceeds of disposition of lands, it was and is a political trust, not justiciable or enforceable in the courts";
- (iii) 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".

4. With respect to paragraph 7 and in the light of paragraph 6 of the Statement of Claim and Ontario's answers to paragraphs 5 and 13 of the Request to Admit

incorporated by reference into Set No. 1 of the Questions to Ontario on Written Examination for Discovery which state as follows:

"5. The Haldimand Proclamation and the Simcoe Patent conferred upon the ancestors of the Six Nations the same rights as they would have enjoyed as the original inhabitants of the lands only in the sense that they conferred a personal and usufructuary right dependent upon the good will of the sovereign, and not an estate in fee simple.

13. It was the intention of the Crown under the Simcoe Patent to confer upon the members of the Six Nations Confederacy who had migrated to Upper Canada the same rights and privileges as were enjoyed by those Indians living within the lands in Upper Canada included in the Royal Proclamation of 1763 only in the sense that it was the intention of the Crown to confer, in respect of the lands affected by the Simcoe Patent, a personal and usufructuary right dependent upon the good will of the sovereign, and not an estate in fee simple."

Provide full particulars of all allegations of fact, law or mixed fact and law relied upon as the basis for the inclusion of the word "only" in the above statements.

5. With respect to paragraph 12:

- (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 plaintiff is now estopped from relying on:

(i) the "surrender requirement" of the Royal Proclamation of 1763;
or

(ii) the "surrender requirement" of any other instrument issued or
enacted by the Crown;

(b) specify the detrimental reliance (if any) alleged to give rise to the
estoppels referred to in paragraph (a) above.

6. With respect to paragraph 23 provide full particulars of all allegations of fact,
law or mixed fact and law relied on as the basis for the allegation that "the Crown
neither recognized nor owed any fiduciary obligation to the Six Nations in respect
of the Six Nations' lands".

7. With respect to paragraph 26 provide full particulars of all allegations of fact,
law or mixed fact and law relied on as the basis for the allegation that "all parts of
the Six Nations' lands that were the subject of a disposition, transaction, or use
other than trespass were the subject of a lawful and valid absolute surrender by
the Six Nations or a valid statutory provision authorizing the disposition,
transaction or use" and specify what legislation is referred to.

8. With respect to paragraph 31:

- (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 plaintiff had full knowledge" of the circumstances therein pleaded; and
- (b) provide full particulars of all acts, omissions, events or circumstances (other than the mere passage of time) alleged to support "the reasonable inference of acquiescence of the plaintiff".

9. With respect to paragraph 40 specify what relevant liabilities that existed prior to July 1, 1867 became on that date liabilities of Canada.

Dated: December 1, 1998

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SIX NATIONS OF THE GRAND RIVER

- AND -

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SERVICE OF A TRUE COPY ADMITTED ON

DEC 01 1998 1:25 pm

ON BEHALF OF THE
DEPUTY ATTORNEY GENERAL OF CANADA
MORRIS ROSENBERG
per. Paul J. Evtaire, Q.C. per
Department of Justice
M. Della Rossa

ONTARIO COURT OF JUSTICE
(GENERAL DIVISION)

Proceeding Commenced at Brantford

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