

**ONTARIO
SUPERIOR COURT OF JUSTICE**

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

**SUPPLEMENTARY MOTION RECORD OF THE HAUDENOSAUNEE
DEVELOPMENT INSTITUTE**
(Motion for Joinder/Intervention)

July 6, 2022

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

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Plaintiff

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TAB 1

Court File No. CV-18-594281

ONTARIO
SUPERIOR COURT OF JUSTICE

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

SUPPLEMENTARY AFFIDAVIT OF BRIAN DOOLITTLE
(Affirmed July 6, 2022)

I, BRIAN DOOLITTLE, of the Village of Ohsweken, in the Province of Ontario,
MAKE OATH AND SAY:

1. I am Kanowakeron, a member of the Turtle Clan of the Mohawk Nation of the Haudenosaunee Confederacy. My English name is Brian Doolittle.
2. I affirmed one affidavit in this matter on June 10, 2022. Capitalized terms in this affidavit have the same meaning as in my June 10, 2022 affidavit, unless otherwise noted.
3. I have personal knowledge of the facts in this affidavit. Where I rely on information from third parties, I state the source of the information and verily believe it to be true.

I. The HCCC's Appointment of HDI

4. At paragraphs 24-26 of my June 10, 2022 affidavit, I describe HCCC's appointment of HDI to represent the interests of the Haudenosaunee Confederacy and its members in this action, on behalf of and as directed by the HCCC.

5. Attached as **Exhibit "A"** is a letter from *Hohahes*, Leroy Hill, Secretary of the HCCC, dated July 4, 2022, and confirming the appointment of HDI on April 2, 2022 at a duly convened meeting of the HCCC. As set out in Mr. Hill's letter, the decision of the HCCC was as follows:

Decision – All sides agreed for HDI to intervene and for Aaron [Detlor] to coordinate our fight. And for the chiefs committee to work closely with Aaron [Detlor] and legal team. Also, for information to be shared with Chiefs and Clanmothers on the email chain, to keep everyone updated. Firekeepers added Cleve T. and Yogi W. to the Chiefs Negotiation Committee.

II. HCCC's Correspondence with the Federal and Provincial Crown

6. I attached as Exhibit I to my June 10, 2022 affidavit an April 6, 2022 letter from Mr. Hill to The Honourable Marc Miller, Federal Minister of Crown-Indigenous Relations, which informed Mr. Miller that the HCCC had asked HDI to "take such steps as it deems necessary" to protect the Haudenosaunee Confederacy's interests in this Litigation (the "**April 6 Letter**"). Below, I attach further correspondence between HDI / HCCC and the Crown related to the April 6 Letter.

7. Attached as **Exhibit "B"** is a letter dated November 19, 2021 from HDI, on the HCCC's behalf, to The Honourable David Lametti (Federal Minister of Justice and Attorney General of Canada) and The Honourable Doug Downey (Attorney General of Ontario).

8. To my knowledge, Doug Downey has not responded to the November 19, 2021 letter, nor has any representative from the Province of Ontario.

9. Attached as **Exhibit “C”** is a February 3, 2022 letter from The Honourable Marc Miller (Federal Minister of Crown-Indigenous Relations), copying Minister Lametti and Mr. Downey, responding to HDI’s November 19, 2021 letter. Mr. Miller’s February 3, 2022 letter reads in part:

As the Prime Minister has consistently stated, working towards reconciliation with Indigenous Peoples is foundational to the Government of Canada’s mandate. In my role as Minister of Crown–Indigenous Relations, I look forward to working with Six Nations of the Grand River and the Haudenosaunee Confederacy in advancing priorities and addressing issues of concern to your people. I share the Haudenosaunee Confederacy Chiefs Council’s goal of working towards resolution of outstanding claims through negotiation and dialogue.

In August 2020, the Honourable Carolyn Bennett and I offered to meet together with representatives of the Elected Council, the Haudenosaunee Confederacy Chiefs Council and the Government of Ontario to discuss shared interests and priorities, visions for self-determination, and approaches for addressing land issues. In my new role, I want to assure you of my commitment to working with you on these matters. I would be pleased to meet with you separately, together with other representatives of the Haudenosaunee Confederacy Chiefs Council, including Clan Mothers, as appropriate, in the near future to discuss how best to move forward. I am also open to participating in a larger meeting with representatives from both the Elected Council and the Haudenosaunee Confederacy Chiefs Council, if preferred. Please note that I have also extended an offer to meet with the Six Nations Elected Council, my goal being openness and transparency in encouraging meaningful engagement and developing a better understanding of the community’s interests.

Canada deeply values its relationship with Six Nations of the Grand River and I recognize that there is much work to be done to rebuild this relationship if we are to truly achieve reconciliation. I believe that with respect, cooperation, and determination, we can make

progress on your community's priorities in a way that respects its unique history and circumstances.

10. Attached as **Exhibit "D"** is a copy of a letter from Mr. Hill to Minister Miller dated March 7, 2022, in response to Minister Miller's letter of February 3, 2022.

11. The April 6 Letter (attached as Exhibit I to my June 10, 2022 affidavit) follows up upon Mr. Hill's March 7, 2022 letter to Minister Miller.

12. Attached as **Exhibit "E"** is a copy of Minister Miller's mandate letter, which is referenced in the April 6 Letter. Minister Miller's mandate letter states that his "first and foremost priority" is to work in full partnership with First Nations to "continue building nation to nation relationships and support self-determination, including supporting First Nations communities as they transition to self government and move away from the *Indian Act*." Minister Miller's mandate letter specifically asks that he delivers on the following commitments:

- a. "Continue to support Indigenous-led processes for rebuilding and reconstituting their nations and advancing self-determination, and work in partnership on the implementation of the spirit and intent of treaties, and land claim and self-government agreements with appropriate oversight mechanisms to hold the federal government accountable."
- b. "Support the Minister of Justice and Attorney General of Canada in fully implementing the *United Nations Declaration on the Rights of Indigenous Peoples Act* across government."

- c. “Work with Indigenous partners and relevant Ministers to accelerate the Recognition of Indigenous Rights and Self-determination processes, with particular focus on reforming federal government structures, notably to support self-determination consistent with the *United Nations Declaration on the Rights of Indigenous Peoples*.”
 - d. “Work with existing and traditional Indigenous governments and leaders, whose nations and forms of governance were suppressed and ignored historically by the federal government, to restore respectful nation-to-nation relations, in the spirit of self-determination, by renewing and updating treaty relationships where they exist, including pre-confederation treaties, and by seeking viable, trusting and respectful relationships where no treaty exists.”
13. Attached as **Exhibit “F”** is a copy of Minister Lametti’s mandate letter. Mr. Lametti’s mandate letter specifically asks that he delivers on the following commitments:
- a. “Fully implement the *United Nations Declaration on the Rights of Indigenous Peoples Act* and work with Indigenous Peoples to accelerate the co-development of an action plan to achieve the objectives of the Declaration. You will be supported in this work by all ministers, and in particular the Minister of Crown-Indigenous Relations, Minister of Indigenous Services and Minister of Natural Resources.”
 - b. “Advance the priorities of Indigenous communities to reclaim jurisdiction over the administration of justice in collaboration with the provinces and territories,

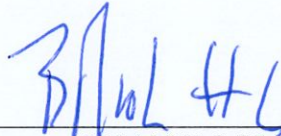
and support and fund the revitalization of Indigenous laws, legal systems and traditions.”

14. I affirm this affidavit in connection with HDI’s motion for intervention and for no other or improper purpose.

AFFIRMED BEFORE ME at Toronto, in)
the Province of Ontario, remotely by the)
affiant stated as being located in the Village)
of Ohsweken, this 6th day of July, 2022 in)
accordance with O. Reg. 431/20,)
Administering Oath or Declaration)
Remotely)



Commissioner for Taking Affidavits
JONATHAN MARTIN
(LSO# 83596H)



BRIAN DOOLITTLE

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This is Exhibit "A" to the Affidavit of
Brian Doolittle, affirmed this 6th day of
July, 2022



Commissioner for Taking Affidavits



Six Nations "Iroquois" Confederacy
GRAND RIVER COUNTRY

Ohsweken, Ontario

July 4, 2022

This letter is to confirm that the Haudenosaunee Confederacy Chiefs Council (HCCC), in a duly convened council have directed the Haudenosaunee Development Institute (H.D.I.) to coordinate the effort to protect our land rights being discussed in provincial court. As Secretary, I provide the following excerpt from the council minutes of April 2, 2022;

Decision-Council agreed for H.D.I. to intervene and for Aaron Detlor to coordinate our fight. Also, for the Chiefs Committee to work closely with Aaron and the legal team. Also, for information to be shared with Chiefs and Clanmothers on the email chain, to keep everyone updated."

Please feel free to contact me if any further information is needed.

In Peace and Friendship,

Hohahe, Leroy Hill
Council Secretary

EXHIBIT B

This is Exhibit "B" to the Affidavit of
Brian Doolittle, affirmed this 6th day of
July, 2022



Commissioner for Taking Affidavits



November 19, 2021

The Honourable David Lametti
Minister of Justice and Attorney General of Canada
Department of Justice
284 Wellington Street
Ottawa, ON K1A 0H8

The Honourable Doug Downey
Attorney General of Ontario
Ministry of the Attorney General
720 Bay Street, 11th Floor
Toronto, ON M7A 2S9

Dear Ministers Lametti and Downey:

RE: Six Nations of the Grand River Band of Indians v Attorney General of Canada et al, Toronto Court File No. CV-18-594281

We are counsel to the Haudenosaunee Development Institute ("HDI") which acts with delegated authority from the Haudenosaunee Confederacy Chiefs Council (the "HCCC"). The HCCC has directed HDI to articulate HCCC's position with respect to the above noted Action which is currently before the Ontario Superior Court (the "Action") and to protect Haudenosaunee rights and interests. The HCCC's position is as follows:

1. The HCCC is one of the two parties to the Haldimand Proclamation of 1784, the treaty at issue in the Action;
2. The HCCC is the collective rights holder for the Haudenosaunee, and the Haudenosaunee (or Six Nations) Trust (the "Trust") beneficiary;
3. The Plaintiff to the Action, the Six Nations of the Grand River Band of Indians, is not the proper party to advance the claims in the Amended Statement of Claim (the "Claim") dated May 7, 2020;
4. The Action cannot proceed to a decision on the merits or a settlement without the consent of the HCCC;
5. The Crown must fulfill its treaty and fiduciary obligations to the HCCC, including its obligations as the trustee of the Trust; and
6. The matters at issue in the Action can only be resolved with the Crown's return to the negotiating table with the HCCC.

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Each of these points is elaborated upon below.

1. HCCC is Party to the Treaty

Party to the Treaty at Issue in the Action. The Claim pleads breach of treaty obligations and particularizes the Haldimand Proclamation of 1784 as the treaty at issue (see e.g. paras 15, 17, 82(d) of the Claim). The HCCC is party to the Haldimand Proclamation with the Crown as the HCCC was at the time, as it continues to be, the governing body of the Haudenosaunee.

In recognition of the Haudenosaunee's allied assistance in the American War of Independence and in recognition of encroachments upon the Haudenosaunee's 1701 treaty lands, the Haldimand Proclamation of 1784 confirmed that the lands prescribed therein would be held, managed, and used by the Haudenosaunee for the exclusive benefit of the Haudenosaunee. These Proclamations confirmed the area of Haudenosaunee exclusivity (or "the prescribed lands") as:

"six miles deep from each side of the River beginning at Lake Erie and extending in proportion to the Head of said River, which Them and Their Posterity are to enjoy forever."

There are other treaties which govern the HCCC-Crown relationship and establish Haudenosaunee rights and interests that are not pleaded in the Claim. The HCCC's longstanding treaty relations with the Crown include, for example, the Two Row Wampum and Silver Covenant Chain of Friendship, and the Nanfan Treaty of 1701. With respect to the lands prescribed in the Haldimand Proclamation, the HCCC has from time immemorial held title to those lands. The Haldimand Proclamation merely sets out the Haudenosaunee right to possess and occupy the lands in a manner cognizable to the Crown.

2. Collective Rights Holder & Trust Beneficiary.

The HCCC is the collective rights holder on behalf of the Haudenosaunee people. The Chiefs that comprise the HCCC, referred to at times by Crown actors and others as the "Hereditary Chiefs", are the descendants of the collective rights holders and empowered by the Haudenosaunee to advance the collective treaty rights and interests of the Haudenosaunee made up of the Mohawk, Oneida, Onondaga, Cayuga, Seneca, and Tuscarora people. The HCCC, referred to historically as the State of the Six Nations of the Iroquois, has been and continues to be the governing entity of the Haudenosaunee. The HCCC continues to have a sovereign status notwithstanding efforts on the part of Canada and Ontario to undermine or encroach upon that status.

The HCCC as the collective rights holder is the proper beneficiary of the Trust that was imposed on any monies from dispositions of the prescribed lands; accordingly, the Crown

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owes important duties to the HCCC as trustee of the Trust in accordance with the terms of the Trust and Treaty promises.

The HCCC has raised the trust relationship in past communications and documents, referring to the collective beneficial Haudenosaunee rights. For example, in the Redman's Appeal for Justice dated August 6, 1923 where Deskaheh, Sole Deputy and Speak of the HCCC Council states (emph. added):¹

... the Imperial Government [Great Britain] of its sole accord handed over to the Dominion Government [Canada] such funds, but for administration according to the terms of that trust and promise, **and the fund is now in the actual possession of the Dominion Government, the beneficial rights remaining as before in the Six Nations. ...**

3. Plaintiff Lacks Authority to Advance Haudenosaunee Rights and Interests

The Plaintiff to the Action, the Six Nations of the Grand River Band of Indians, also referred to as the Six Nations Band Administration ("SNBA") is not a proper party to the Action. The SNBA lacks authority to advance the Claim to resolution via litigation or settlement.

Colonial Imposition of the Six Nations Indian Act Council. The SNBA exists by way of the *Indian Act* and Crown Orders in Council, P.C. 1629, dated September 17, 1924, later replaced by P.C. 6015 to the same effect dated November 12, 1951 (the "Orders in Council"). The Crown's Orders in Council purported to unilaterally impose the *Indian Act's* band council and electoral scheme on the Haudenosaunee people against their will, almost 150 years after the Crown treated with the HCCC in 1784 regarding the prescribed lands at issue in the Action.

As of October 1924, the SNBA existed as an illegitimate creature of colonial statute pursuant to the *Indian Act* that is wholly separate and apart from the HCCC and Haudenosaunee systems of governance. Since the Crown's creation of the SNBA and with Crown support and funding, the SNBA has attempted to assert itself as a governing body of the Haudenosaunee, despite not being recognized by the Haudenosaunee people as the legitimate government. The HCCC has continued to exist and govern with the support of the Haudenosaunee people as it has from time immemorial. The Crown's interference with Haudenosaunee governance and politics through the forced imposition of the SNBA was contrary to Treaty promises with the Haudenosaunee, and forms part

¹ The Redman's Appeal for Justice to the League of Nations, Submission from Deskaheh to the Hon. Sir James Eric Drummond (August 6, 1923), p 3.

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of the Crown's colonial legacy of oppression and broken Treaty promises with the Haudenosaunee.

Haudenosaunee People and Predecessors Not a "Band". The SNBA in its Claim pleads at paragraph 2 that the "[t]he Plaintiff, the Six Nations, is a band within the meaning of the Indian Act..." and that "the predecessors, and the current body, of the Indians known as the Six Nations of the Grand River together are referred to as the "Six Nations"". The Six Nations – that is the Haudenosaunee people today and their predecessors – are not a "band" within the meaning of the *Indian Act*. The HCCC and Haudenosaunee people do not recognize Canada's imposed *Indian Act* scheme and, contrary to the Claim as pleaded, do not accept that they are a "band" within the meaning of the *Indian Act*. The Haudenosaunee people are the People of the Longhouse. They are comprised Nations and maintain a Clan system which adheres to Haudenosaunee law.

SNBA Lacks Requisite Authority. The SNBA lacks the requisite authority to advance the Claim; it is not the proper collective rights holder under Crown or Haudenosaunee law to litigate or settle the Action.

In applying Crown law to standing issues regarding the proper party to advance collective rights claims, Canadian courts have recognized that defining the proper collective rights holder of an Indigenous Nation is a matter principally determined by the Indigenous people who make up the Nation taking into account Indigenous perspectives and histories of nationhood.² To be the proper collective rights holder and thus the proper party to advance a collective rights claim, the collective must empower the collective rights holder with the authority to act. Such authority is in part informed by process and representation, such as the collective's participation in an electoral process and the collective's representation in the council or other entity which is the collective rights holder.

The HCCC and the vast majority of Haudenosaunee people have never accepted the SNBA as the governing body of the Haudenosaunee people. Nor have they empowered the SNBA through participation in the *Indian Act* electoral process with authority to govern and make decisions with respect to collective Haudenosaunee rights and interests. In other words, the vast majority of Haudenosaunee people consider the SNBA to be an illegitimate arm of the colonial state that was unlawfully imposed on the Haudenosaunee and is propped up by the Crown.

² See e.g. *Tsilhqot'in Nation v British Columbia*, 2007 BCSC 1700, paras 437-471, rev'd on other grounds 2012 BCCA 285, paras 51-57, 150-151, 148-149, 156, rev'd on other grounds 2014 SCC 44, para 19; and *Kwicksutaineuk/Ah-Kwa-Mish First Nation v Canada (Attorney General)*, 2012 BCCA 193, paras 77-78.

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The trial judge's decision in *Isaac et al v Davey et al* speaks to the collective's lack of participation in the *Indian Act* electoral process, noting that the SNBA's authority to represent the Haudenosaunee people is "seriously in doubt":³

It is claimed by the plaintiffs [the SNBA] that even if they have no statutory rights they do represent all other members of the Six Nations except the defendants [members of the Confederacy]. **Some showing of the right to such a claim must be made if it is to be sustainable. In the present instance not only is there no showing of such a right, but such evidence as there is indicates conclusively not only that the system imposed by the Indian Act is not supported by more than a small fraction of the population [of Haudenosaunee people] of the lands in question, but that at least certain of the plaintiffs were elected by a very small fraction of those eligible.** Mrs. Mary Bloomfield, the secretary to the Six Nations Council [SNBA] for about the last five years, produced exs. 16 and 17, photostatic copies of the official reports of the band elections in 1969 and 1971. In 1969, out of some 10,000 band members of whom about 5,000 are in actual residence, a total of 547 votes were cast. Of these 315 were cast for Richard Isaac as chief councillor. Acclamations apparently occurred in all other districts but Nos. 5 and 6. In those districts totals of 225 and 156 votes were cast respectively and the winning candidates obtained in district No. 5, 70 and 62 votes, and in district No. 6, 42 and 41 votes. **Their representative character is therefore seriously in doubt.**

The lack of Haudenosaunee people's support for the SNBA and involvement in the *Indian Act* electoral process among other SNBA band matters continues to this day. The current SNBA does not have the support of a majority of Haudenosaunee people and is not representative of all the Nations that make up the Haudenosaunee people. For example, only 1720 people (approximately 6%) of the total voting population of over 30,000 people voted in the last SNBA election in November of 2019.

Crown law on the proper party to advance collective rights held by Indigenous peoples has significantly advanced since *Isaac et al v Daveys et al* was decided at the trial level and then overturned on appeal. Under the Crown's own law today, the SNBA's authority to represent the Haudenosaunee people as the collective rights holder remains highly questionable at best.⁴ The HCCC maintains that the SNBA is clearly not the proper party vested with the requisite authority to advance the Claim.

³ *Isaac et al v Davey et al*, 1973 CanLII 814 (ONSC), rev'd 1974 CanLII 40 (ONCA), aff'd 1977 CanLII 21 (SCC).

⁴ See e.g. *Hydro One Networks Inc v The Haudenosaunee Confederacy Chiefs*, 2019 ONSC 4616, para 20.

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4. Action Cannot Proceed to A Decision on the Merits or Settlement that Affects Haudenosaunee Treaty Rights and Interests

There are at least three reasons why the Action cannot proceed: lack of standing; impacts on Haudenosaunee rights and interests; and differing views and characterizations of the Treaty promises and history of Crown action at issue in the Claim.

Standing. Further to the above, the SNBA does not have standing to pursue the Action as it is not a proper party. The HCCC is the Crown's treaty partner, not the SNBA. The HCCC Chiefs are the descendants and heirs of those who entered into treaties with the Crown agents in pre-confederation times. The Crown cannot in good faith litigate or settle the Action with the SNBA when the HCCC is the proper treaty partner and Haudenosaunee collective rights holder, and any decision on the merits or settlement would affect Haudenosaunee rights and interests.

Impact on Haudenosaunee Rights and Interests. The Claim as pleaded encompasses the Crown's breach of its fiduciary duties and Treaty promises, including the Crown's failure to account for Trust monies and other assets as trustee of the Trust. The content of the treaty promises made to the Haudenosaunee – encompassing the treaty rights, and the Crown's various breaches of those rights and other Crown obligations owing to the Haudenosaunee as trustee of the Trust and pursuant to the Crown's fiduciary duty – are at issue in the Action. A settlement or any decision on the merits of the Claim would thus impact on such Haudenosaunee treaty rights.

The Crown cannot proceed to litigate Haudenosaunee rights and/or enter a settlement with respect to those rights without engaging the HCCC. To do so would constitute dishonourable conduct and bad faith dealings on the part of the Crown, particularly when the Crown engages with the HCCC with respect to Haudenosaunee rights in other contexts, including through its delegate HDI.

The HCCC is not in receipt of any communications from the Crown alerting the HCCC to this Action, nor requesting the HCCC's position on the Claim. The HCCC considers the Crown's failure to communicate with the HCCC regarding the Claim to be but another example of the Crown's dishonourable conduct in its dealings with the Haudenosaunee.

Characterization of Treaty Promises and History. The HCCC's position on the treaty promises and their breaches, including the history of land dispositions in breach of treaty promises, differs in many respects from what is pleaded in the Claim. The Haudenosaunee agree with only a very few of the descriptions of the historical acts of land misappropriation set out in the Claim.

The resolution of the Action would not resolve all issues with respect to the Crown's breaches of Haudenosaunee treaty rights and its fiduciary duties as trustee of the Trust. The Crown could not honourably assert that a resolution of the Claim would absolve the Crown from its treaty promises made to the HCCC or determine Haudenosaunee rights and interests as advanced by the HCCC.

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The Crown cannot in good faith and with any certainty litigate or settle the Claim when the Crown has real or constructive knowledge of the following:

- (i) The HCCC and the vast majority of Haudenosaunee people do not recognize the Plaintiff as a proper party with authority to advance the issues in the Claim and bind the Haudenosaunee people;
- (ii) Any decision on the merits or settlement would improperly determine and/or affect Haudenosaunee treaty rights in the absence of the HCCC, the proper collective rights holder; and
- (iii) The HCCC has differing views on the extent of the treaty rights and Crown breaches at issue in the Claim.

For the Crown to proceed with the Action in light of the above is untenable.

5. Crown Obligations as Treaty Partner and Trustee

While the Action cannot proceed, the Crown's breaches of treaty promises and its fiduciary duties at issue in the Action are live issues in need of resolution.

The Haldimand Proclamation recognized exclusive Haudenosaunee use, occupation and possession to over 950,000 acres of land with that land base now diminished to approximately 45,000 acres. Since 1784, Haudenosaunee lands have been chipped away contrary to the promises of the Crown to the HCCC. The HCCC does not accept the taking of Haudenosaunee land and the Crown's blatant abuse of the Trust and failure to fulfill its treaty promises and fiduciary duties owing to the Haudenosaunee. These matters must be addressed on a Nation-to-Nation basis at the negotiating table outside the colonial litigation context which is governed by Crown laws, procedures, and judicial appointments.

The HCCC understands that the treaty based relationship with the Crown is governed by the extension of the Haudenosaunee law of skennen, kariwio and kasastensera.

While we rely upon fiduciary and trust law to articulate the legal obligations that arise from a treaty based relationship, it is without prejudice to HCCC's position that these exist as a subset of the legal principles to which the parties to a treaty are bound and which necessarily includes Haudenosaunee law.

With that said we understand that the Haldimand Treaty and the Crown's actions with respect to Haudenosaunee lands and Trust monies have created what Canadian law characterizes as a fiduciary and trust relationship. The Crown has held and still holds funds for the benefit of the Haudenosaunee.

The Crown's law of trusts developed in the courts of Equity to address situations where one party holds funds or other property for the benefit of another and has duties in equity

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that go beyond contracts under law. At the same time the operation of section 35 of the *Constitution Act, 1982* provides that the Crown owes a strong fiduciary duty to the Haudenosaunee as the Crown has exercised discretionary control over Haudenosaunee land and trust monies.⁵

As a fiduciary and trustee of assets belonging to the Haudenosaunee, the Crown has clear obligations that must be addressed. The HCCC, as the beneficiary of the Trust expects these obligations to be met in full.

The Crown as trustee is obliged to, *inter alia*:

- Act faithfully and loyally, which involves avoiding conflict of interest, and being honest and transparent with the beneficiary, the HCCC; and
- Act with reasonable skill and competency, which involves using the reasonable skill needed to invest or make other decisions regarding management of the Trust assets on behalf of the beneficiary, the HCCC.

It is clear that the Crown has breached its fiduciary duties and failed in its duties as trustee to the Haudenosaunee. The history of the Crown-HCCC relationship is littered with examples of the Crown putting its interests ahead of the Haudenosaunee, acting with a lack of honesty and transparency, and taking unreasonable risks with the Trust monies and lands of the Haudenosaunee. The Crown has failed thus far to inform the HCCC of its actions as Trustee even though the duty to account to the beneficiary is key to the obligation to act with transparency. In determining the equitable compensation owing to the Haudenosaunee for the Crown's breach of its fiduciary duty, the controlling question is what the Crown ought to have done as a fiduciary.⁶

The HCCC treaty relationship requires that the Crown adhere to its duties as the trustee of the funds and property that flowed from the purported dispositions of lands which were to be transferred to and for the exclusive benefit of the Haudenosaunee. The HCCC raises this issue now in connection with the Crown's obligations as a trustee over the funds it holds for the Haudenosaunee. There are many other serious concerns regarding the Crown's disposition of Haudenosaunee lands that will need to be addressed separately.

6. Steps Towards a Resolution: Crown Return to the Negotiations Table

The HCCC calls on Canada and Ontario to return to the negotiations table.

The HCCC requests a meeting to initiate discussions on the process for the Crown to return to the negotiations table with the HCCC and to disengage from the SNBA litigation.

⁵ *Southwind v Canada*, 2021 SCC 28, paras 60-61, 64 [*Southwind*].

⁶ *Southwind*, para 11.

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The negotiations table is the proper forum to discuss and resolve issues arising in the Crown-HCCC treaty relationship and how the Crown will account for Trust assets and discharge its fiduciary duties moving forward in managing the Trust assets. The first step towards a proper trust relationship is for the Crown to account for all monies resulting from dispositions of Haudenosaunee lands and their investment in the Trust. At the very least, the Crown must account for the more than 900,000 acres which it has disposed of as a trustee and how the monies related to those dispositions have been held and invested for the benefit of the Haudenosaunee and where there have been failures to meet the fiduciary standards, specifically conflict of interest and the use of reasonable skill in investment, which are inherent in its role.


At the same time, the Crown as trustee must examine its processes around investment and reporting on the Trust monies it currently holds to ensure the way forward is clear and consistent with its fiduciary duties to the Haudenosaunee.

Finally, the Crown as Trustee is well aware that the HCCC expects the Crown to address the failures of the past and compensate the Haudenosaunee for the Crown's breach of its fiduciary duties. As a trustee, the Crown must account for any losses to the Trust that flowed from its breaches of fiduciary duties and account for any unauthorized profits it earned through the use of its position of trustee over the Trust monies (all of which were improper).

The HCCC expects that the negotiations table will be the forum where the Crown, *inter alia*, will provide an accounting of Trust assets, engage in discussion with respect to Haudenosaunee land and treaty rights, and settle for past wrongs.

We look forward to your response to the above. Should you have any questions or concerns please do not hesitate to contact us.

Yours truly



Aaron Detlor
RAD/tg



Adrienne Telford & Lara Koerner-Yeo
AT/LKY/ml

cc: Six Nations Band Administration
Ben Jetten, Iris Antonios, Max Shapiro, Rebecca Torrance, Counsel to SNBA
Michel Helie, Assistant Deputy Attorney General, MAG Crown Law Division
Sean Kearney, Director, MAC Crown Law Office Civil
Shalene Curtis-Micallef, Assistant Deputy Minister, DOJ
Lynn Lovett, Assistant Deputy Attorney General, DOJ National Litigation Sector

EXHIBIT C

This is Exhibit "C" to the Affidavit of
Brian Doolittle, affirmed this 6th day of
July, 2022



Commissioner for Taking Affidavits

Ministre des
Relations Couronne-Autochtones



Minister of
Crown-Indigenous Relations

Ottawa, Canada K1A 0H4

February 3, 2022

Haudenosaunee Confederacy Chiefs Council
c/o Hohahes, Leroy Hill
P.O. Box 714
OHSWEKEN ON N0A 1M0

ohahokta@hotmail.com

Dear Chiefs:

I am writing further to the letter of November 19, 2021, sent by the Haudenosaunee Development Institute to the Honourable David Lametti, Minister of Justice and Attorney General of Canada, and the Honourable Doug Downey, Attorney General of Ontario, regarding litigation and claims involving the Six Nations of the Grand River.

As the Prime Minister has consistently stated, working towards reconciliation with Indigenous Peoples is foundational to the Government of Canada's mandate. In my role as Minister of Crown-Indigenous Relations, I look forward to working with Six Nations of the Grand River and the Haudenosaunee Confederacy in advancing priorities and addressing issues of concern to your people. I share the Haudenosaunee Confederacy Chiefs Council's goal of working towards resolution of outstanding claims through negotiation and dialogue.

In August 2020, the Honourable Carolyn Bennett and I offered to meet together with representatives of the Elected Council, the Haudenosaunee Confederacy Chiefs Council and the Government of Ontario to discuss shared interests and priorities, visions for self-determination, and approaches for addressing land issues. In my new role, I want to assure you of my commitment to working with you on these matters. I would be pleased to meet with you separately, together with other representatives of the Haudenosaunee Confederacy Chiefs Council, including Clan Mothers, as appropriate, in the near future to discuss how best to move forward. I am also open to participating in a larger meeting with representatives from both the Elected Council and the Haudenosaunee Confederacy Chiefs Council, if preferred. Please note that I have also extended an offer to meet with the Six Nations Elected Council, my goal being openness and transparency in encouraging meaningful engagement and developing a better understanding of the community's interests.

.../2

- 2 -

Canada deeply values its relationship with Six Nations of the Grand River and I recognize that there is much work to be done to rebuild this relationship if we are to truly achieve reconciliation. I believe that with respect, cooperation, and determination, we can make progress on your community's priorities in a way that respects its unique history and circumstances.

Sincerely,

A handwritten signature in black ink, consisting of a series of overlapping loops and a long horizontal stroke extending to the left.

The Honourable Marc Miller, PC, MP

c.c.: The Honourable David Lametti, P.C., M.P.
The Honourable Greg Rickford, P.C., M.P.P.
The Honourable Doug Downey, M.P.P.
Chief Mark Hill

EXHIBIT D

This is Exhibit "D" to the Affidavit of
Brian Doolittle, affirmed this 6th day of
July, 2022



Commissioner for Taking Affidavits



Six Nations "Iroquois" Confederacy
GRAND RIVER COUNTRY

2634 6th Line R.R.# 2 Ohsweken, ON NOA 1M0

March 7, 2022

The Honourable Mark Miller, PC, MP
Minister of Crown-Indigenous Relations
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Minister:

I trust this correspondence finds you in good health and good spirits.

We are writing in reply to your correspondence of February 3 2022.

We would be pleased to meet with you to discuss a number of matters that need to be resolved involving the events of 1924.

As you are aware the Six Nations Elected Band Administration was imposed upon the Haudenosaunee in 1924 without consent and over the objection of the Haudenosaunee Confederacy Chiefs Council and the Haudenosaunee people.

One of the primary architects of the imposition of the *Indian Act* system, Duncan Campbell Scott, utilized the elected band system, in conjunction with the residential school policy to advance cultural genocide against the Haudenosaunee and Ongwehonweh people generally.¹

An apology has been provided for the imposition of the residential school policy however we have not received any expression of regret with respect to the attempt to end Haudenosaunee governance and our way of life.

As the Six Nations Elected Band Administration is entirely a creature of your government's legislation we do not believe that it is a necessary participant to our future

¹ Honouring the Truth, Reconciling for the Future – Summary of the Final Report of the Truth and Reconciliation Commission of Canada, page 3

meetings particularly where the Band Administration has not entered into any treaties with the Crown on behalf of the Haudenosaunee.

We believe that discussions directed towards acknowledging Canada's actions in 1924 will go a great length to repairing our relationship and allowing us to move forward to advance the goals of reconciliation consistent with our treaty relationship with the Crown.

In peace and friendship,



Hohahes, Leroy Hill
Council Secretary
Haudenosaunee Confederacy Chiefs Council

cc: The Honourable David Lametti, P.C., M.P.
The Honourable Greg Rickford, P.C., M.P.P.
The Honourable Doug Downey, M.P.P.
Mark Hill, Six Nations Elected Band Administration

EXHIBIT E

This is Exhibit "E" to the Affidavit of
Brian Doolittle, affirmed this 6th day of
July, 2022



Commissioner for Taking Affidavits



Dear Minister Miller:

Thank you for agreeing to serve Canadians as Minister of Crown-Indigenous Relations.

From the beginning of this pandemic, Canadians have faced a once-in-a-century challenge. And through it all, from coast to coast to coast, people have met the moment. When it mattered most, Canadians adapted, helped one another, and stayed true to our values of compassion, courage and determination. That is what has defined our path through this pandemic so far. And that is what will pave our way forward.

During a difficult time, Canadians made a democratic choice. They entrusted us to finish the fight against COVID-19 and support the recovery of a strong middle class. At the same time, they also gave us clear direction: to take bold, concrete action to build a healthier, more resilient future. That is what Canadians have asked us to do and it is exactly what our Government is ready to deliver. We will work to build that brighter future through continued collaboration, engagement, and the use of science and evidence-based decision-making. With an unwavering focus on delivering results, we will work constructively with Parliamentarians and maintain our strong partnerships with provincial, territorial and municipal governments and Indigenous partners. This decade has had an incredibly difficult start, but this is the moment to rebuild a more resilient, inclusive and stronger country for everyone.

The science is clear. Canadians have been clear. We must not only continue taking real climate action, we must also move faster and go further. As Canadians are increasingly experiencing across the country, climate change is an existential threat. Building a cleaner, greener future will require a sustained and collaborative effort from all of us. As Minister, I expect you to seek opportunities within your portfolio to support our whole-of-government effort to reduce emissions, create clean jobs and address the climate-related challenges communities are already facing.

This year, Canadians were horrified by the discovery of unmarked graves and burial sites near former residential schools. These discoveries underscore that we must move faster on the path of reconciliation with First Nations, Inuit and Métis Peoples. We know that reconciliation cannot come without truth and our Government will continue to invest in that truth. As Ministers, each of us has a duty to further this work,

both collectively and as individuals. Consequently, I am directing every Minister to implement the United Nations Declaration on the Rights of Indigenous Peoples and to work in partnership with Indigenous Peoples to advance their rights.

We must continue to address the profound systemic inequities and disparities that remain present in the core fabric of our society, including our core institutions. To this effect, it is essential that Canadians in every region of the country see themselves reflected in our Government's priorities and our work. As Minister, I expect you to include and collaborate with various communities, and actively seek out and incorporate in your work, the diverse views of Canadians. This includes women, Indigenous Peoples, Black and racialized Canadians, newcomers, faith-based communities, persons with disabilities, LGBTQ2 Canadians, and, in both official languages.

Across our work, we remain committed to ensuring that public policies are informed and developed through an intersectional lens, including applying frameworks such as Gender-based Analysis Plus (GBA Plus) and the quality of life indicators in decision-making.

Canadians continue to rely on journalists and journalism for accurate and timely news. I expect you to maintain professional and respectful relationships with journalists to ensure that Canadians are well informed and have the information they need to keep themselves and their families safe.

Throughout the course of the pandemic, Canadians and their governments have adapted to new realities. Governments must draw on lessons learned from the pandemic to further adapt and develop more agile and effective ways to serve Canadians. To this end, I expect all Ministers to evaluate ways we can update our practices to ensure our Government continues to meet the challenges of today and tomorrow.

The success of this Parliament will require Parliamentarians, both in the House of Commons and the Senate, to work together across all parties to get big things done for Canadians. I expect you to maintain constructive relationships with your Opposition Critics and coordinate any legislation with the Leader of the Government in the House of Commons. As Minister, you are accountable to Parliament both individually, for your style of leadership and the performance of your responsibilities, and collectively, in support of our Ministry and decisions taken by Cabinet. *Open and Accountable Government* sets out these core principles and the standards of conduct expected of you and your office. I expect you to familiarize yourself with this document, which outlines my expectations for each member of the Ministry.

Our platform lays out an ambitious agenda. While finishing the fight against the pandemic must remain our central focus, we must continue building a strong middle class and work toward a better future where everyone has a real and fair chance at success and no one is left behind.

As Minister of Crown-Indigenous Relations, your first and foremost priority is to work in full partnership with First Nations, Inuit and Métis to continue building nation to nation relationships and support self-determination, including supporting First Nations communities as they transition to self-government and move away from the *Indian Act*. Your immediate priority is to provide the necessary supports for communities as they undertake searches of unmarked graves and burial sites at residential schools, and ensure supports for healing and commemoration to preserve and protect the rights and dignity of children who never made it home. It is critical that you lead the work of all Ministers to accelerate the implementation of the Truth and Reconciliation's *Calls to Action* and implement the 2021 Federal Pathway to Address Missing and Murdered Indigenous Women, Girls and 2SLGBTQQIA+ People, including providing sustainable resources to the National Centre for Truth and Reconciliation, and advance the 2021 National Action Plan to address missing and murdered Indigenous women and girls and 2SLGBTQQIA+ people.

To realize these objectives, I ask that you achieve results for Canadians by delivering the following commitments.

- Work with the Minister of Indigenous Services to address the history and legacy of residential schools, including by continuing to provide the necessary supports to communities who wish to continue to undertake the work of burial searches at the sites of former residential schools and other federally-run institutions, such as day schools and Indian hospitals.
- Provide funding towards the construction of a permanent home for the National Centre for Truth and Reconciliation and ensure it has sustained financial resources to successfully fulfil its mandate, with dedicated ongoing support for the work on missing children and unmarked graves.
- Continue to lead and coordinate the work required of all ministers to accelerate the implementation of the Truth and Reconciliation Commission's *Calls to Action*. You will be supported by the Minister of Indigenous Services.
- With the support of all relevant ministers, including the Minister for Women and Gender Equality and Youth and the Minister of Indigenous Services, work with First Nations, Inuit and Métis leadership, Survivors, families and communities to address violence against Indigenous women, girls and 2SLGBTQQIA+ people by accelerating the implementation of the Federal Pathway to Address Missing and Murdered Indigenous Women, Girls and 2SLGBTQQIA+ People. In addition, work with

Indigenous partners, provinces and territories to support the implementation of the 2021 MMIWG and 2SLGBTQIA+ National Action Plan.

- With the Minister of Indigenous Services, continue to work with First Nations partners to ensure fair and equitable compensation for those harmed by the First Nations Child and Family Services program and to ensure the long-term reform of child and family services in First Nations communities, including to help children and families stay together and provide First Nations youth who reach the age of majority the supports they need for up to two additional years.
- With the Minister of Indigenous Services, Minister of Northern Affairs, Minister of Housing and Diversity and Inclusion and Minister of Intergovernmental Affairs, Infrastructure and Communities, and in partnership with First Nations, Inuit and Métis communities, continue to make immediate and long term investments to support ongoing work to close the infrastructure gap by 2030, with a particular focus on expediting investments in Indigenous housing, with over half of the funding available by the upcoming summer construction period, while concurrently working to establish Indigenous-led institutions to build housing and infrastructure.
- Continue to support Indigenous-led processes for rebuilding and reconstituting their nations and advancing self-determination, and work in partnership on the implementation of the spirit and intent of treaties, and land claim and self-government agreements with appropriate oversight mechanisms to hold the federal government accountable.
- Support the Minister of Justice and Attorney General of Canada in fully implementing the *United Nations Declaration on the Rights of Indigenous Peoples Act* across government.
- Support the Minister for Women and Gender Equality and Youth in the evaluation process of GBA Plus with the goal of enhancing the framing and parameters of this analytical tool and with particular attention to the intersectional analysis of race, indigeneity, rurality, disability and sexual identity, among other characteristics.
- Work with Indigenous partners and relevant Ministers to accelerate the Recognition of Indigenous Rights and Self-determination processes, with particular focus on reforming federal government structures, notably to support self-determination consistent with the United Nations Declaration on the Rights of Indigenous Peoples.
- Accelerate ongoing work with First Nations to redesign federal policies on additions-to-reserves and the Specific Claims process to provide just and timely resolution, conscious of the need for a fairer and more equitable process, accelerate the resolution of outstanding land claims and, as set out in our

permanent bilateral process, meet regularly with the Assembly of First Nations and rights holders to make progress on First Nations priorities.

- Work with existing and traditional Indigenous governments and leaders, whose nations and forms of governance were suppressed and ignored historically by the federal government, to restore respectful nation-to-nation relations, in the spirit of self-determination, by renewing and updating treaty relationships where they exist, including pre-confederation treaties, and by seeking viable, trusting and respectful relationships where no treaty exists.
- Work with Inuit to finalize a co-developed Inuit Nunangat Policy and accelerate its implementation, continue work to fully implement Inuit land claim agreements and, as set out in our permanent bilateral process, meet regularly through the Inuit-Crown Partnership Committee to make progress on Inuit priorities.
- Continue moving forward on Self Government Recognition and Implementation Agreements with the Manitoba Métis Federation, the Métis Nation of Alberta, the Métis Nation of Ontario, and the Métis Nation of Saskatchewan, and on the Self-Government Framework Agreement with the Northwest Territory Métis Nation, and, as set out in our permanent bilateral process, meet regularly with Métis Nation partners to make progress on Métis priorities.
- Support the Minister of Public Safety in their work with First Nations partners to co-develop a legislative framework for First Nations policing, and on continuing to engage with Inuit and Métis on policing matters.
- Support the Minister of Justice and Attorney General of Canada to address systemic discrimination and the overrepresentation of Indigenous people in the justice system, including the development of an Indigenous Justice Strategy, in consultation and cooperation with provinces, territories and Indigenous partners.
- In close collaboration with the Minister of Indigenous Services, the Minister of Northern Affairs and the President of the Queen's Privy Council and Minister of Emergency Preparedness, work with First Nations and provincial and territorial government partners to strengthen the governance and service delivery for First Nations emergency preparedness, management and recovery.
- In collaboration with the Minister of Environment and Climate Change and the Minister of Indigenous Services, continue to work in partnership with First Nations, Inuit and the Métis Nation to address climate change and its impacts, and chart collaborative strategies.
- Support the Minister of Northern Affairs in continued work with Inuit to improve food security in Inuit Nunangat, including through the Harvesters Support Grant

and the Nutrition North Canada program, amended to make it more transparent and responsive to Inuit needs.

As Minister, you are also responsible for actively engaging with your Cabinet and Caucus colleagues. As we deliver on our platform commitments, it will be important that members of the Ministry continue to collaborate and work constructively to support rigorous and productive Cabinet decision-making. I expect you to support your colleagues in delivering their commitments, leveraging the expertise of your department and your own lived experiences.

To best achieve results for Canadians, Ministers must be rigorous and coordinated in our approach to implementation. I would therefore ask that you return to me with a proposed approach for the delivery of your mandate commitments, including priorities for early implementation. Furthermore, to ensure we are accountable for our work, I will be asking you to publicly report to me, and all Canadians, on your progress toward these commitments on a regular basis.

As we have been reminded throughout the pandemic, adapting to change is not only something government should do, it is something government must do. As you work to fulfil our commitments, I expect you to actively consider new ideas and issues as they emerge, whether through public engagement, your work with Parliamentarians or advice from the public service. I also expect you to work with your Deputy Minister to assess priorities on a continual basis as we build a better future for all Canadians. In addition to achieving results, you are responsible for overseeing the work of your department and ensuring the effective operation of your portfolio.

As you staff your office and implement outreach and recruitment strategies for federally appointed leadership positions and boards, I ask that you uphold the principles of equity, diversity and inclusion. This helps ensure that federal workplaces are dynamic and reflective of the Canadians we serve. You will also ensure your Minister's office and portfolio are reflective of our commitment to healthy and safe workplaces.

Canadians expect us to work hard, speak truthfully and be committed to advancing their interests and aspirations. When we make mistakes – as we all will – Canadians expect us to acknowledge them, and most importantly, to learn from them.

I know I can count on you to fulfill the important responsibilities entrusted in you, and to turn to me, and the Deputy Prime Minister, early and often to support you in your role as Minister.

Sincerely,

Rt. Hon. Justin Trudeau, P.C., M.P.
Prime Minister of Canada

*This Ministerial Mandate Letter was signed by the Prime Minister in the Minister's first official language.

EXHIBIT F

This is Exhibit "F" to the Affidavit of
Brian Doolittle, affirmed this 6th day of
July, 2022



Commissioner for Taking Affidavits



Dear Minister Lametti:

Thank you for continuing to serve Canadians as Minister of Justice and Attorney General of Canada.

From the beginning of this pandemic, Canadians have faced a once-in-a-century challenge. And through it all, from coast to coast to coast, people have met the moment. When it mattered most, Canadians adapted, helped one another, and stayed true to our values of compassion, courage and determination. That is what has defined our path through this pandemic so far. And that is what will pave our way forward.

During a difficult time, Canadians made a democratic choice. They entrusted us to finish the fight against COVID-19 and support the recovery of a strong middle class. At the same time, they also gave us clear direction: to take bold, concrete action to build a healthier, more resilient future. That is what Canadians have asked us to do and it is exactly what our Government is ready to deliver. We will work to build that brighter future through continued collaboration, engagement, and the use of science and evidence-based decision-making. With an unwavering focus on delivering results, we will work constructively with Parliamentarians and maintain our strong partnerships with provincial, territorial and municipal governments and Indigenous partners. This decade has had an incredibly difficult start, but this is the moment to rebuild a more resilient, inclusive and stronger country for everyone.

The science is clear. Canadians have been clear. We must not only continue taking real climate action, we must also move faster and go further. As Canadians are increasingly experiencing across the country, climate change is an existential threat. Building a cleaner, greener future will require a sustained and collaborative effort from all of us. As Minister, I expect you to seek opportunities within your portfolio to support our whole-of-government effort to reduce emissions, create clean jobs and address the climate-related challenges communities are already facing.

This year, Canadians were horrified by the discovery of unmarked graves and burial sites near former residential schools. These discoveries underscore that we must move faster on the path of reconciliation with First Nations, Inuit and Métis Peoples. We know that reconciliation cannot come without truth and our Government will

continue to invest in that truth. As Ministers, each of us has a duty to further this work, both collectively and as individuals. Consequently, I am directing every Minister to implement the United Nations Declaration on the Rights of Indigenous Peoples and to work in partnership with Indigenous Peoples to advance their rights.

We must continue to address the profound systemic inequities and disparities that remain present in the core fabric of our society, including our core institutions. To this effect, it is essential that Canadians in every region of the country see themselves reflected in our Government's priorities and our work. As Minister, I expect you to include and collaborate with various communities, and actively seek out and incorporate in your work, the diverse views of Canadians. This includes women, Indigenous Peoples, Black and racialized Canadians, newcomers, faith-based communities, persons with disabilities, LGBTQ2 Canadians, and, in both official languages.

Across our work, we remain committed to ensuring that public policies are informed and developed through an intersectional lens, including applying frameworks such as Gender-based Analysis Plus (GBA Plus) and the quality of life indicators in decision-making.

Canadians continue to rely on journalists and journalism for accurate and timely news. I expect you to maintain professional and respectful relationships with journalists to ensure that Canadians are well informed and have the information they need to keep themselves and their families safe.

Throughout the course of the pandemic, Canadians and their governments have adapted to new realities. Governments must draw on lessons learned from the pandemic to further adapt and develop more agile and effective ways to serve Canadians. To this end, I expect all Ministers to evaluate ways we can update our practices to ensure our Government continues to meet the challenges of today and tomorrow.

The success of this Parliament will require Parliamentarians, both in the House of Commons and the Senate, to work together across all parties to get big things done for Canadians. I expect you to maintain constructive relationships with your Opposition Critics and coordinate any legislation with the Leader of the Government in the House of Commons. As Minister, you are accountable to Parliament both individually, for your style of leadership and the performance of your responsibilities, and collectively, in support of our Ministry and decisions taken by Cabinet. *Open and Accountable Government* sets out these core principles and the standards of conduct expected of you and your office. I expect you to familiarize yourself with this document, which outlines my expectations for each member of the Ministry.

Our platform lays out an ambitious agenda. While finishing the fight against the pandemic must remain our central focus, we must continue building a strong middle class and work toward a better future where everyone has a real and fair chance at success and no one is left behind.

As Minister of Justice and Attorney General of Canada, your top priority is to ensure that all Canadians have access to fair and just treatment before the law. This includes reforming and modernizing the criminal justice system, which will include work to advance strategies to address systemic racism and the disproportionate representation of Indigenous Peoples, as well as Black Canadians and members of marginalized communities. You will also prioritize the implementation of the *United Nations Declaration on the Rights of Indigenous Peoples Act* and the appointment of a Special Interlocutor to further advance justice on unmarked graves and address the legacy of residential schools.

To realize these objectives, I ask that you achieve results for Canadians by delivering the following commitments.

- Work with Members of Parliament across parties to secure swift passage of legislation to make it a criminal offence to obstruct access to health services and to intimidate or threaten healthcare professionals or Canadians receiving health care.
- Fully implement the *United Nations Declaration on the Rights of Indigenous Peoples Act* and work with Indigenous Peoples to accelerate the co-development of an action plan to achieve the objectives of the Declaration. You will be supported in this work by all ministers, and in particular the Minister of Crown-Indigenous Relations, Minister of Indigenous Services and Minister of Natural Resources.
- Work with Indigenous partners to appoint a Special Interlocutor who will work with Indigenous communities and provincial and territorial governments to support the development of a legal and regulatory framework to advance justice regarding unmarked graves and make recommendations related to federal laws, regulations, policies and practices surrounding unmarked and undocumented graves and burial sites at residential schools.
- Building on the passage of Bill C-4, which criminalized conversion therapy, continue to ensure that Canadian justice policy protects the dignity and equality of LGBTQ2 Canadians.
- Continue work to ensure the Bench is gender-balanced and reflective of Canada's diversity by working with relevant stakeholders to encourage women, Black and racialized Canadians, Indigenous Peoples and LGBTQ2 Canadians to join the Bench and the legal profession. This will include working with the Commissioner for

Federal Judicial Affairs to better track diversity data for both new and past appointees to the bench.

- Address systemic discrimination and the overrepresentation of Black and racialized Canadians and Indigenous Peoples in the criminal justice system and ensure all Canadians have access to fair and just treatment, including by:
 - Secure support for the swift passage of Bill C-5 to reduce reliance on mandatory minimum penalties and promote non-criminal approaches to drug possession;
 - With the support of the Minister of Crown-Indigenous Relations, continue to develop, in consultation and cooperation with provinces, territories and Indigenous partners, an Indigenous Justice Strategy; and
 - With the support of the Minister of Housing and Diversity and Inclusion, develop, in consultation and cooperation with provinces, territories and Black Canadians, a Black Canadians Justice Strategy.
- Continue work to make drug treatment courts the default option for first-time non-violent offenders.
- Work with provinces and territories and the Minister of Mental Health and Addictions to help all Canadians have greater access to mental health courts to provide people suffering from mental health illnesses with a path to recovery, and expand access to culturally appropriate, trauma-informed mental health services for Indigenous Peoples who access treatment through mental health courts.
- Enhance access to justice by bringing our court system into the 21st century, including by working with provinces and territories to make better use of technology and virtual court services.
- Continue work to advance the establishment of an independent Criminal Case Review Commission to improve access to justice for potentially wrongfully convicted people to have their applications reviewed.
- Continue efforts with the Minister of Canadian Heritage to develop and introduce legislation as soon as possible to combat serious forms of harmful online content to protect Canadians and hold social media platforms and other online services accountable for the content they host, including by strengthening the *Canadian Human Rights Act* and the *Criminal Code* to more effectively combat online hate and reintroduce measures to strengthen hate speech provisions, including the re-enactment of the former Section 13 provision. This legislation should be reflective of the feedback received during the recent consultations.
- Support the Minister of Housing and Diversity and Inclusion in the development of the National Action Plan on Combatting Hate, including by establishing a National Support Fund for Survivors of Hate-Motivated Crimes to help survivors.

- Advance the priorities of Indigenous communities to reclaim jurisdiction over the administration of justice in collaboration with the provinces and territories, and support and fund the revitalization of Indigenous laws, legal systems and traditions.
- Work with the Minister of Public Safety to bring forward measures to counter the rise of ideologically-inspired violent extremism and strengthen the capacity of Canadian police and prosecutors to bring to justice cybercriminals and terror suspects to the fullest extent of the law.
- Work with the Minister of Public Safety to help end gun violence by introducing “Red flag” laws to allow the immediate removal of firearms if that person is a threat to themselves or others, particularly to their spouse or partner, and increasing maximum penalties for firearms trafficking and smuggling.
- Revive the Law Commission of Canada so it can provide independent advice on law reform needed on the complex legal issues Canadians face, such as systemic racism in the justice system, advancing reconciliation with Indigenous Peoples, issues around climate change and rapid technological shifts in the world.
- Continue to work with the Minister of Seniors to strengthen Canada’s approach to elder abuse by finalizing the national definition of elder abuse, investing in better data collection and establishing new offences and penalties in the *Criminal Code* related to elder abuse.
- Work with provinces and territories to support the development of specialized sexual violence courts.
- Support the Minister of Public Safety in their work to strengthen the laws and investigative powers related to major financial crimes and to bring forward a proposal to establish a Canada Financial Crimes Agency.
- Secure support for the swift passage of reforms to the judicial conduct process in the *Judges Act* to ensure the process is fair, effective and efficient so as to foster greater confidence in the judicial system.
- Working with the Minister of Public Safety, Minister of National Defence and Minister of Innovation, Science and Industry, and with the support of the Minister of Foreign Affairs, continue to advance the National Cyber Security Action Plan, ensuring Canada is well positioned to adapt to and combat cyber risks, and ensure the security and integrity of Canada’s critical systems.
- Building on previous public consultations and technical engagements amongst experts, continue substantive review of the *Privacy Act* including engagement with Indigenous partners to develop specific proposals for amendments to the *Privacy*

Act to keep pace with the effects of both technological change and evolving Canadian values.

As Minister, you are also responsible for actively engaging with your Cabinet and Caucus colleagues. As we deliver on our platform commitments, it will be important that members of the Ministry continue to collaborate and work constructively to support rigorous and productive Cabinet decision-making. I expect you to support your colleagues in delivering their commitments, leveraging the expertise of your department and your own lived experiences.

To best achieve results for Canadians, Ministers must be rigorous and coordinated in our approach to implementation. I would therefore ask that you return to me with a proposed approach for the delivery of your mandate commitments, including priorities for early implementation. Furthermore, to ensure we are accountable for our work, I will be asking you to publicly report to me, and all Canadians, on your progress toward these commitments on a regular basis.

As we have been reminded throughout the pandemic, adapting to change is not only something government should do, it is something government must do. As you work to fulfil our commitments, I expect you to actively consider new ideas and issues as they emerge, whether through public engagement, your work with Parliamentarians or advice from the public service. I also expect you to work with your Deputy Minister to assess priorities on a continual basis as we build a better future for all Canadians. In addition to achieving results, you are responsible for overseeing the work of your department and ensuring the effective operation of your portfolio.

As you staff your office and implement outreach and recruitment strategies for federally appointed leadership positions and boards, I ask that you uphold the principles of equity, diversity and inclusion. This helps ensure that federal workplaces are dynamic and reflective of the Canadians we serve. You will also ensure your Minister's office and portfolio are reflective of our commitment to healthy and safe workplaces.

Canadians expect us to work hard, speak truthfully and be committed to advancing their interests and aspirations. When we make mistakes – as we all will – Canadians expect us to acknowledge them, and most importantly, to learn from them.

I know I can count on you to fulfill the important responsibilities entrusted in you, and to turn to me, and the Deputy Prime Minister, early and often to support you in your role as Minister.

Sincerely,



Rt. Hon. Justin Trudeau, P.C., M.P.
Prime Minister of Canada

SIX NATIONS OF THE GRAND RIVER BAND OF INDIANS
Plaintiff

-and- THE ATTORNEY GENERAL OF CANADA *et al.*
Defendants

Court File No. CV-18-594281

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
TORONTO

**SUPPLEMENTARY AFFIDAVIT OF BRIAN
DOOLITTLE**

(Motion for Joinder/Intervention)

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SIX NATIONS OF THE GRAND RIVER BAND OF INDIANS
Plaintiff

-and- THE ATTORNEY GENERAL OF CANADA *et al.*
Defendants

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**SUUPLEMENTARY MOTION RECORD OF THE
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