

**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 HIS MAJESTY THE KING
IN RIGHT OF ONTARIO

Defendants

- and -

MISSISSAUGAS OF THE CREDIT FIRST NATION

Moving Party

**RESPONDING MOTION RECORD OF THE PLAINTIFF, SIX NATIONS OF THE
GRAND RIVER BAND OF INDIANS**

MOTION RETURNABLE MAY 8-11, 2023

February 6, 2023

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

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Court File No. CV-18-594281-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

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MISSISSAUGAS OF THE CREDIT FIRST NATION

Moving Party

**AFFIDAVIT OF MARK HILL
(Affirmed February 6, 2023)**

I, Mark Hill, of the village of Ohsweken, Six Nations of the Grand River territory,
MAKE OATH AND SAY:

A. Introduction

1. In this affidavit, I describe at a high level the history of my community – the Six Nations of the Grand River – and its relationship with the Mississaugas of the Credit First Nation (“**MCFN**”).

B. My Background

2. I am the Elected Chief of the Six Nations Elected Council (“**Elected Council**”) of the Six Nations of the Grand River Band of Indians (“**Six Nations of the Grand River**” or the “**Band**”). I have been the Chief of the Elected Council since November 2019. From 2010 to 2019, I was a District Elected Councillor in the Elected Council. As such, I have knowledge of the matters in this affidavit, and where I have relied on information received from others, I have indicated the source of that information and believe it to be true.

3. I am a member of the Mohawk Nation, a member of the Bear Clan, and a band member of the Six Nations of the Grand River since birth. I am registered as an Indian under the *Indian Act*.

C. Six Nations Lands Before 1784

4. Below, I describe the history of the Six Nations and how they came to settle on the reserve at the Grand River that was created for our people by the 1784 Haldimand Proclamation (the “**Reserve**”). This is based on what I have been taught since birth by my family, elders in our community, and members of the Six Nations Lands and Resources Unit who have studied our history.

5. From time immemorial, I understand that the Six Nations (also known as the Haudenosaunee or the Five Nations, which first included the Mohawk, Oneida, Onondaga, Cayuga and Seneca nations, and later the Tuscarora as the “sixth” nation) lived on and occupied a large part of what is now the midwestern United States and the provinces of Ontario and Quebec, in the Great Lakes region. The Six Nations used and

occupied these lands, including the lands around the Grand River, for beaver hunting, trapping, fishing, harvesting, and trading.

6. The Anishinaabe is another group of Indigenous peoples that has historical connections to the Great Lakes region of Canada and the United States. The Anishinaabeg (the plural form of Anishinaabe) include the Mississaugas.

7. In the 1600s and early 1700s, the Haudenosaunee and the Anishinaabe were in a period of sustained conflict known as the “Beaver Wars”. The Beaver Wars ended when representatives of the Haudenosaunee and the Anishinaabe reached a peace agreement known as the Dish with One Spoon agreement in 1700. This was confirmed in another peace agreement called the Great Peace of Montreal in 1701. In our community, we understand these two agreements as having confirmed that the Haudenosaunee and the Anishinaabe would have a shared right to hunt, trade, and live across the areas covered by these agreements, including what is now the Six Nations Reserve.

8. I have read the affidavit of MCFN Chief R. Stacey Laforme, affirmed on December 2, 2022. In that, Chief Laforme describes the scope and meaning of the Dish with One Spoon agreement and the Great Peace of Montreal and suggests that the MCFN’s history is in issue in this court case. The Band is not seeking any declarations from the court about these agreements.

9. Chief Laforme also references what he calls the Nanfan Deed of 1701 and suggests that an issue in our court case is “whether the Nanfan Deed of 1701 is a treaty”.

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10. Our community refers to this as the “Albany Treaty” or the “Nanfan Treaty”, since it was an agreement made at Albany between representatives of the Haudenosaunee and John Nanfan, the then-acting colonial governor of New York, on behalf of the British Crown. It is widely understood in our community that the Albany Treaty recognized that the Haudenosaunee’s traditional beaver hunting territories in what is now southern Ontario and the midwestern United States would be protected by the British Crown. These territories included the Grand River valley, where the Reserve is now located. That said, the Band is not seeking declarations or relief in its court case about whether the Albany Treaty is a treaty.

D. The 1784 Haldimand Proclamation and 1793 Draft Simcoe Patent

11. Chief Laforme’s affidavit also references the 1784 Haldimand Proclamation and the 1793 draft Simcoe Patent. The history of the Haldimand Proclamation and *our* people’s dealings with the Crown and our people’s history is not as set out in Chief Laforme’s affidavit. We only wish to hold the governments of Canada and Ontario to account for what the Crown promised to the Six Nations of the Grand River.

12. The Haldimand Proclamation has always been understood in our community to be a treaty made between the Six Nations and the British Crown, and to have created the Reserve. The Six Nations, led by Joseph Brant, accepted the Haldimand Proclamation as partial recompense for the Six Nations’ alliance with and support of the British Crown during the American Revolutionary War. We understand the Haldimand Proclamation to mean what exactly what it says.

- 5 -

13. Chief Laforme's affidavit suggests that an issue in our court case is whether the Six Nations holds Aboriginal title to the lands covered by the Haldimand Proclamation. The Band is not seeking declarations regarding Aboriginal title in this court case.

14. Our court case is based, in part, on the British Crown failing to set aside for the Six Nations all of the lands that we were promised under the Haldimand Proclamation, but the Band is not seeking declarations or relief about what happened between the British Crown and the Mississaugas during or around this time.

E. Other Treaties After 1793

15. In his affidavit, Chief Laforme discusses other treaties that were signed between the Mississaugas and the British Crown after 1793. These do not relate to the lands set aside for the Six Nations under the Haldimand Proclamation. The Band's pleadings, as well as the defendants' pleadings, do not reference these treaties and the Band is not seeking findings about them in our court case.

16. We support the MCFN as they seek to rebuild a nation-to-nation relationship with the Crown and enforce their treaty rights on their territories. We ask that the MCFN also respect the Six Nations of the Grand River's right to do the same regarding our own claims against the Crowns.

F. Delay and Prejudice

17. This court case started in 1994 and has been public and well-known to the community and the Canadian public at large. The court case has been the subject of many reports in national and Indigenous news media since that time. The MCFN have

- 6 -

had decades to consider whether to intervene in this court case. The Band is very worried that the MCFN's request to intervene at this time, so close to the planned trial start date, will delay the hearing of this case and will prejudice the Six Nations of the Grand River by significantly expanding the scope of the claim beyond what is pleaded. The Band's interest is to litigate its claims against Canada and Ontario, and not to create tensions between the Six Nations of the Grand River and MCFN communities or to litigate our sometimes painful history.

18. The Band is also concerned about how the MCFN has come to be involved in this case, and that Ontario interfered in an effort to slow the case down and to make it more complicated. Despite not being a party to the case, the MCFN's motion record contains three expert reports delivered by the Band in support of the Band's claims. I understand MCFN to be saying that these reports raise issues that might impact MCFN's interests.

19. The Band and its lawyers did not provide these reports to the MCFN or its lawyers. Rather, I am informed by Gregory Sheppard, one of the Band's lawyers, that Ontario admitted to sharing these expert reports with the MCFN's lawyers without raising this first in a case conference. This required our lawyers to ask for a court direction that this not happen again, which was granted in an Endorsement of Justice Akbarali reported at 2022 ONSC 7158. This event was also reported in our community. Attached as **Exhibit A** is a copy of a November 2, 2022 news article in the *Turtle Island News*, a community newspaper, describing the release of the expert reports.

AFFIRMED remotely by Mark Hill at the village of Ohsweken, Six Nations of the Grand River Territory, before me at the City of Toronto, in the Province of Ontario, on February 6, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits
(or as may be)

GREGORY SHEPPARD

DocuSigned by:



AC45EFFA61F1436...

MARK HILL

This is Exhibit "A" referred to in the Affidavit of Mark Hill affirmed remotely by Mark Hill at the village of Ohsweken, Six Nations of the Grand River Territory, before me at the City of Toronto, in the Province of Ontario, on February 6, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

GREGORY SHEPPARD

Mississaugas Credit First Nation seeks to intervene in Six Nations trillion dollar land law suit

UPDATED: Nov 2, 2022 9:22 a.m.

By Lynda Powless

Editor

The Mississaugas of Credit First Nation (MCFN) are seeking intervenor status in Six Nations massive trillion dollar law suit that could push the case further back into 2024.

Six Nations lands director Lonny Bomberry said the neighbouring First Nation served Six Nations lawyers last Thursday.

Calling it a “bogus claim” he said “they are all coming out of the woodwork when its coming close to payday. Everyone is coming out of the woodwork to try to claim.”

He said not only is MCFN trying to jump on board, but they are also doing so with some of Six Nations case materials.

He said, “Ontario is desperate.”

He said “Ontario released some of our expert reports to them, without our consent. We served the reports on Canada and Ontario but have not filed in court, so they have them and Ontario gave them to (Mississaugas) Credit First Nation before our court case comes up.”

“Ontario is desperate. They are not prepared to defend this trial; they never have been and are just trying to delay and confuse everything.”

The massive case against Canada and Ontario was scheduled to go to court in January 2023.

Now the MCFN have become the second entity to seek intervenor status in the massive lawsuit.

The lawsuit scheduled to go to trial in early 2023 was pushed back to 2024 last month and now could now be pushed back even further.

Bomberry said they are pushing to have both the HDI and MCFN claims dealt with as early as possible. “We are hoping to have these matters dealt with early in 2023.”

Last month the Haudenosaunee Confederacy Chiefs Council’s (HCCC) development arm the Haudenosaunee Development Institute (HDI) filed for intervenor status claiming the HCCC at Grand River represents all Haudenosaunee.

The courts ordered the HDI to prove the HCCC does represent all Haudenosaunee and were told to place notices in newspapers from Quebec to Ontario to New York and even out west in a move to prove they did represent all Haudenosaunee.

Both groups seeking intervenor status comes after Crown-Indigenous Relations officials received an opinion from negotiators with the Treaties and Aboriginal Government branch that there was reason to worry they could lose the massive land claim case.

Internal documents in a 2020 briefing package to the deputy minister, said ““Justice Canada advises that portions of the Six Nations litigation claim pose high risk for the Crown, and will result in a significant damage award.”

Negotiators with the Treaties and Aboriginal Government branch informed their deputy minister, the department’s top public servant, of the law department’s opinion in the August 2020 briefing package obtained by APTN News and Turtle Island News.

Six Nations lawsuit demands an answer to what happened to Six Nations 900,000 acres of land that was improperly surrendered in southwestern Ontario, and its monies.

Six Nations dollars were used at the time as a fledgling Upper Canada was being formed to build bridges, government buildings and more.

Bomberry said MCFN is claiming they did not surrender any of Ontario and still have treaty ownership to the area.

He said “they are saying the NanFan Treaty does not apply to them.

“They want to intervene claiming they never surrendered all this territory and still have treaty ownership of it. The NanFan Treaty is not valid against them, and they and other Anishinaabe people drove out the Haudenosaunee in late 1600s and took control of the area. I don’t know what evidence they have to rely on that. We have never run across it.”

They said MCFN quick claimed any lands they had.

“They gave up everything. So, it’s going to become a battle of them making scurrilous claims about what’s true.”

He said MCFN has history issues. “In 1847 they were surrounded by settlers and asked Six Nations if we would set aside land for them to move here with us. So, if we were such great enemies as they like to claim, why would they want to live among us’

He said “We took mercy on them and let them stay with us. We never surrendered that land. They don’t own that land. They have nothing to prove they own the land. We reserved the right to the woods and to hunt there.”

He said even the MCFN lineage may be up for discussion in any court case.

He said “there are historians who will say they drove out the Haudenosaunee in the Beaver Wars but there’s no actual record of that just hearsay and noted historians don’t believe that actually happened. We had more concerns, more battles going on with what was happening with American states and tribes there, that’s where we concentrated our energy and the Huron and Neutrals had been assimilated into the Five Nations.

He said the MCFN launched a claim now in abeyance saying they did not surrender any of the waters of Ontario, including all the Great Lakes, rivers and streams in their treaty areas, in their quick claim areas.”

He said he is confident in Six Nations' case. "We are just going to have to do a little work that's all.¹¹
They are all coming out of the woodwork when you come close to a payday.

In a statement the MCFN said "Mississaugas of the Credit First Nation has always supported, and will continue to support, Six Nations of the Grand River's decades-long fight for a just accounting of the monies owed to them by the Crown relating to the sale and mismanagement of their lands. Unfortunately, it has become clear that the case will go further than this and will also deal with broad questions of historical facts and rights, including the rights of Mississaugas of the Credit First Nation. We feel compelled to participate in this case to ensure our history is told fairly and accurately, and that the rights of our people are protected. We have been drawn into this case very reluctantly and remain hopeful that the focus of the case remains on the historical wrongs suffered by Six Nations of the Grand River."

Add Your Voice

Is there more to this story? We'd like to hear from you about this or any other stories you think we should know about. Contribute your voice on our [contribute page](#).

SIX NATIONS OF THE GRAND RIVER BAND OF INDIANS Plaintiff
-and- THE ATTORNEY GENERAL OF CANADA et al. Defendants
-and- MISSISSAUGAS OF THE CREDIT FIRST NATION. Moving Party
Court File No. CV-18-594281-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Brantford
and transferred to Toronto

**AFFIDAVIT OF MARK HILL
(Affirmed February 6, 2023)**

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Lawyers for the Plaintiff

Court File No. CV-18-594281-0000

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- and -

MISSISSAUGAS OF THE CREDIT FIRST NATION

Moving Party

**AFFIDAVIT OF ELENA REONEGRO
(Affirmed February 6, 2023)**

I, Elena Reonegro, of the City of Toronto, in the Province of Ontario, MAKE OATH
AND SAY:

1. I am an Assistant with the law firm of Blake, Cassels & Graydon LLP (“**Blakes**”), lawyers for the Plaintiff, Six Nations of the Grand River Band of Indians, and, as such, have knowledge of the matters contained in this affidavit. Where I have relied on information from others, I state the source of that information and believe it to be true.

2. Attached are the following documents from the website of the Mississaugas of the Credit First Nation (“**MCFN**”), which I downloaded on January 26, 2023 from the link indicated on each document:

(a) “Treaty Lands & Territory”, as **Exhibit A**; and

(b) “Between the Lakes Treaty, No. 3 (1792)”, as **Exhibit B**.

3. Attached as **Exhibit C** is a copy of Ontario’s Ministry of Indigenous Affairs website titled “Current land claims”, which I downloaded on February 2, 2023 from the link indicated on the document.

4. Attached as **Exhibit D** is a copy of a Statement of Claim issued by the MCFN on December 17, 2020 in Toronto Court File No. CV-20-00653343-0000. I am informed by Gregory Sheppard that the Statement of Claim was provided to Blakes by counsel for Ontario on April 22, 2021. Attached as **Exhibit E** is a copy of an Order dated April 26, 2021 in the same matter placing the action into abeyance on consent, as obtained by Blakes on June 2, 2022.

5. Attached as **Exhibit F** is a copy of a document entitled “Statement of Claim Submitted to the Government of Canada and to the Government of Ontario” dated March 31, 2015, which I downloaded on February 2, 2023 from the MCFN website.

6. Attached as **Exhibit G** is a copy of a report dated March 2015 prepared by Joan Holmes & Associates Inc., which I downloaded on February 2, 2023 from the MCFN website.

7. Attached as **Exhibit H** is an email chain ending February 5, 2023 between Nuri Frame, one of the MCFN's counsel, and Max Shapiro, one of the Plaintiff's counsel.

8. Attached as **Exhibit I** is a letter dated February 6, 2023 from Mr. Shapiro to MCFN's counsel, with attachments.

AFFIRMED BEFORE ME at the City of Toronto, in the Province of Ontario on February 6, 2023.



Commissioner for Taking Affidavits
(or as may be)



ELENA REONEGRO

This is Exhibit "A" referred to in the Affidavit of Elena Reonegro affirmed February 6, 2023.



Commissioner for Taking Affidavits (or as may be)

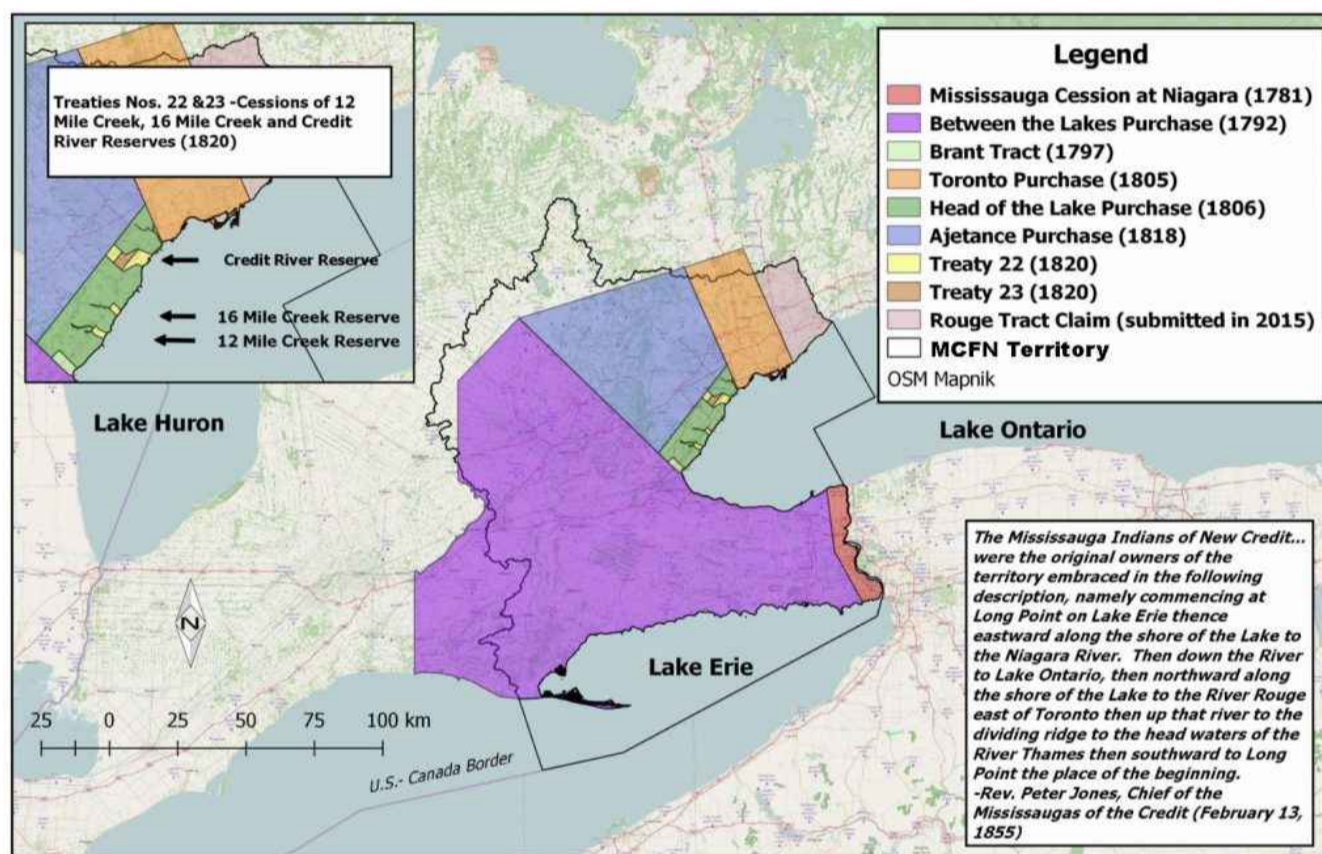
GREGORY SHEPPARD



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Mississaugas of the Credit First Nation Land Cessions 1781-1820 and Rouge Tract Claim, 2015

Prior to European contact, the ancestors of the Mississaugas of the Credit First Nation occupied the lands north of Lake Superior and the area around Georgian Bay. The Mississaugas lived lightly on the lands they occupied and purposefully moved about the landscape harvesting resources as they became available.

Mississauga Territory

The ancestors of the Mississaugas of the Credit migrated into Southern Ontario by means of military conquest. After the Iroquois had expelled the Huron from Southern Ontario in 1649-50, they continued their attacks northward into the territories occupied by the Mississaugas and their allies. By the end of the 17th century, the Mississaugas and their allies had succeeded in driving the Iroquois back into their homelands south of Lake Ontario. At the conclusion of the conflict, many Mississaugas settled at the eastern end of Lake Ontario; other Mississaugas settled at the western end of the lake with their primary location at the mouth of the Credit River.

The Mississaugas of the Credit occupied, controlled and exercised stewardship over approximately 3.9 million acres of lands, waters, and resources in Southern Ontario. Their territory extended from the Rouge River Valley westward across to the headwaters of the Thames River, down to Long Point on Lake Erie and then followed the shoreline of Lake Erie, the Niagara River, and Lake Ontario until arriving back at the Rouge River Valley.

From the time of the conquest of New France in 1760, the British Crown recognized the inherent rights of First Nations and their ownership of the lands they occupied. The Royal Proclamation of 1763 confirmed First Nations' sovereignty over their lands and prevented anyone, other than the Crown, from purchasing that land. The Crown, needing First Nations' land for military purposes or for settlement, would first have to purchase it from its indigenous occupants.

Moccasin Identifier with Ron MacLean and Battle of the Blades





MCFN Supports the Right of First Nations to Assert Jurisdiction Across

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The Mississauga's of the Credit First Nation is a thriving and vibrant community, bursting with people reaching for their roots as well as the future as they prepare to teach the next 7 generations it's history and culture.



General Contact Information

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- Communications@mncfn.ca
- Mississauga of the Credit First Nation
2789 Mississauga Road R.R. #6
Hagersville, Ontario
N0A 1H0
- Hours of Operation**
Monday to Friday 8:30 a.m. – 4:30 p.m.

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This is Exhibit "B" referred to in the Affidavit of Elena Reonegro affirmed February 6, 2023.



Commissioner for Taking Affidavits (or as may be)

GREGORY SHEPPARD



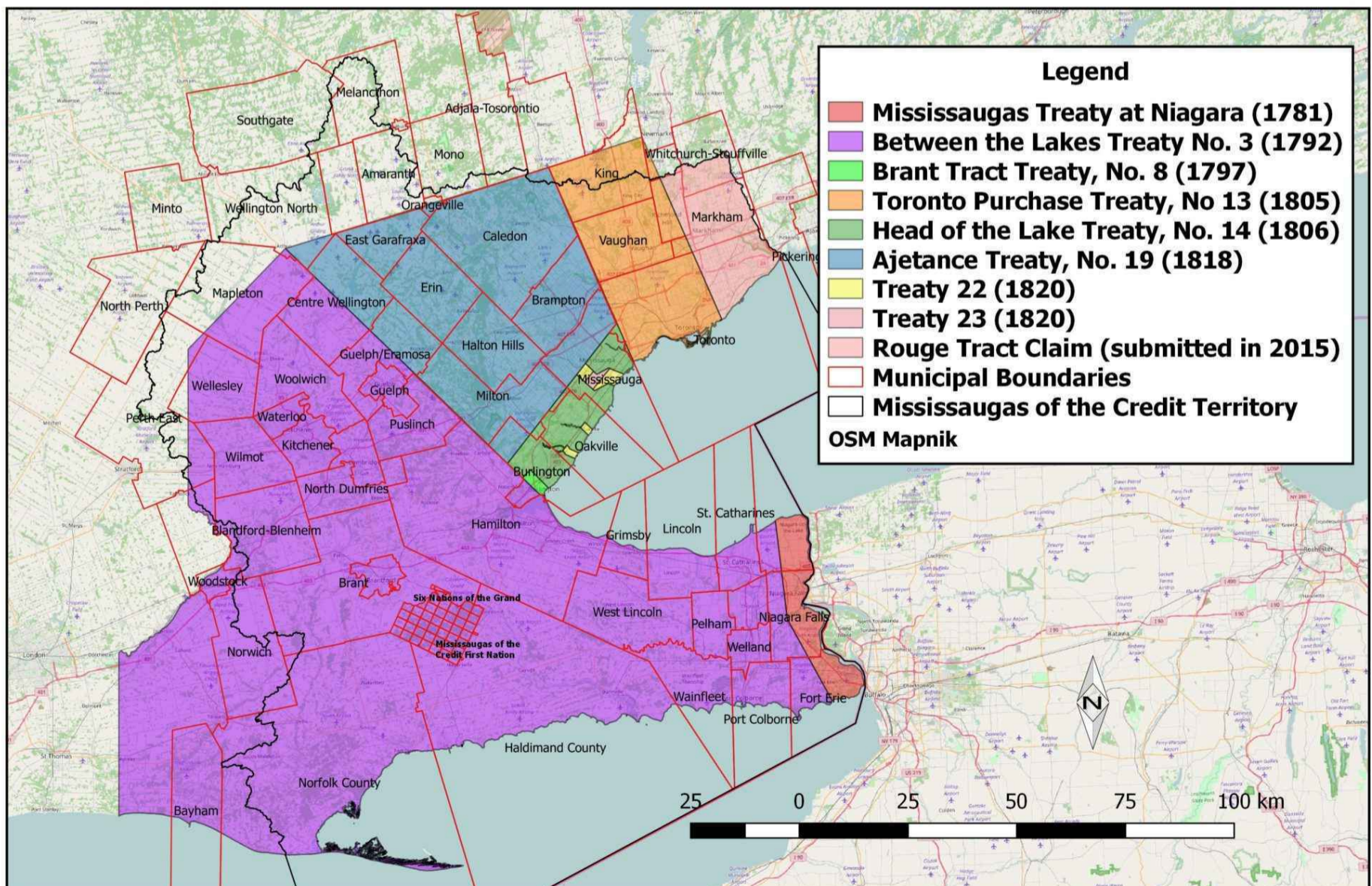
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Between the Lakes Treaty, No. 3 (1792)

Between the Lakes Treaty, No. 3 (1792)

Posted on November 4, 2020



Municipal Boundaries Related to the Between the Lakes Treaty, No. 3 (1792)



The arrival of Loyalists during and after the American Revolutionary War placed pressure on the British Crown to find lands on which to settle the newcomers. Among the Loyalists were approximately 2000 members of the Six Nations who had lost their homes fighting on behalf of the Crown.

Seeking to reward his First Nation allies for their loyalty during the war, Governor Haldimand offered homes to the Six Nations refugees in the remaining British colonies. One group of the Six Nations Loyalists settled at the eastern end of Lake Ontario, while another group, under the leadership of Mohawk Chief Joseph Brant, selected the Grand River Valley as an area for settlement.

Recognizing that under the terms of the Royal Proclamation of 1763 the land needed to be purchased from its owners before the resettlement of the Grand River Valley could begin, Col. John Butler was sent to negotiate with the Mississaugas at the western end of Lake Ontario. On May 22, 1784, for the sum of £1180 worth of trade goods, the Mississaugas of the Credit ceded to the Crown approximately 3 000 000 acres of land located between Lakes Huron, Ontario, and Erie. Of the land ceded, some 550 000 acres were granted to the Six Nations in the Haldimand Proclamation of October 25, 1784, with the remainder to be utilized for the settlement of other Loyalists. The land grant to the Six Nations was to extend six miles on both sides of the Grand River from its mouth to its source. When it was later discovered that the upper limits of the Between the Lakes Purchase were in error due to faulty geographical assumptions, actual boundaries were defined and a confirming document signed by the Mississaugas and the Crown in 1792.

Major population centres found within the boundaries of the Between the Lakes Purchase include Hamilton, Cambridge, Waterloo, Guelph, Brantford, and St. Catharines. The present location of the Mississaugas of the Credit First Nation Reserve is located on Between the Lakes Purchase lands.

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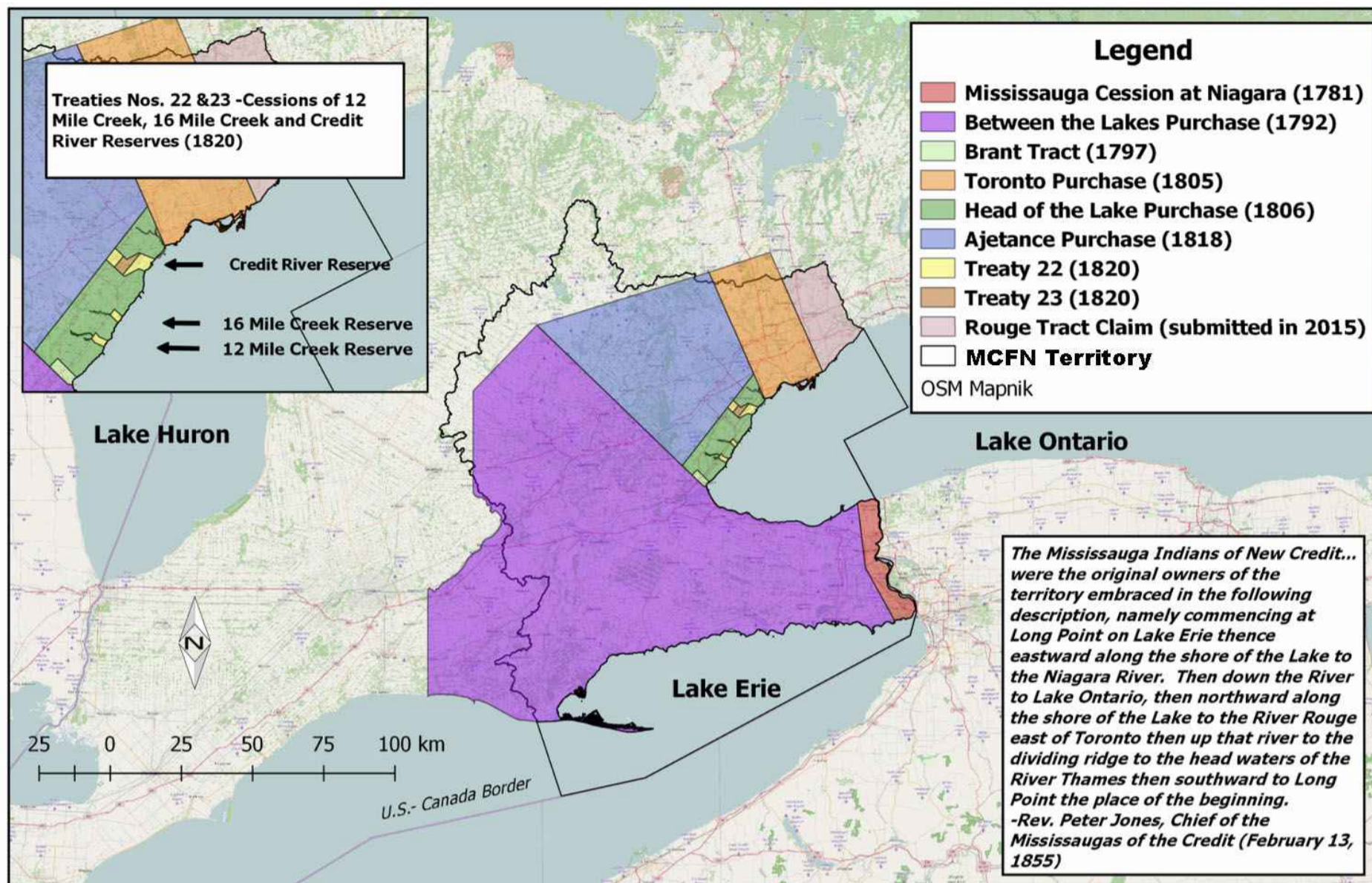
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Treaty Lands & Territory



Mississaugas of the Credit First Nation Land Cessions 1781-1820 and Rouge Tract Claim, 2015



The Mississauga's of the Credit First Nation is a thriving and vibrant community, bursting with people reaching for their roots as well as the future as they prepare to teach the next 7 generations it's history and culture.



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This is Exhibit "C" referred to in the Affidavit of Elena Reonegro affirmed February 6, 2023.



Commissioner for Taking Affidavits (or as may be)

GREGORY SHEPPARD

Current land claims

Learn about claims that have been accepted for negotiation, or are being researched and assessed, and settlement agreements that are being implemented.

Claims being researched and assessed

Beaverhouse First Nation Community (Treaty 9)

Location: Northeast of Kirkland Lake

Claim type: Reserve Land

Beaverhouse First Nation Community submitted a claim to Ontario on July 5, 2018, asserting the community is a distinct First Nation and did not sign Treaty 9, or any other treaty. The assessment of the claim submission is ongoing.

Henvey Inlet (Robinson-Huron Treaty 1850)

Location: Approximately 90 kilometres south of Sudbury

Claim type: Boundary

Henvey Inlet First Nation filed a claim with Ontario on July 15, 2021, asserting that the boundaries of the reserve surveyed under the Robinson-Huron Treaty 1850 differ from what the First Nation understood they were to receive. On July 29, 2021, Henvey Inlet First Nation was advised that Ontario will complete an assessment of the claim submission within three years.

Magnetawan (Robinson-Huron Treaty 1850)

Location: Approximately 100 kilometres south of Sudbury

Claim type: Boundary

Magnetawan First Nation filed a claim with Ontario on June 28, 2022, asserting that the boundaries of the reserve surveyed under the Robinson-Huron Treaty 1850 differ from what the First Nation understood it was to receive. On July 13, 2022, Magnetawan First Nation was advised that Ontario will complete an assessment of the claim submission within three years.

Mississaugas of the Credit First Nation - Rouge River Tract

Location: Rouge River watershed

Claim type: Aboriginal Title

Mississaugas of the Credit First Nation submitted a claim on July 13, 2015, asserting Aboriginal Title to lands in the Rouge River Tract. Ontario's review of the claim is ongoing.

Mississaugas of the Credit First Nation - Aboriginal Title to water

Location: Region of northeastern Lake Erie and northwestern Lake Ontario

Claim type: Aboriginal Title

Mississaugas of the Credit First Nation submitted a claim on September 21, 2016, asserting title to the waters, beds of waters, ground water and floodplains in their territory. The First Nation requested that Ontario pause its review of the claim.

Mississaugas of the Credit First Nation (Treaty 22 and Treaty 23)

Location: Mississauga and Oakville

Claim type: Reserve land

Mississaugas of the Credit First Nation submitted a claim to Canada and Ontario on May 28, 2018 and provided a supplemental legal opinion and additional historical report clarifying it in August 2020. In the claim, the Mississaugas of the Credit First Nation asserts that there was no meeting of the minds regarding Treaty 22 in 1820, and that the lands ceded under Treaty 23 were sold at undervalue. Ontario's review of the claim is ongoing.

Mohawks of the Bay of Quinte (Treaty 24 - sometimes referred to as "Surrender 24")

Location: Northern shore of Lake Ontario, approximately 20 kilometres east of Belleville and 60 kilometres west of Kingston

Claim type: Reserve land

Mohawks of the Bay of Quinte submitted a claim to Ontario on March 12, 2020, asserting that Surrender 24 of July 20, 1820, is invalid. On May 12, 2020, Mohawks of the Bay of Quinte was advised that Ontario will complete an assessment of the claim submission within three years.

Red Rock First Nation (Robinson-Superior Treaty 1850)

Location: Southern Lake Nipigon area

Claim type: Reserve land

Ontario has notice of a claim by Red Rock First Nation for additional reserve lands under the Robinson-Superior Treaty 1850. The claim was commenced in the Superior Court of Justice in 2019.

Whitesand First Nation (Robinson-Superior Treaty 1850)

Location: Northwestern Lake Nipigon area

Claim type: Reserve land

Ontario has notice of a claim by Whitesand First Nation for additional reserve lands under the Robinson-Superior Treaty 1850. The claim was commenced in the Superior Court of Justice in 2019.

Claims accepted by Ontario for negotiation

Agency One (Treaty 3)

Location: Fort Frances area

Claim type: Unsold Surrendered Land

In 2017, Canada, Ontario and beneficiaries of Agency 1 Reserve (Couchiching, Mitaanjigamiing, Naicatchewenin and Nigigoonsiminikaaning) agreed to enter into discussions about the First Nations' proposal to have three parcels of unsold surrendered land, outside of the Point Park, returned to reserve status. In August 2022, the Town of Fort Frances filed a motion for summary judgment seeking an order declaring that the Agency One Reserve lands that were surrendered in 1908, including the three parcels of unsold surrendered land, are the exclusive property of the town to be used for park purposes. The motion for summary judgment and the cross motions will be heard in December 2023. No negotiation meetings are currently scheduled.

Algonquins of Ontario

Location: Eastern Ontario (Ottawa River Watershed)

Claim type: Aboriginal Rights and Title

The Algonquins of Ontario negotiations are the only modern treaty negotiations currently underway in Ontario. The Algonquin rights and title assertions cover a territory of 36,000 square kilometres in eastern Ontario, an area with more than 1.2 million people. Following the successful negotiation of an agreement-in-principle signed in 2016, Ontario, Canada and the Algonquins of Ontario are now engaged in the final stage of treaty negotiations which will be followed by a ratification process and multi-year implementation plan. If successful, the negotiations will produce the province's first modern-day, constitutionally protected treaty.

More information: The Algonquin land claim (<https://www.ontario.ca/page/algonquin-land-claim>)

Animakee Wa Zhing #37 (Northwest Angle #37) (Treaty No. 3)

Location: Lake of the Woods area

Claim type: Treaty land entitlement

Animakee Wa Zhing #37 filed a claim with Canada and Ontario in March 1999 and May 2010, respectively, asserting that they did not receive all the reserve lands to which they are entitled under Treaty 3. Canada accepted the claim for negotiation in March 2009 and Ontario accepted the claim for negotiation in May 2013. A bilateral settlement between Canada and the First Nation was finalized in

November 2020. Ontario and Animakee Wa Zhing #37 continue to negotiate a settlement, including engaging in public and Indigenous consultation on the First Nation's areas of interest.

Animbiigoo Zaagi'igan Anishinaabek (Lake Nipigon) (Robinson-Superior Treaty 1850)

Location: Northeastern Lake Nipigon Area

Claim type: Reserve Land Entitlement

Animbiigoo Zaagi'igan Anishinaabek submitted a claim to Ontario on June 5, 2018, asserting they did not sign or adhere to the Robinson-Superior Treaty of 1850. Ontario accepted the claim for negotiation in January 2022, conditional on Canada also accepting the claim.

Asubpeeschoseewagong Netum Anishinabek (ANA – Grassy Narrows) and Wabauskang (Treaty 3)

Location: Dryden area

Claim type: Treaty land entitlement

Asubpeeschoseewagong Netum Anishinabek (ANA) and Wabauskang First Nations submitted a joint claim to Ontario and Canada in 1993, asserting that they did not receive all the land to which the original English River First Nation was entitled under Treaty 3. Ontario accepted the claim for negotiation in March 2011 and negotiations proceeded between Ontario, ANA and Wabauskang. In October 2019, Canada notified ANA and Wabauskang First Nations of its acceptance of the claim, and negotiations between the four parties began in early 2020.

Bkejwanong Territory (Walpole Island)

Location: Amherstberg area

Claim type: Unsold surrendered land

Walpole Island First Nation submitted a claim in 1985, alleging a continuing interest in the shore and road allowances located within and along the external boundaries of the lands identified as the former Lower Indian Reserve in Moore Township. This file is inactive.

Biigtigong Nishnaabeg (Pic River First Nation) (Robinson-Superior Treaty 1850)

Location: North of Lake Superior

Claim Type: Aboriginal Rights and Title

In 2003, Biigtigong Nishnaabeg brought legal action (Pic River action, also known as the Michano litigation) against Canada and Ontario seeking a declaration of unextinguished exclusive Aboriginal Title to an area north of Lake Superior, claiming they did not enter the Robinson Superior Treaty in 1850 and did not adhere to the Robinson Superior Treaty subsequent to 1850. In 2016, the three parties began exploratory discussions to try to find a resolution outside of the court process. As a result of these discussions, the parties entered into formal negotiations in May 2019 and the litigation

was put into abeyance (on hold) in December 2019. Negotiations between Biigtigong Nishnaabeg, Ontario and Canada are ongoing.

Biinjitiwaabik Zaaging Anishinaabek (Rocky Bay First Nation)

Location: Lake Nipigon

Claim type: Aboriginal Rights and Title

In 2006, Biinjitiwaabik Zaaging Anishinaabek (Rocky Bay First Nation) brought legal action against Canada and Ontario seeking a declaration of unextinguished and exclusive Aboriginal Title to an area north of Lake Superior, claiming that they did not enter the Robinson-Superior Treaty in 1850 and did not adhere to the Robinson-Superior Treaty subsequent to 1850. In 2016, Biinjitiwaabik Zaaging Anishinaabek, Ontario and Canada began exploratory discussions to try to find a resolution outside of the court process. As a result of these discussions, the parties entered into formal negotiations in June 2021. The litigation is stayed (on hold) and negotiations between Biinjitiwaabik Zaaging Anishinaabek, Ontario and Canada are ongoing.

Bingwi Neyaashi Anishinaabek

Location: Lake Nipigon

Claim type: Aboriginal Rights and Title

In 2006, Bingwi Neyaashi Anishinaabek (then known as Sand Point First Nation) brought legal action against Canada and Ontario seeking, among other remedies, a declaration of unextinguished Aboriginal Title to an area north of Lake Superior, claiming that they did not enter the Robinson-Superior Treaty in 1850 and did not adhere to the Robinson-Superior Treaty subsequent to 1850. In 2016, Bingwi Neyaashi Anishinaabek, Ontario and Canada began exploratory discussions to try to find a resolution outside of the court process. As a result of these discussions, the parties entered into formal negotiations in June 2021. The litigation is stayed (on hold) and negotiations between Bingwi Neyaashi Anishinaabek, Ontario and Canada are ongoing.

Eabametoong First Nation (Treaty 9)

Location: North of Eabamet Lake, north of the Albany River

Claim type: Treaty land entitlement

Eabametoong First Nation submitted a claim to Canada and Ontario in December and October 2010, respectively, asserting that they did not receive all the reserve lands to which they are entitled under Treaty 9. Ontario accepted the claim for negotiation in October 2013. Canada accepted the claim in November 2013. Negotiations between the First Nation, Canada and Ontario began in 2014, and are ongoing.

Fort Severn (Treaty 9)

Location: Hudson's Bay / Northwestern Ontario

Claim type: Treaty Land Entitlement

Fort Severn First Nation submitted a claim to Canada and Ontario in July and April 2013, respectively, asserting that they did not receive all the reserve lands to which they are entitled under Treaty 9. Ontario and Canada accepted the claim for negotiation in July 2016, and negotiations are ongoing.

Ginoogaming First Nation (Treaty 9)

Location: 318 kilometres northeast of Thunder Bay, beside the Municipality of Greenstone

Claim type: Treaty land entitlement

Ginoogaming First Nation submitted a claim to Canada and Ontario in July and February 2013, respectively, asserting that they did not receive all the reserve lands to which they are entitled under Treaty 9. Ontario and Canada accepted the claim for negotiation in February and April 2016, respectively. Tripartite negotiations commenced in September 2016.

Kiashke Zaaging Anishinaabek (Gull Bay First Nation) (Robinson-Superior Treaty 1850)

Location: Lake Nipigon

Claim type: Flooding

Kiashke Zaaging Anishinaabek submitted a flooding claim to Canada in February 2005 and to Ontario in March 2014, asserting an outstanding entitlement to damages caused by unauthorized flooding of their reserve lands. Negotiations between Kiashke Zaaging Anishinaabek, Canada and Ontario began in 2017 and are ongoing.

Kiashke Zaaging Anishinaabek (Gull Bay First Nation) (Robinson-Superior Treaty 1850)

Location: Lake Nipigon

Claim type: Boundary

On September 7, 2010, Kiashke Zaaging Anishinaabek submitted a boundary claim to Ontario asserting an entitlement to additional reserve lands and financial compensation. The claim asserts that the boundaries of the reserve the First Nation received under the Robinson-Superior Treaty 1850 differ from what the First Nation understood they were to receive. Ontario has accepted the claim for negotiation, conditional on Canada also accepting the claim. The claim is currently the subject of ongoing litigation.

Lac La Croix

Location: Fort Frances area

Claim type: Treaty land entitlement

In March 2002, Lac La Croix First Nation submitted a claim to Canada and Ontario, asserting that they did not receive all the reserve lands to which they are entitled under Treaty 3. Canada and Ontario accepted the claim for negotiation in June 2011. The parties have been in negotiations since November 2012 and expect to conclude the settlement of the claim in 2022-2023.

Lake of the Woods/ Shoal Lake/ Winnipeg River (Treaty 3)

Location: Lake of the Woods area

Claim type: Flooding

Thirteen Treaty 3 First Nations on Lake of the Woods/Shoal Lake/Winnipeg River, with a total of 45 separate reserves, filed flooding claims with Ontario and Canada. Eleven of these claims were accepted by Ontario in 2007, followed by Canada in 2009. The two remaining claims were accepted by both Ontario and Canada in 2011. The Rainy River First Nations flooding claim was settled in 2015. Niisaachewan Anishinaabe Nation's and Nootkamegwanning First Nation's Flooding claims were settled in 2022.

The remaining 10 First Nations involved in the claims are:

- Animakee Wa Zhing #37 (Northwest Angle #37)
- Anishinaabeg of Naongashiing (Big Island)
- Big Grassy River (Mishkosiminiziibiing)
- Buffalo Point
- Iskatewizaagegan #39 (Shoal Lake #39)
- NorthWest Angle #33
- Ojibways of Onigaming
- Shoal Lake #40
- Washagamis Bay (Obashkaandagaang)
- Wauzhushk Onigum Nation (Rat Portage)

The claims are in various stages of negotiation.

More information: Lake of the Woods/Shoal Lake/Winnipeg River flooding claims (<https://www.ontario.ca/page/lake-woods-flooding-claims>)

Long Lake #58 First Nation

Location: North of Lake Superior

Claim type: Aboriginal Rights and Title

In 2006, Long Lake #58 First Nation brought legal action against Canada and Ontario seeking a declaration of unextinguished and exclusive Aboriginal Title to an area north of Lake Superior, claiming that they did not enter or subsequently adhere to either the Robinson-Superior Treaty of 1850 or Treaty No. 9 of 1906. In 2016, Long Lake #58 First Nation, Ontario and Canada began exploratory discussions to try to find a resolution outside of the court process. As a result of these discussions, the parties entered into formal negotiations in June 2019. The litigation is stayed (on hold) and negotiations between Long Lake #58 First Nation, Ontario and Canada are ongoing.

Matachewan (Treaty 9)

Location: Approximately 60 kilometres southwest of Kirkland Lake

Claim type: Treaty land entitlement

Matachewan First Nation submitted a claim to Canada and Ontario in October and August 2009, respectively, asserting that they did not receive all the reserve lands to which they are entitled under Treaty 9. Canada accepted the claim in August 2011 and Ontario accepted the claim in July 2012. Negotiations between the First Nation, Canada and Ontario began in September 2012. A bilateral settlement agreement between the Matachewan First Nation and Canada was finalized in July 2019. Ontario and Matachewan First Nation have initialed a settlement agreement, which was ratified by Matachewan First Nation members on November 5, 2022.

Mississauga #8 (Robinson-Huron Treaty 1850)

Location: Blind River area

Claim type: Right-of-way/ Highway

Ontario, Canada, and the Mississauga #8 First Nation are addressing several administrative issues associated with surveys of, and compensation to be paid for, the portions of the rights-of-way for provincial Highways 17 and 557 that pass through the First Nation's reserve. The parties are also clarifying the legal status of the First Nation's existing reserve lands and two parcels of unsold surrendered land. Ontario is working with Mississauga #8 First Nation and Canada to conclude the Mississauga #8 First Nation's Specific Agreement.

Mississauga #8 (Robinson-Huron Treaty 1850)

Location: Blind River area

Claim type: Flooding

Mississauga #8 First Nation submitted its flooding claim to Ontario in September 1996, alleging that in the early 1850s, two dams were constructed on the Blind River without the consent of the First Nation and subsequently flooded part of their reserve lands. Ontario accepted the claim for negotiation in April 2009. Canada accepted the claim in August 2010. The parties began formal negotiations in February 2012.

Moose Cree (Treaty 9)

Location: Approximately 300 kilometres north of Timmins

Claim type: Treaty land entitlement

Moose Cree First Nation submitted a claim to Canada and Ontario in September and June 2010, respectively, asserting that they did not receive all the reserve lands to which they are entitled under Treaty 9. Ontario accepted the claim for negotiation in June 2013, and Canada accepted the claim for negotiation in July 2013. Negotiations are ongoing.

Naicatchewenin (Treaty 3)

Location: Northwest of Fort Frances

Claim type: Right-of-way/trespass

Naicatchewenin First Nation submitted a claim to Canada and Ontario in December 2006, asserting that Ontario is trespassing on Reserve 17B as a result of the unauthorized construction and operation of the Burditt Lake Dam. Canada and Ontario accepted this claim for negotiation in January 2011 and March 2011, respectively. In 2013, the parties agreed to pause negotiations.

Naicatchewenin (Treaty 3)

Location: Northwest of Fort Frances

Claim type: Treaty land entitlement

Naicatchewenin First Nation submitted a claim to Canada in February 2010 asserting that they did not receive all the reserve lands to which they are entitled under Treaty 3. Canada accepted the claim for negotiation in January 2013. Naicatchewenin First Nation submitted the claim to Ontario in March 2015 and Ontario accepted the claim for negotiation in March 2018. Tripartite negotiations began in July 2018 and are ongoing.

Netmizaaggamig Nishnaabeg (Pic Mobert First Nation) (Robinson-Superior Treaty 1850)

Location: North of Lake Superior

Claim Type: Aboriginal Rights and Title

In 2006, Netmizaaggamig Nishnaabeg (Pic Mobert First Nation) brought legal action against Canada and Ontario seeking a declaration of unextinguished and exclusive Aboriginal Title to an area north of Lake Superior, claiming that they did not enter the Robinson-Superior Treaty in 1850 and did not adhere to the Robinson-Superior Treaty subsequent to 1850. In 2016, the three parties began exploratory discussions to try to find a resolution outside of the court process. As a result of these discussions, the parties entered into formal negotiations in September 2019. Negotiations between Netmizaaggamig Nishnaabeg, Ontario and Canada are ongoing.

Neyaashiinigiing (Chippewas of Nawash) (Treaty 82)

Location: Bruce Peninsula

Claim type: Unsold surrendered land

Neyaashiinigiing submitted a claim to Ontario in January 2014, alleging that some of their surrendered reserve lands remain unsold and that the First Nation did not receive its full entitlement to a one-acre burial ground reserve under Treaty 82. Ontario accepted the claim in June 2016, agreeing to enter exploratory discussions on the unsold surrendered land claim and to negotiate the burial ground component of the reserve entitlement claim, both of which are ongoing.

Nipissing First Nation (Robinson-Huron Treaty 1850)

Location: North shore of Lake Nipissing and west of the City of North Bay

Claim type: Boundary

Nipissing First Nation's claim asserts that the boundaries of the reserve, surveyed under the Robinson-Huron Treaty 1850, differ from what the First Nation understood they were entitled to receive. A bilateral settlement between Canada and Nipissing was finalized in 2013. Ontario accepted the claim for negotiation in April 2022 and bilateral negotiations are ongoing.

Ojibways of Onigaming (Treaty 3)

Location: Between Kenora and Fort Frances

Claim type: Right-of-way/highway

Ojibways of Onigaming submitted a claim in 1994, alleging unauthorized and uncompensated taking and use of land for Highway 71 through Sabaskong Bay Reserve 35D. Negotiations are paused to allow the parties to focus on the First Nation's flooding claim.

Pays Plat First Nation

Location: North of Lake Superior

Claim type: Aboriginal Rights and Title

In 2006, Pays Plat First Nation brought legal action against Canada and Ontario seeking a declaration of unextinguished and exclusive Aboriginal Title to an area north of Lake Superior, claiming that there is no evidence that Pays Plat First Nation entered into the Robinson-Superior Treaty in 1850 and did not adhere to the Robinson-Superior Treaty subsequent to 1850. In 2016, Pays Plat First Nation, Ontario and Canada began exploratory discussions to try and find a resolution outside of the court process. As a result of these discussions, the parties entered into formal negotiations in December 2020. The litigation is stayed (on hold) and negotiations between Pays Plat First Nation, Ontario and Canada are ongoing.

Rainy Lake First Nations (Treaty 3)

Location: Fort Frances area

Claim type: Flooding

From 1994-1999, five First Nations (Couchiching, Mitaanjigamiing, Naicatchewenin, Nigigoonsiminikaaning and Seine River) submitted claims to Canada and Ontario, with respect to unauthorized and uncompensated flooding of their nine reserves on Rainy Lake following construction of the Fort Frances/International Falls dam at Fort Frances. Negotiations with Canada and Mitaanjigamiing, Naicatchewenin, Nigigoonsiminikaaning, and Seine River First Nations have been proceeding since 2009. Negotiations with Canada and Couchiching First Nation began in 2013. Surveying of the lands impacted by the flooding has been completed for eight of the nine reserves. The Mitaanjigamiing First Nation (<https://www.ontario.ca/page/current-land-claims#section-2>) and Nigigoonsiminikaaning First Nation reached trilateral settlement agreements of their flooding claims in

2022. Information will be provided to stakeholders and Indigenous communities before settlements with the other Rainy Lake First Nations are finalized.

More information: Rainy Lake First Nations flooding claims (<https://www.ontario.ca/page/rainy-lake-first-nations-flooding-claims>)

Rainy River (Treaty 3)

Location: West of Fort Frances

Claim type: Right-of-way/highway

This claim, submitted to Canada in 2000 and Ontario in May 2002, alleges the unauthorized and uncompensated taking and use of land in Manitou Rapids Reserve 11 for Highways 11 and 71. Ontario accepted it for negotiation in December 2008. Canada accepted the claim for negotiation in September 2011. Canada closed the file in June 2012. This file has been inactive since that time.

Sagamok Anishnawbek (Robinson-Huron Treaty 1850)

Location: 98 kilometres west of Sudbury and five kilometres southwest of Massey

Claim type: Boundary

In 2017, Sagamok Anishnawbek First Nation submitted a claim to Ontario with respect to the La Cloche Tract. During its review, Ontario identified a survey discrepancy with the La Cloche Tract resulting in an outstanding entitlement to reserve land under the Robinson-Huron Treaty 1850. In order to fulfill its obligations, Ontario offered to enter negotiations with Sagamok in December 2020 and bilateral negotiations commenced in February 2021 and are ongoing.

Sandy Lake (Treaty 5)

Location: Northeast of Red Lake

Claim type: *Indian Lands Agreement (1986) Act*

In November 2014, Sandy Lake First Nation requested to enter into a Specific Agreement pursuant to the Indian Lands Agreement (1986) Act, with Ontario and Canada. In May 2015, Ontario accepted the First Nation's request. The Specific Agreement will result in Ontario waiving its entitlements under the *Indian Lands Act, 1924* to 50% of the revenues derived from minerals on reserve and releasing any such mineral revenues being held by Canada to the First Nation.

Seine River (Treaty 3)

Location: Fort Frances area

Claim type: Treaty land entitlement

Seine River First Nation submitted a claim to the governments of Ontario and Canada in April 2005 asserting that they did not receive all the reserve lands to which they are entitled under Treaty No. 3.

The claim was accepted for negotiation by Ontario in March 2011 and by Canada in September 2011. Tripartite negotiations began in October 2012 and are ongoing.

Shawanaga (Robinson-Huron Treaty 1850)

Location: 30 kilometres west of the Town of Parry Sound

Claim type: Boundary

Shawanaga First Nation submitted a claim to Canada and Ontario in August 2014, with an amended claim submitted to Ontario in 2016. The claim asserts that the boundaries of the reserve the First Nation received under the Robinson-Huron Treaty 1850 differ from what the First Nation understood they were to receive. The claim was accepted for negotiation by Canada in November 2018 and by Ontario in August 2019. Tripartite negotiations began in 2020 and are ongoing.

Temagami First Nation/Teme-Augama Anishnabai (Robinson-Huron Treaty 1850)

Location: Temagami

Claim type: Boundary

In 1991, the Supreme Court of Canada ruled that the Crown, Canada and Ontario had outstanding legal obligations to Temagami First Nation arising from the Robinson-Huron Treaty 1850. In order to fulfill its obligations, Ontario entered negotiations with Temagami First Nation and Teme-Augama Anishnabai in 2000. The negotiations, which were previously on hold, resumed in 2020.

Thessalon (Robinson-Huron Treaty 1850)

Location: North shore of Lake Huron, 100 kilometres east of Sault Ste. Marie.

Claim type: Boundary

Thessalon's claim asserts that the boundaries of the reserve surveyed for the First Nation under the Robinson-Huron Treaty 1850 differ from what the First Nation was entitled to receive. Negotiations between Thessalon First Nation and Ontario began in July 2016. The negotiations have been on hold since September 2020.

Wahnapiatae (Robinson-Huron Treaty 1850)

Location: Northwestern shore of Lake Wanapitei

Claim type: Boundary

Wahnapiatae's claim asserts that the boundaries of the reserve surveyed for the First Nation under the 1850 Robinson-Huron Treaty differ from what the First Nation understood it was to receive. The First Nation is negotiating a bilateral settlement with Canada. In January 2020, Ontario accepted the claim and negotiations between Wahnapiatae First Nation and Ontario are ongoing.

Wasauksing (Robinson-Huron Treaty 1850)

Location: Parry Sound area

Claim type: Boundary

Wasauksing First Nation asserts that certain islands adjacent to the Parry Island Reserve No. 16 were originally connected to the reserve and remain reserve land today. Ontario entered negotiations with Wasauksing First Nation in June 1981. Should Canada and Wasauksing initial and sign a Boundary Clarification Agreement, the Ministry of Indigenous Affairs will work closely with the Ministry of Northern Development, Mines, Natural Resources and Forestry to ensure implementation happens quickly.

Washagamis Bay (Obashkaandagaang) (Treaty 3)

Location: Kenora area

Claim type: Boundary

In its Statement of Claim, Washagamis Bay First Nation asserts that Canada and Ontario failed to recognize that several islands west of Corkscrew Island in Clearwater Bay, and at the mouth of White Partridge Bay on Lake of the Woods, are part of Reserve No. 38D. These islands were used for gardening and were identified by the former federal Department of Indian Affairs as Indian Reserve No. 38D. Negotiations are ongoing between the First Nation, Ontario and Canada.

Whitefish River (Robinson-Huron Treaty 1850)

Location: Manitoulin Island area

Claim type: Unsold surrendered land

Whitefish River First Nation is seeking the return of unsold surrendered land. The First Nation, Ontario and Canada agreed to negotiate in phases, with Phase I intended to reach a protocol agreement, and Phase II intended for negotiation. Phase I is complete. Phase II is outstanding and negotiations on the unsold surrendered land have not begun.

Whitefish River (Robinson-Huron Treaty 1850)

Location: Manitoulin Island area

Claim type: Boundary

Whitefish River's claim asserts that the boundaries of the reserve surveyed for the First Nation under the Robinson-Huron Treaty 1850 differ from what the First Nation was entitled to receive. A bilateral settlement between Canada and Whitefish River was finalized in March 2020. Bilateral negotiations between Ontario and Whitefish River began in February 2021 and are ongoing.

Wiikwemkoong Unceded Territory

Location: Georgian Bay

Claim type: Boundary

In December 1997, the Wiikwemkoong Unceded Territory submitted a claim to islands in Georgian Bay. Ontario received a mandate to begin tripartite negotiations with Wiikwemkoong and Canada in 2008. Negotiations are ongoing and the parties are working towards a final Settlement Agreement. Public consultations have been ongoing since 2012. Ontario is currently concluding public consultations and Class Environmental Assessment processes.

More information: Wiikwemkoong Unceded Territory (<https://www.ontario.ca/page/wiikwemkoong-unceded-territory>)

Settlement agreements in implementation

1990 Manitoulin Island Land Claim Settlement Agreement (United Chiefs and Councils of Mniidoo Mnising)

Location: Various townships on Manitoulin Island and Cockburn Island

Claim type: Unsold surrendered land / Indian lands agreement

The 1990 Manitoulin Island Land Claim Settlement Agreement includes two agreements, a bilateral Final Agreement between Ontario and the five First Nations (Aundeck Omni Kaning, M'Chigeeng, Sheguiandah, Sheshegwaning and Zhiibaahaasing), and a tri-lateral Specific Agreement including Canada. The 1990 Agreement settled a claim concerning unsold surrendered lands arising from the Manitoulin Island Treaty of 1862. Ontario is presently working with the signatory First Nations and Canada to resolve several issues in order to achieve full implementation of the agreement.

Chapleau Cree Treaty Land Entitlement

Location: Geographic Townships of Chapleau, Chappise, Caverley, Caouette, D'Arcy, Mageau, Marshall and Racine, Territorial District of Sudbury

Claim type: Treaty land entitlement

Ontario, Canada and Chapleau Cree First Nation reached a trilateral settlement agreement of the First Nation's treaty land entitlement claim in 2016. As part of the settlement, Ontario will transfer approximately 4,000 hectares (9,884 acres) of unpatented Crown land to Canada to be added to the First Nation's reserve lands, fulfilling their outstanding entitlement. The parties are working on implementation of the agreement.

Garden River – Squirrel Island

Location: Squirrel Island in the St. Mary's River, Territorial District of Algoma

This file was the subject of a settlement agreement between Canada and the Garden River First Nation involving properties on Squirrel Island near Sault Ste. Marie. While Ontario was not a party to the agreement, in January 1992 it committed to transfer provincial interests in several properties on

the island. The parties are working to address outstanding title and environmental remediation issues.

Ipperwash Tripartite Land Transfer Agreement

Location: Former Ipperwash Provincial Park (Geographic Township of Bosanquet, Municipality of Lambton Shores, County of Lambton)

On February 6, 2020, a tripartite Land Transfer Agreement between Canada, Ontario and Chippewas of Kettle & Stony Point First Nation was executed. Ontario finalized the transfer of the former Ipperwash Provincial Park to Canada on July 30, 2020 and Canada added the lands to reserve on August 25, 2020.

Lake of the Woods/ Shoal Lake/ Winnipeg River (Treaty 3) Flooding Agreements

Location: Lake of the Woods area

Claim type: Flooding

Thirteen Treaty 3 First Nations on Lake of the Woods/Shoal Lake/Winnipeg River, with a total of 45 separate reserves, filed flooding claims with Ontario and Canada. Eleven of these claims were accepted by Ontario in 2007, followed by Canada in 2009. The two remaining claims were accepted by both Ontario and Canada in 2011. The Rainy River First Nations flooding claim has been settled and implemented.

Trilateral settlement agreements have been reached with the First Nations listed below. These settlements include financial compensation for past losses and damages due to flooding of reserve lands resulting from a series of dams on Lake of the Woods, and for the continued flooding of reserve lands. Implementation of these agreements is ongoing:

- Niisaachewan Anishinaabe Nation (The Dalles 38C) – 2022
- Naotkamegwanning (Whitefish Bay) – 2022

Mississauga #8 Northern Boundary

Location: Geographic Townships of Cobden, Scarfe, Patton, Mack, Montgomery, and Thompson, Territorial District of Algoma

Claim type: Boundary

In 1999, Ontario transferred administration and control of the settlement lands to Canada for the benefit of Mississauga #8 First Nation. Ontario is working to release retained interests in roads and address other administrative matters that remain outstanding. Implementation of this 1994 settlement agreement will be completed after the transfer of two waterpower facilities located on Crown land in 2037 and 2043 respectively.

Mitaanjigamiing Treaty Land Entitlement

Location: Geographic Township of Griesinger, Territorial District of Rainy Lake

Claim type: Treaty land entitlement

The agreement with the First Nation and Canada to add land to the existing reserve was fully executed in 2018. The agreement provides for the transfer of approximately 1,646 hectares (4,069 acres) of Crown land from Ontario to Canada for addition to the Mitaanjigamiing Reserve. The parties are working on implementation of the agreement.

Mohawks of the Bay of Quinte – Turton Penn

Location: Geographic Township of Tyendinaga, County of Hastings

This 2005 agreement resolved a longstanding issue regarding ownership of former Highway 2 (Hastings County Road 2) and restored lands known as the Turton Penn leasehold to reserve status. Ontario will transfer its interest in former Highway 2 and other lands to the Mohawks of the Bay of Quinte in exchange for the province preserving the right of public use to the road. The parties are working on implementation of the agreement.

Nishnawbe-Aski Bands Agreement

Location: McDowell Lake (150 km northeast of Red Lake) and Aroland (60 km north of Geraldton)

Claim type: 1991 Tri-Partite Framework Band Agreement

On December 9, 1991, the Six Nishnawbe-Aski Bands Agreement was signed by Aroland First Nation, Kee-Way-Win First Nation, New Slate Falls First Nation, McDowell Lake First Nation, Saugeen First Nation, Wawakapewin First Nation, Canada and Ontario for the purposes of providing reserve lands and basic community facilities and services. Ontario is presently working with Canada and the First Nations of Aroland and McDowell Lake to address issues needed to achieve full implementation of the agreement.

Rainy Lake First Nations (Treaty 3) Flooding Claim

Location: Fort Frances area

Claim type: Flooding

From 1994 to 1999, five First Nations (Couchiching, Mitaanjigamiing, Naicatchewenin, Nigigoonsiminikaaning and Seine River) submitted claims to Canada and Ontario, with respect to unauthorized and uncompensated flooding of their nine reserves on Rainy Lake following construction of the Fort Frances/International Falls dam at Fort Frances. The claims were accepted for negotiation by Ontario and Canada in 2003 and 2009 respectively. Tripartite negotiations on four of the claims began in 2009. Tripartite negotiation of the fifth claim (Couchiching) began in 2013. The following settlement agreements are currently in implementation:

- the Mitaanjigamiing Flooding Settlement Agreement (May 2022)
- the Nigigoonsiminikaaning Flooding Settlement Agreement (October 2022)

More information: Rainy Lake First Nations flooding claims (<https://www.ontario.ca/page/rainy-lake-first-nations-flooding-claims>)

Wahta Mohawks Boundary

Location: Geographic Township of Gibson, Municipality of the Township of Georgian Bay, Muskoka District

Claim type: Boundary

Ontario, Canada and the Wahta Mohawks reached a trilateral settlement agreement of the First Nation's boundary claim in 2004. The agreement includes the transfer of administration and control of approximately 3,359 hectares (8,300 acres) of Crown lands to Canada for addition to reserve. The parties are working on implementation of the agreement.

Williams Treaties Settlement Agreement

Location: Various locations in Central & Southern Ontario

In August 2018 Canada, Ontario and the seven Williams Treaties First Nations (Chippewas of Beausoleil, Rama, Georgina Island, the Mississaugas of Scugog, Curve Lake, Hiawatha and Alderville) entered into a negotiated settlement agreement, and the Alderville litigation was discontinued in September 2018. Canada, Ontario, and First Nations continue to work together to fulfill the commitments of the agreement.

Lands and Larger Land Base Agreements (LLLBs)

Claim type: Lands and larger land base agreements

On August 5, 1991, Ontario and Canada signed a Framework Agreement with six First Nations (Fort William, Michipicoten, Pays Plat, Pic Mobert, Rocky Bay and Sand Point) in the Robinson-Superior 1850 treaty area. The Framework Agreement committed the parties to negotiate agreements to provide lands to the First Nations outside of the land claims process. The First Nation parties either did not have a reserve or had a very small reserve and required additional land to meet the current and future economic and social needs of the communities. Ontario is working with Canada and the respective First Nations to finalize the implementation of the final three outstanding LLLB agreements below.

Pays Plat LLLB

Location: Geographic Township of Lahontan and Yesno, Territorial District of Thunder Bay

Claim type: Lands and larger land base agreement

The agreement with the First Nation and Canada to add land to the existing reserve was fully executed in 2020. The agreement provides for the transfer of approximately 16 square kilometres of Crown

land from Ontario to Canada for addition to the Pays Plat Reserve. The parties are working on implementation of the agreement.

Pic Mobert LLLB (Netmizaaggamig Nishnaabeg)

Location: Geographic Township of Laberge, Bryant and McCron, Territorial District of Thunder Bay

Claim type: Lands and larger land base agreement

The agreement with Pic Mobert First Nation and Canada will result in the transfer from Ontario to Canada of approximately 16 square kilometres of Crown land to be added to Pic Mobert Reserve. The parties are working on phased implementation of the agreement, with approximately half of the lands added to reserve by Canada in late 2020.

Rocky Bay (Biinjitiwaabik Zaaging Anishinaabek) LLLB

Location: Geographical Township of Kilkenny, Municipality of Greenstone, Territorial District of Thunder Bay

Claim type: Lands and larger land base agreement

The agreement with the First Nation and Canada to add land to the existing reserve was fully executed in 2017. The agreement provides for the transfer of approximately 686 hectares (1,695 acres) of Crown land from Ontario to Canada to be added to the Rocky Bay Reserve. Approximately 7 hectares (17 acres) of patented land owned by the First Nation will also be added to the reserve. The parties are working on implementation of the agreement.

This is Exhibit "D" referred to in the Affidavit of Elena Reonegro affirmed February 6, 2023.



Commissioner for Taking Affidavits (or as may be)

GREGORY SHEPPARD



Court File No.: _____

Electronically issued : 17-Dec-2020
Délivré par voie électronique : 17-Dec-2020
Toronto

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE CHIEF AND COUNCIL OF THE MISSISSAUGAS OF THE CREDIT FIRST NATION,
on behalf of the MISSISSAUGAS OF THE CREDIT Band of Indians

Plaintiff

-- and --

THE ATTORNEY GENERAL OF CANADA and
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, and the
ATTORNEY GENERAL OF ONTARIO as representing
Her Majesty the Queen in Right of Ontario

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff.
The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

-

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: _____ Issued by: _____
Local registrar

Address of
Court Office: 393 University Avenue, 10th Floor
Toronto, ON M5G 1E6

TO: **The Attorney General of Canada**
Department of Justice Canada
Ontario Regional Office
The Exchange Tower
130 King Street West
Suite 3400, Box 36
Toronto, ON M5X 1K6

AND TO: **The Attorney General of Ontario and
Her Majesty the Queen in Right of Ontario**
Ministry of the Attorney General
McMurtry-Scott Building
Crown Law Office-Civil
720 Bay Street, 11th Floor
Toronto, ON M7A 2S9

CLAIM

1. The Plaintiff claims:

- a. A DECLARATION that the Mississaugas of the Credit First Nation has aboriginal title to all of the water, beds of water, and floodplains in its territory, as set out in Schedule A, or to such portions thereof for which this Court finds the evidence sufficient;
- b. A DECLARATION that the Plaintiff has the following aboriginal rights within its territory, as set out in Schedule A, or within such portions thereof, for which this Court finds the evidence sufficient:
 - i. The right to hunt, fish, trap, gather, or collect any or all species or types of animals, plants, minerals and oil, for any or all purposes, including food, social and ceremonial purposes, trade, exchange for money, or sale (including commercial sale);
 - ii. The right to have access to, preserve, and conserve sacred sites for traditional, social, and ceremonial purposes;
- c. In the alternative that this Court finds that the Mississaugas of the Credit First Nation does not have aboriginal rights to the water in its territory, a DECLARATION that the Mississaugas of the Credit First Nation has common law public rights to the water, beds of water, and floodplains within its territory;
- d. A DECLARATION that the Defendants are required to compensate the Plaintiff for the value and for the loss of use of the water, beds of water, and floodplains in its territory, or any portions thereof, which have been excluded, by virtue, only, of private parties owning them in fee simple;

- e. An accounting of revenues derived by the Defendants or their predecessors from the water, beds of water, and floodplains in its territory, or any portions thereof;
- f. A certificate or certificates of pending litigation in relation to any of the water, beds of water, or floodplains within the Plaintiff's territory, or any portions thereof;
- g. Pre-judgment interest on any amounts not subject to equitable interest;
- h. Post-judgment interest;
- i. Costs of these proceedings on a full indemnity basis or on such other basis as to the Court may seem just; and
- j. Such further and other relief as this Honourable Court may deem just and appropriate.

The Parties

The Plaintiff

- 2. The Mississaugas of the Credit First Nation, formerly known as the Mississaugas of the New Credit Indian Band, is a "band" within the meaning of section 2(1) of the *Indian Act*, RSC 1985, c 1-5.
- 3. The Mississaugas of the Credit First Nation's territory, as set out in Schedule A, commences at Long Point on Lake Erie, then eastward along the shore of the Lake to the Niagara River. Then down the River to Lake Ontario, then northward along the shore of the Lake to the River Rouge east of Toronto, then up that river to the dividing ridge to the head waters of the River Thames, then southward to Long Point, the place of the beginning. The Mississaugas of the Credit First Nation's territory also extends into Lakes Erie and Ontario, as set out in Schedule A.

4. The Mississaugas of the Credit First Nation use and occupy a reserve of approximately 4,800 acres of land, located in the Township of Tuscarora on the Grand River, near Hagersville, Ontario.
5. The Plaintiff, the Chief and Council of the Mississaugas of the Credit First Nation on behalf of the Mississaugas of the Credit First Nation Band of Indians, sue on behalf of the Mississaugas of the Credit First Nation and the past and current members of the Mississaugas of the Credit First Nation, a band of Indians.
6. The Mississaugas of the Credit First Nation's aboriginal and treaty rights are recognized and affirmed under Section 35 of the *Constitution Act 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

The Defendants

The Attorney General of Canada ("Canada")

7. The Attorney General of Canada, (hereinafter referred to as "Canada"), is the Minister of Her Majesty the Queen in Right of Canada, who is responsible for the statutes of Canada and the constitution of Canada, and who represents Her Majesty the Queen in Right of Canada in litigation concerning the constitution of Canada. The Plaintiff pleads and relies on Sections 21(1) and 23 of the *Crown Liability and Proceedings Act*, RSC 1985, c C-50, and amendments thereto, where such *Act* is applicable.

Her Majesty the Queen in Right of Ontario ("Ontario")

8. Her Majesty the Queen in right of Ontario, (hereinafter referred to, together with the Defendant the Attorney General of Ontario, as "Ontario"), is named as a Defendant in order to represent the interests of the Crown in right of the Province of Ontario. The Plaintiff pleads and relies on Sections 12, 14, 15, 16, and 23 of the *Crown Liability*

and Proceedings Act, 2019, SO 2019, c 7, Sch 17, where such *Act* and sections are applicable.

9. The Defendant, the Attorney General of Ontario, as representing her Majesty the Queen in right of Ontario, (hereinafter referred to, together with the Defendant Her Majesty the Queen in right of Ontario, as "Ontario"), is also named as a Defendant in order to represent the interests of the Crown in right of the Province of Ontario.
10. This Statement of Claim is brought against the Attorney General of Ontario as representing her Majesty the Queen in right of Ontario only for such relief, if any, that is held by the Court not to be obtainable in this Statement of Claim against the Crown of Ontario under the *Crown Liability and Proceedings Act, 2019*, or any successor or replacement legislation.
11. This proceeding, when considered as a "Statement of Claim" and relief is brought against "Her Majesty the Queen in right of Ontario," when styled as such, seeks both:
 - a. A claim for relief under the *Crown Liability and Proceedings Act, 2019*, or any successor or replacement legislation, to the extent that any of the claims for relief in this Statement of Claim are held by the Court to be proceedings under that *Act*, or any successor or replacement legislation; and
 - b. A claim for relief that is available against Her Majesty the Queen in right of Ontario, other than under the *Crown Liability and Proceedings Act, 2019*, or any successor or replacement legislation, and which relief is available by way of this Statement of Claim.
12. In these pleadings, reference to the "Crown" is intended to refer to the Crown in all her emanations, whether it be Provincial, Federal, or Imperial, and both before and

after Confederation of 1867. Reference to “Defendants” is intended to refer to the Defendants in this claim, being the Crown emanations Canada and Ontario.

13. The Mississaugas of the Credit First Nation states that as between it and the Defendants, both Defendants, being emanations of the Crown, are jointly, concurrently, and severally liable to it under this claim.

14. Notice of this action was given to Ontario by letter dated 17 March, 2020, pursuant to Section 18(1) of the *Crown Liability and Proceedings Act, 2019*, as amended.

History of the Mississaugas of the Credit First Nation

15. The Mississaugas of the Credit First Nation are part of the larger Anishinaabe Nation, which occupied vast tracts of territory, including almost all of what is now Ontario, and beyond. This forms part of the larger geographical, cultural, and customary context in which local land and water rights existed and continue to exist.

16. The Mississaugas of the Credit First Nation are also part of the Mississauga Nation, which presently includes six Mississauga First Nations.

17. The Mississaugas moved into what is now eastern and southern Ontario in the late 1600s; establishing villages along the north shore of Lake Ontario and adjacent waterways. These village sites included, but were not limited to, Toronto, the Rouge River, and the River Credit. The villages extended from the mouth of the Rouge to the mouth of the Niagara.

18. The Plaintiff is the decedent of the River Credit Mississaugas, a Mississaugas people. At all times, from the conquest of the French in 1760, and from the first Treaty with the Mississaugas in 1764 at Niagara, through to the land surrenders of the nineteenth

century, the British Crown recognized the Mississaugas as the Indians with title to what is now most of southern Ontario.

19. At no time did the Mississaugas of the Credit First Nation or their ancestors, knowingly surrender their aboriginal title to the water, beds of water, or floodplains in its territory.

Treaties entered into between the Plaintiff and the Crown

20. The majority of southern Ontario is unlike the rest of Ontario and western Canada, in that the Mississaugas did not enter into one treaty with the British Crown that dealt with all of their territory. Rather, the Mississaugas entered into many different land cessions or treaties with the British Crown from 1781 to 1820.

21. Water, beds of water, or floodplains within the Plaintiff's territory was **neither included nor excluded** in the written text of the following treaties entered into by the Mississaugas and the British Crown between 1781 to 1822:

- a. Treaty No 381, May 9, 1781;
- b. Treaty No 2, June 22, 1790;
- c. Treaty No 3 ³/₄, (Brant Tract), October 24, 1795;
- d. Treaty No 13a, August 2, 1805;
- e. Treaty No 19, (Ajetance Treaty), October 28, 1818; and
- f. Treaty No 27, May 31, 1819.

22. Water, but not the beds of water or floodplains, within the Plaintiff's territory **was** included in the written text of the following Treaties, entered into by the Mississaugas and the British Crown between 1781 and 1822:

- a. Treaty No 3, (Between the Lakes Purchase), May 22, 1784 and December 7, 1792;

- b. Treaty No 8, August 21, 1797;
- c. Treaty No 13, (Toronto Purchase), September 23, 1787 and August 1, 1805;
- d. Treaty No 14, September 5, 1806;
- e. Treaty No 22, February 28, 1820, with exception of reserving the fisheries at the River Credit; and
- f. Treaty No 23, February 28, 1820.

Between the Lakes Purchase, 1784 and Treaty No 3, December 1792

23. In May 1784, the Mississaugas, along with other First Nations entered into an agreement with the British Crown to transfer rights of soil and property to the King for a tract of land from the head of Lake Ontario to the Thames River, south to Lake Erie.
24. Following the discussions in 1784, John Graves Simcoe, Lieutenant Governor of Upper Canada, had reservations regarding the limits of the tract ceded in 1784. Simcoe asked Surveyor General Samuel Holland to verify the “North West Course” boundary.
25. The survey showed that a more accurate description was needed. Treaty No 3, was entered into in December 1792. The British Crown summarized the 1784 transaction but also took the opportunity to **seek permission from the Mississaugas for free use of Mississaugas waters** for transport and navigation purposes throughout the lands used and occupied by the First Nation. Within Treaty No 3, the Mississaugas **granted** the Crown **separate permission to navigate the lakes and rivers** within the Mississaugas’ territory.

Importance of Waterways

26. The ancestors of the Mississaugas of the Credit First Nation did discuss water within its territory with the Crown and were told that the Crown was, generally, not interested in their water. The treaties, generally, dealt only with their land.
27. Following a number of land cessions, in October 1790, Lieutenant Colonel John Butler signed off on a document outlining a complaint received from the chiefs of the Mississauga Indians about “white people” fishing in their creeks. Butler stated in response to the complaint that “...this Warning to all Concerned that **they [the Mississaugas] will not allow** any person of that description [white] to fish in the Creek called the River of Credit which they reserve entirely to themselves, any Other Creeks they have no objection to Peoples fishing in.”
28. An extract from correspondence in April 1791, between Lieutenant Governor Simcoe and the Lords of Trade states that “the Indians...rights reserved on certain Streams and Lakes for fishing and hunting privileges or purposes” shall be protected.

1797 Brant Tract Purchase

29. The Brant Tract was a purchase of land at Burlington Bay from the Mississaugas for Mohawk Captain Joseph Brant. Simcoe informed Butler, while in purchasing lands, to explain to Captain Brant that the Mississaugas were to “**retain their customary use of the Beach &c....**”
30. In another correspondence from Simcoe to Dorchester, Dorchester was informed that the Mississaugas should retain their rivers and fishing grounds if specific lands were purchased. Simcoe noted that “these lands should be purchased **so as to leave the Mississaugas in full possession of their rivers and fishing grounds....**”

31. In April 1798, Captain Brant corresponded with a Crown official, providing a description of a tract of land marked off for the Mississaugas. Brant described the bounds of the land and commented on the fisheries, noting that “...the **fisheries of all the Rivers will be reserved...**” and “...if the Marshes of the Creeks should be settled it would certainly spoil the fishery.”

1805 Toronto Purchase Renewal, Treaty No 13

32. Due to the confusion regarding the Toronto Purchase in 1787, Deputy Superintendent General William Claus met with the Mississaugas of the Credit First Nation in July 1805, to try and obtain a description of the exact boundaries of the cession. The hope was that a new deed could be executed.

33. Chief Quenepenon responded to Claus, stating that all of the Mississauga chiefs who had participated in the original sale were dead but they had informed their successors of the boundaries.

34. Chief Quenepenon insisted that the old chiefs “particularly reserved the fishery of the River to our Nation” and reminded Claus that Colonel Butler in 1787, replied to the Mississaugas’ request for the fisheries by stating, “**we do not want the water, we want the land.**” There is no evidence that the Crown in any way contradicted what Chief Quenepenon had to say.

35. On August 1, 1805, the Crown and the Mississaugas of the Credit executed a new deed, confirming the Toronto Purchase of 1787, and clearly outlining its boundaries. The deed included a special provision protecting Mississaugas fishing rights on the Etobicoke River, solely for the use of themselves and the Mississauga Nation.

Head of the Lake Purchase, 1805

36. In 1805, the land was surrendered from the Etobicoke River to Captain Brant's tract. It wasn't until September 5 and 6, 1806, that the formal surrender of the land took place.
37. As part of this surrender, the chiefs specifically requested protection when they camped along the Lake Ontario shore and reserved to the Mississaugas Nation "...the sole right of the fisheries in the Twelve Mile Creek, the Sixteen Mile Creek, the Etobicoke River together with the lands on each side of the said creeks and the River Credit...the right of fishery and reserves extending from Lake Ontario up the said creeks and River Credit...."

Protection of Fisheries

38. In October 1810, William Claus met with the Mississaugas at the River Credit. Chief Quenepenon expressed concern regarding the fisheries and trespass by whites, noting that "...You promised to try and help us, but the white People will come here....**it was you who advised us to reserve our Rivers for the support of our Women and Children....**"
39. Claus responded stating "...I repeat to you that if you are not pleased that the White People should fish and they persist, that you have a right to cut their Boats and destroy their Liquor – **they have no right to go into your Country if you do not wish it....**"
40. In late October 1818, Malcolm McGregor, wrote to the Secretary of State, submitting observations about the Indians living on a reserve on the River Credit. McGregor pointed out that the reserve land was not a grant to the Indians, but part of their Aboriginal territory. He reported that the **Mississaugas retained ownership of the**

Credit riverbanks and fishery, but stated that possession proved nominal, “as the River has been constantly and at pleasure, encroached upon and plunder’d....”

Petitions from the Mississaugas of the Credit

41. The River Credit Mississaugas’ leaders had repeatedly submitted petitions to British officials declaring that they had reserved all of their hunting and fishing grounds when they ceded the land to the Crown.
42. In mid-November 1825, the Mississaugas of the River Credit petitioned for exclusive fishing rights within their reserve in order for their commercial fisheries to succeed and support their community. The Mississaugas stated that “**we have always considered ourselves the owners of this River and fishery and have been enabled in a measure to reap some benefit of the said fishery....**”
43. Four years later, on January 31, 1829, the Mississaugas petitioned the House of Assembly of Upper Canada, stating that they had “sold a great deal of land to...the King, for very little....We reserved all the hunting and fishing grounds.” They requested protection of their fisheries in these waters.
44. The petition was referred to a Select Committee which submitted a report to the Commons House of Assembly in February 1829, recommending that a law be passed to protect the Mississaugas living on the Credit River from non-Indian fishermen.
45. In March 1829, the Province of Upper Canada passed *An Act, the better to protect the Mississauga Tribes living on the Indian Reserve of the River Credit, in their exclusive right of Fishing and Hunting therein*. The Act identified the Credit Reserve boundaries and prohibited people from fishing on the reserve **without the consent of at least three Mississaugas principal men or chiefs**.

46. The Act identified the Mississaugas fishery in the following way:

...That the said right to **the sole fishery aforesaid, shall be held and taken to extend through** the entire stream from Racey's line down its course, to its mouth, and from thence **one mile into Lake Ontario, occupying such a space thereon as may be supposed to be included in the segment of a circle**, having the middle of the said River at its mouth as the centre, and the distance to the Eastern Boundary where it touches the shore as its Radius, whereby to describe the said segment from the East to West Boundaries thereof on the shore as aforesaid....

47. In 1835, *An Act to revive and continue an Act passed in the Tenth year of His late Majesty's Reign, entitled, "An Act the better to protect the Mississauga Tribes living on the Indian Reserve of the River Credit, in their exclusive right of Fishing and Hunting therein"* extended protection of the Mississaugas hunting and fishing rights on the Credit River for another four years.

48. In October 1837, the Mississaugas of the Credit submitted a petition to Queen Victoria discussing the River Credit Reserve and noting that Parliament had acknowledged the tract to be theirs and forbade the whites from disturbing their fisheries.

49. As late as 1850, Mississaugas chiefs identified various unsurrendered reserves on waterways leading into Lake Ontario.

Aboriginal Title to Water, Beds of Water, and Floodplains

50. The Mississaugas of the Credit First Nation retains unextinguished aboriginal title to the waters, beds of waters, and floodplains within its territory, as a successor to the aboriginal title of the River Credit Mississaugas.

51. The Mississaugas of the Credit understand the treaties entered into between their ancestors and the Crown, where the treaty is silent on water, to mean that the water, beds of water, and floodplains were not surrendered with the land.
52. The Mississaugas of the Credit understand the treaties entered into between their ancestors and the Crown, where the treaty mentions water, did not include the surrender of the beds of water or floodplains.
53. The waters were, in some cases, protected by the Crown through the passage of legislation.

Common Law Public Rights

54. In the alternative that this Court finds that the Mississaugas of the Credit First Nation does not have aboriginal rights to the water in its territory, the Mississaugas of the Credit First Nation submits that they have common law public rights to the water, beds of water, and floodplains within its territory.
55. Public rights are held by the public at large, and can include the rights to navigation and fishing. As noted in *Reference re BC Fisheries, 1914*, the Privy Council held that “the fishing in navigable non-tidal water is the subject of property, and according to English law must have an owner and cannot be vested in the public generally” (at 173).
56. The Supreme Court of Canada further held that:

Non-navigable rivers, in contrast with navigable or public, are also called private, because although they may be navigable in fact, that is, capable of being traversed with ships, boats, rafts, &c., &c., more or less according to their size and depth, and so subject to a servitude to the public for purposes of passage, yet they are not open to the public for purposes of fishing, but may be owned by private persons, and in common presumption are **owned**

by the proprietors of the adjacent land on either side, who, in right of ownership of the bed of the river, are exclusive owners of the fisheries therein opposite their respective lands on either side to the centre line of the river (*The Queen v Robertson*, (1882) 6 SCR 52 at 88-89).

57. The Mississaugas of the Credit First Nation submit that this means that exclusive ownership of the fishery is treated as evidence of ownership of the waters, beds of waters, and floodplains.

The Breaches

58. Canada and Ontario, and their predecessors, had, and have, a fiduciary duty to respect and protect the Mississaugas of the Credit First Nation's aboriginal title.

59. Canada and Ontario, and their predecessors, have alienated to third parties certain waters, beds of waters, and floodplains, to which the Mississaugas of the Credit First Nation have never relinquished its rights, which would, but for this fact, be included within its territory.

60. Such alienations are in breach of the Defendant's duties to respect and protect the Mississaugas of the Credit First Nation's aboriginal title, and the Plaintiff has suffered loss and damage flowing from such breaches.

The Losses and the Appropriate Remedies

61. The Mississaugas of the Credit First Nation submits that both principles of equity from fiduciary law and the honour of the Crown require restitution; that is, that Canada and Ontario return the water, beds of water, and floodplains improperly taken and not paid for. Canada and Ontario claim ownership of the water, beds of water, and floodplains in the Plaintiff First Nation's territory. The water, beds of water, and floodplains should be returned to the Mississaugas of the Credit First Nation.

62. With respect to the water, beds of water, and floodplains that cannot be returned, the full monetary value of the property must be provided as compensation, including any increases in value that occurred between the breach and the date on which the compensation is actually made.
63. This means that the Mississaugas of the Credit are owed today the unimproved fair market value of the water, beds of water, and floodplains improperly included in the land surrenders between the Mississaugas Indians and the Crown between 1781 and 1822, that cannot be returned.
64. The Mississaugas of the Credit First Nation are also owed lost opportunity or loss of use with respect to those waters, beds of waters, and floodplains, where Canada, Ontario, or third parties have benefited from the use of the waters, beds of waters, and floodplains. Such an example is the lost opportunity with respect to hydro-electric generation.
65. Steps to remedy the breaches of the Crown's obligations include:
- a. Taking all reasonable steps towards ensuring that the waters, beds of waters, and floodplains identified by the Plaintiff First Nation for this claim are not disposed of or adversely affected in the interim period; and
 - b. Implementation steps, including:
 - i. securing those waters, beds of waters, and floodplains to ensure their availability for transfer to the Plaintiff First Nation;
 - ii. Payment of equitable compensation, or alternatively, payment of damages; and
 - iii. Payment of costs on a full indemnification basis.

66. The Plaintiff thus asks that the Court order the remedies as set out above.

December 17, 2020

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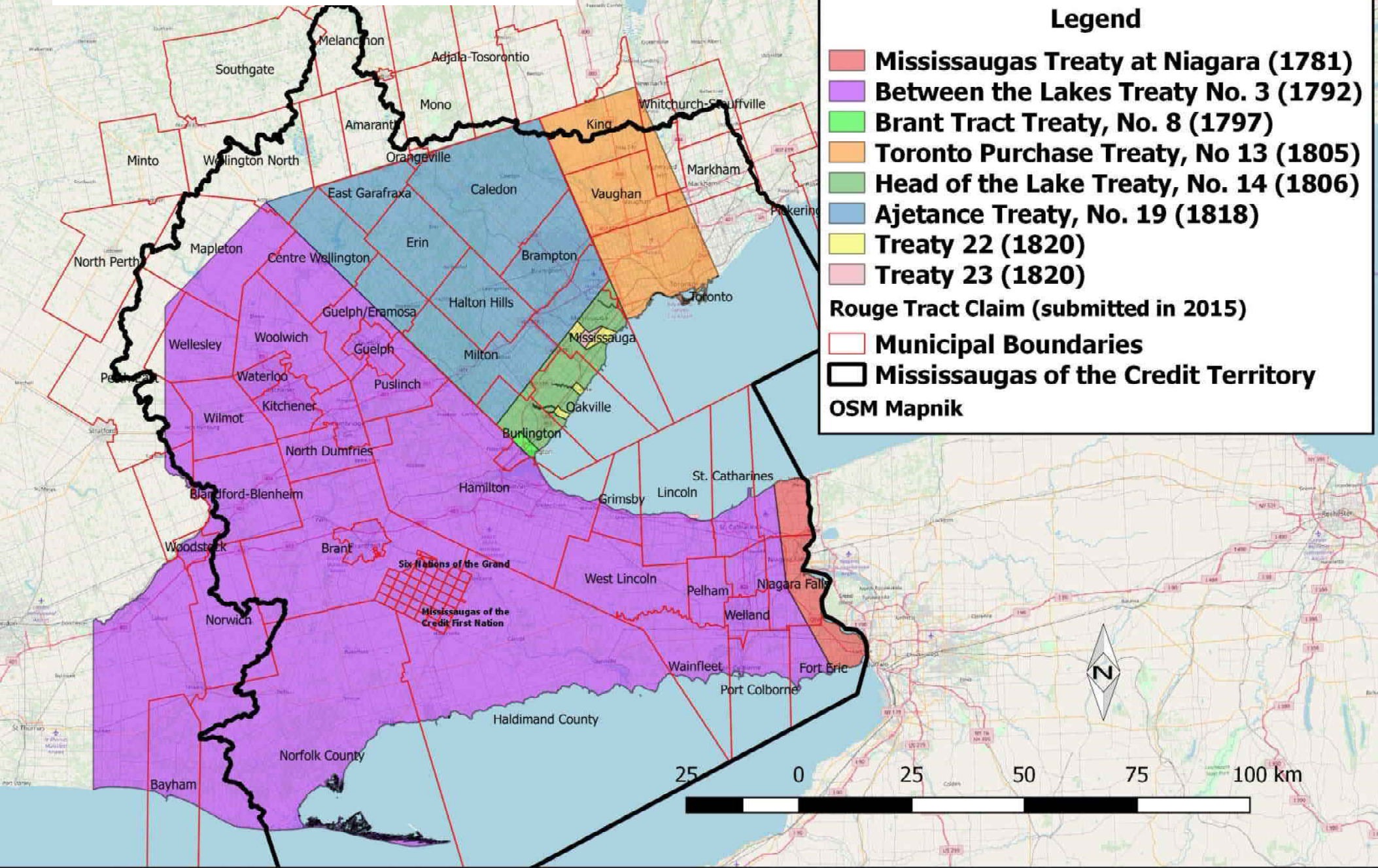
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Lawyers for the Plaintiff

Schedule A
MCFN Municipalities within MCFN Treaty Lands and Territory Map



Municipalities within MNCFN Treaty Lands

THE CHIEF AND COUNCIL OF THE MISSISSAUGAS OF THE
CREDIT FIRST NATION, on behalf of the MISSISSAUGAS OF
THE CREDIT FIRST NATION Band of Indians

Plaintiff

and THE ATTORNEY GENERAL
OF CANADA et. al.

Defendants

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at TORONTO

STATEMENT OF CLAIM

**KIM ALEXANDER FULLERTON BARRISTER AND
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Lawyers for the Plaintiff

This is Exhibit "E" referred to in the Affidavit of Elena Reonegro affirmed February 6, 2023.



Commissioner for Taking Affidavits (or as may be)

GREGORY SHEPPARD

Court File No. CV-20-00653346

ONTARIO**SUPERIOR COURT OF JUSTICE**

THE HONOURABLE JUSTICE)
)
 MR. JUSTICE CHALMERS) DAY, THE 26th DAY OF
) APRIL, 2021

BETWEEN:

**THE CHIEF AND COUNCIL OF
 THE MISSISSAUGAS OF THE CREDIT FIRST NATION,
 on behalf of the MISSISSAUGAS OF THE CREDIT Band of Indians**

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Defendants

**ORDER**

THIS MOTION, made by the Plaintiff, Mississaugas of the Credit First Nation, and on consent of the Defendants, The Attorney General of Canada and Her Majesty the Queen in Right of Ontario, for an Order placing this Action into abeyance, was heard in writing at 393 University Avenue, Toronto Ontario.

ON A CONSENT BASIS, executed by the lawyers for the Mississaugas of the Credit First Nation, The Attorney General of Canada, and Her Majesty the Queen in Right of Ontario, who consent to this order.

1. **THIS COURT ORDERS** that this Action be, and hereby is, placed into abeyance.

2. **THIS COURT ORDERS** that there shall be no costs of this motion.



C. H. CHALMERS, J.

THE CHIEF AND COUNCIL OF THE MISSISSAUGAS OF THE
CREDIT FIRST NATION, on behalf of the MISSISSAUGAS OF
THE CREDIT FIRST NATION Band of Indians
Plaintiff

and THE ATTORNEY GENERAL
OF CANADA et. al.
Defendants

Court File No.
CV-20-00653346-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at TORONTO

ORDER

**KIM ALEXANDER FULLERTON BARRISTER AND
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